CONTRACT DESIGN AND CONSTRUCTION
(EDUCATION CODE § 17250.10 ET SEQ.)

This contract is entered into and effective on ___June 30_____, 2021___ ("**Contract**"), by and between **San Leandro Unified School District,** a California public school district ("**District**"), and **Jeff Luchetti Construction** ("**Designer/Builder**"). District and Designer/Builder may be referred to herein individually as a "**Party**" or collectively as the "**Parties**".

RECITALS

WHEREAS, the scope of the Project includes:

The project includes the design and construction (design-build) of new modular classrooms, staff & student restrooms, associated utilities, sitework improvements, demolition, start-up, commissioning and all other associated work required to provide a complete turnkey project at the Bancroft Middle school and John Muir Middle School sites. The design shall be based on the bridging documents and District Standards provided in the Bid Package. The Design-Build team will provide Design Development Drawings, Constructability Review and Value Engineering services per the Bid Package for discussion and implementation as approved by the District and its representatives.

("**Project**"); and

WHEREAS, the Board has authorized the District to enter into a design-build contract with a design-build entity that is able to provide appropriately licensed contracting, architectural, and engineering services to design and construct the Project based on the Project criteria furnished by the District and based on detailed construction documents prepared by the successful design-build entity and approved by the Division of the State Architect and the District; and

WHEREAS, District desires that Designer/Builder design and construct, and Designer/Builder desires to design and construct, the scope of work and provide the services as defined in **Exhibit A**, attached hereto ("Services" or "Work"); and

WHEREAS, the District retained HKIT Architects ("Bridging Architect") to prepare documents setting forth the criteria for the Project (the "Bridging Documents"), which may establish, without limitation, the size, type, and desired design character of the Project, performance specifications covering the quality of materials, equipment, workmanship, and preliminary plans or building layouts;

WHEREAS, the Governing Board of the District ("Board") has determined that Designer/Builder's proposal offered the best value to the public, in accordance with the District's best value selection methodology;

WHEREAS, the Designer/Builder certifies and warrants that it has the experience, expertise, and capability to design and construct the Project based on the Project criteria furnished by the District and the timeframe indicated in this Contract and that, if it is not sufficiently licensed to design any portion of the Work as required by applicable law, Designer/Builder shall directly hire a consultant with sufficient licensure to design that portion of the Work.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

1. The Designer/Builder shall furnish the Services or Work described in **Exhibit A** to the District for a total price

of:

Thirteen Million One Hundred Thirty-Five Thousand Eight Hundred Twenty-Three Hundred Dollars ($13,135,823.00),

("Contract Price") as more specifically indicated in **Exhibit C.** The Contract Price shall be Designer/Builder's total compensation to perform the following Work:

The project includes the design and construction (design-build) of new modular classrooms, staff & student restrooms, associated utilities, sitework improvements at the John Muir Middle School and Bancroft Middle School, as further described in Exhibit A, attached hereto and incorporated herein by this reference ("Project").

2. The Work will be performed in Phases identified as follows, with the Contract Price payable in each phase as indicated below:

Phase	Total of Phase
Phase 1: Design Development Documents (100% at completion of this Phase)	$142,680
Phase 2: Construction Documents (100% at completion of this Phase)	$285,360
Phase 3: Construction • Paid monthly at 95% of work completed pursuant to payment provisions herein; and • 5% paid within sixty days of Project Completion	$12,707,783
Total	$13,135,823

Unit prices, if any, are as follows. The Contract Price will be increased by an amount equal to the Unit Price multiplied by the actual number of units of each Unit Price item incorporated in the Work.

3. Work shall be completed within the time specified in **Exhibit B** ("Project Schedule"), attached hereto and incorporated herein by this reference, from the date specified in the District's Notice(s) to Proceed, as indicated in the Milestone Schedule in **Exhibit B.** This shall be the "Contract Time."

4. **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 Designer/Builder's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Designer/Builder shall forfeit and pay to District the following sum(s) as liquidated damages ("Liquidated Damages"):

[**ADAPT THIS SECTION FOR EACH PROJECT]**

Submittal of any item on approved Submittal Schedule: <u>One Thousand</u> dollars <u>($1,000.00)</u> per day as Liquidated Damages for each and every day's delay beyond the time herein prescribed for each item on approved Submittal Schedule.

Milestone No. 1: <u>Two Thousand Five-Hundred</u> dollars <u>($2,500.00)</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.

Milestone No. 2: <u>Two Thousand Five-Hundred</u> dollars <u>($2,500.00)</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. 2.

Project Completion: Two Thousand Five-Hundred dollars ($2,500.00) 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 Designer/Builder is late in completing two milestones and the entire Project, Designer/Builder will forfeit and pay three separate Liquidated Damages amounts.

b. It is hereby understood and agreed that neither the total cumulative Liquidate 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 Designer/Builder under this Contract. Designer/Builder'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 and payable by Designer/Builder upon the accrual of each day of delay. Neither District's failure or delay in deducting Liquidated Damages from payments otherwise due the Designer/Builder, nor District's failure or delay in notifying Designer/Builder of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of District's right to Liquidated Damages and/or the District's right to withhold Liquidated Damages from any amounts that would otherwise be payable to the Designer/Builder.

e. Designer/Builder 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 Designer/Builder for the District's cost of completing or correcting items of the Work.

Initials: District _____ Designer/Builder _____

5. The Designer/Builder shall not commence the Work under this Contract until the Designer/Builder has submitted and the District has approved the endorsement(s) of insurance required under the Terms and Conditions to this Contract and the District has issued a Notice to Proceed. The Designer/Builder shall not commence the procurement, installation, and construction portions of the Work until the Designer/Builder has submitted and the District has approved the performance bond and the payment (labor and material) bond(s).

6. **Contingency**. The Contract Price contains a construction contingency in the amount of **Six Hundred One Thousand One Hundred Forty-Eight Dollars ($601,148.00)** ("Construction Contingency"). Designer/Builder may utilize funds from the Construction Contingency subject to the District's prior written approval (which shall not be unreasonably withheld) to pay additional costs for which the Designer/Builder is not otherwise entitled to through a change order to increase the Contract Price provided: (i) that the costs could not have reasonably been anticipated by Designer/Builder at the time of execution of the DB Contract; and (ii) the costs are reasonably necessary to enable Designer/Builder to complete the Work in accordance with the Contract Time and Contract Price set forth in the DB Contract.

7. The District and Designer/Builder recognize that the Project activities contemplated by this Contract are subject to environmental review under the California Environmental Quality Act ("CEQA"), and that the District, as a lead agency for the Project and its future use, must comply with the CEQA requirements as set

forth in CEQA and in 14 California Code of Regulations sections 15000, et seq. ("CEQA Guidelines"). Pursuant to CEQA Guidelines Section 15004(b)(2)(A), the Parties acknowledge that (i) approval and execution of this Contract by the Parties does not constitute the District authorizing, approving, or awarding a "project" as defined by CEQA, and (ii) the construction phase of the Project shall not commence until the District's governing board provides Designer/Builder with a specific notice to proceed authorizing construction activity. In the event District does not issue such a Notice to Proceed authorizing construction activity and instead issues a notice of suspension or notice of termination, District will pay for Designer/Builder's undisputed and documented design and/or planning services rendered to the date of that notice.

8. This Contract incorporates by this reference the Terms and Conditions attached hereto. The Designer/Builder, by executing this Contract, agrees to comply with all the Terms and Conditions herein.

9. Designer/Builder hereby acknowledges that the Division of the State Architect ("DSA") and the District's DSA Project Inspector(s) ("Inspector" or "IOR") have authority to approve and/or stop Work if the Designer/Builder's Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, or all applicable laws. The Designer/Builder shall be liable for any delay caused and extra work required by its non-compliant Work. Designer/Builder shall not be liable for delay to the extent caused by the District.

10. Inspection and acceptance of the Work shall be performed by:

    a. The Inspector with whom the District will contract at or prior to the Designer/Builder's commencement of construction of the Project;

    b. The director of construction for the District and/or designee ("District Representative").

    c. The District's program architect ("Architect")

11. Designer/Builder recognizes that the District may obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Designer/Builder Services authorizations, and issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different construction manager at any time. The District shall provide forty-eight (48) hours' notice to Designer/Builder if District designates a different construction manager. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Contract may be performed by the construction manager, unless that task indicates it shall be performed by the governing board of the District.

12. The following individuals are the Designer/Builder's key personnel, none of which can be replaced unless approved by the District as provided herein (such approval not to be unreasonably withheld or delayed):

Project Development and Team Leader	_____
Project Development	_____
Project Management	_____
Project Design	_____

13. Unless otherwise indicated herein for a longer period of time, the Designer/Builder shall guarantee all labor and material used in the performance of this Contract for a period of one year from the date of the District's written approval of the Work.

14. The Contract includes only the following documents which are incorporated herein by this reference ("Contract Documents"):

- X Terms and Conditions to Contract
- X Noncollusion Declaration
- X Prevailing Wage Certification
- X Workers' Compensation Certification
- X Criminal Background Investigation Certification
- X Drug-Free Workplace / Tobacco-Free Environment Certification
- X Asbestos & Other Hazardous Materials Certification
- X Lead-Product(s) Certification
- X Roofing Contract Financial Interest Certification
- X Iran Contracting Act Certification
- X Performance Bond (District's Form)
- X Payment Bond (District's Form)
- X **Exhibit A** (Scope of Work)
- X **Exhibit B** (Project Schedule)
- X **Exhibit C** (Detailed Project Cost Values and Other Pricing Components)
- X **Exhibit D** (District's Rules and Regulations)
- X **Exhibit E** (List of Plans and Specifications)
- X Insurance Certificates and Endorsements
- ____ [Other] _____

15. By signing the Contract, the Parties certify, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge at the time it signs the Contract. If, at any time after signing the Contract, it becomes known that the information provided in the Contract is no longer true, complete, and correct, each Party shall have a duty to provide the updated or differing information.

16. Information regarding Designer/Builder:

Type of Business Entity:
____ Individual
____ Sole Proprietorship
____ Partnership
____ Limited Partnership
____ Corporation
____ Limited Liability Company
____ Other: _____

_____
Employer Identification and/or Social Security Number

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of $600.00 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

ACCEPTED AND AGREED on the date indicated below:

Dated: June 30, 2021

San Leandro Unified School District

Signature: _____

Print Name: Aaron Kerrigan

Print Title: Bond Director

Address: 1145 Aladdin Ave
San Leandro CA 94577

Telephone: 510-667-3500

Dated: June 30, 2021

Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Print Title: Owner

CA Contractor License No.: 761270

Architect License: _____

_____ Engineer License: _____

Facsimile: N/A

E-Mail: akerrigan@slusd.us

_____ Engineer License: _____

DIR Registration No.: 1000005631

Designer/Builder Local Representative:

Address: 70 Stony Point Road

Santa Rosa, CA 95401

Telephone: 707-527-5788

Facsimile: N/A

E-Mail: jeffl@jlcbuild.com

Notice. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

DISTRICT
San Leandro Unified School District
1145 Aladdin Avenue
San Leandro, CA 94577
ATTN: Aaron Kerrigan
Telephone: 510-667-3500

With a copy to:
Glenn Gould, Esq.
Orbach, Huff & Henderson, LLP
6210 Stoneridge Mall Road
Pleasanton, CA 94588
Telephone: (510) 999-7908

DESIGNER/BUILDER
Jeff Luchetti Construction
70 Stony Point Road
Santa Rosa, CA 94501
ATTN: Jeff Luchetti
Telephone: 707-527-5788

With a copy to:
RGM Kramer Inc
3230 Monument Way
Concord CA 94518
ATTN: Nick Malve
Telephone: 925-768-0437

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

TERMS AND CONDITIONS TO CONTRACT

1. **NOTICE TO PROCEED:** The District may issue one or more Notice(s) to Proceed for each phase or a portion of each phase of the Project, at which time Designer/Builder shall proceed with the Work. The Parties specifically acknowledge that any Work which requires California Department of General Services, Division of the State Architect ("DSA") approval shall not commence until DSA approval has been obtained.
2. **CONFLICTS IN THE CONTRACT DOCUMENTS**
   - 2.1. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict. However, if Designer/Builder observes any conflict in the Contract Documents, Designer/Builder shall promptly notify District and Bridging Architect in writing. In the event of conflict in the Contract Documents, the precedence shall be as follows:
     - 2.1.1. Addenda shall govern over other sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.
     - 2.1.2. The Agreement shall govern over other Contract Documents except for specific modifications stated in amendments to the Agreement and Addenda.
     - 2.1.3. In case of conflict between the Bridging Document drawings, Technical Specification Sections 2-49, and the Division 0 and 1 Specifications, the Designer/Builder shall obtain written clarification from the District as to the governing document.
       - 2.1.3.1. In the case of conflict within the Bridging Document drawings, the following shall govern:
         - 2.1.3.1.1. Schedules, when identified as such, shall govern over all other portions of the drawings.
         - 2.1.3.1.2. Specific notes shall govern over all other notes and all other portions of the drawings, except schedules described in the preceding sub clause.
         - 2.1.3.1.3. Larger scale drawings shall govern over smaller scale drawings.
         - 2.1.3.1.4. Figured or numerical dimensions shall govern over dimensions obtained by scaling.
         - 2.1.3.1.5. In the case of other conflict within the drawings, the Designer/Builder shall obtain written clarification from the District as to the governing document.
   - 2.2. The District and Designer/Builder acknowledge that the Contract Documents may differ in some respects from other documents upon which Designer/Builder based its proposal. The District and Designer/Builder agree that the Contract Documents shall supersede any prior or inconsistent versions.
3. **SITE EXAMINATION:** Designer/Builder has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Designer/Builder warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Designer/Builder's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site, with the exception of hazardous materials, that could and should have been discovered through reasonable investigation. Notwithstanding the aforementioned, should the Designer/Builder discover any latent or unknown conditions or hazardous conditions (including asbestos-containing materials), which will materially affect the performance of the Work, Designer/Builder shall immediately inform the District of such fact in writing and shall not proceed until written instructions are received from the District.
4. **DESIGNER/BUILDER'S DUTIES AND RESPONSIBILITIES: DESIGN**
   - 4.1. Design Phase Responsibilities

4.1.1. The Design Phase includes the preparation of the design and Construction Documents for the Project including, but not limited, to all necessary architectural design, specialty consultant services, civil engineering, structural engineering, mechanical engineering, plumbing and HVAC design, fire protection system engineering, landscape architecture, electrical engineering, security system design, telecommunications, data and low-voltage signaling design, geotechnical engineering, topographic and boundary surveying, interior design, modular furniture systems and fixtures, furniture and equipment coordination and space planning, and acoustical engineering. The Design Phase shall also include all plan check and permitting activities required for the construction activities.

4.2. Designer/Builder's Responsibilities

4.2.1. Designer/Builder agrees to design and construct the Project in consideration for the District's payment up to the Contract Price, which may only be adjusted pursuant to the provisions of this Agreement.

4.2.2. **General Responsibilities**

4.2.2.1. Upon receipt of the Notice to Proceed with Design, the Designer/Builder shall instruct the Architect of Record to commence with the design of the building systems and the preparation of the Construction Documents. In accordance with the Bridging Documents, the Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality.

4.2.2.2. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The Designer/Builder shall be responsible to design, prepare Construction Documents and coordinate all disciplines for the entire Project including, but not limited to: all structural elements, building enclosure, roofing, waterproofing, site work, public right-of-way improvements, new parking lots, hardscape, landscape, utilities, and all building systems.

4.2.2.3. Responsibilities also include all design coordination necessary for accommodation of interior space construction, modular furniture coordination, finishes, furnishings, fixtures and equipment, and related infrastructure. The Project's design shall meet or exceed the design and performance criteria stipulated in the Bridging Documents.

4.2.2.4. Deliver to the District any and all design materials. These materials include, but are not limited to: calculations, preliminary drawings, construction drawings, shop drawings, samples, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

4.2.2.5. **Design Confirmation Phase**

4.2.2.5.1. Following receipt of a Notice to Proceed with Design, the Designer/Builder shall meet at least weekly with District and provide such information as necessary to inform District of the Project design status and obtain District input and approval regarding design issues. The Designer/Builder shall be responsible

for scheduling and coordinating the participation in these meetings. Designer/Builder's documents shall depict the materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Bridging Documents.

4.2.2.5.2. Conduct value engineering analysis on building components to determine best value based on initial cost, life expectancy, cost of operation and maintenance. The value engineering analysis shall be performed concurrent with the Design Confirmation effort.

4.2.2.5.3. Prepare and update at each document submittal milestone detailed estimates of the cost of construction to substantiate that the Project will not exceed the Contract Price.

4.2.2.5.4. Prepare and update monthly the detailed construction schedule to confirm Project delivery within the Milestone Dates.

4.2.2.5.5. Provide services to develop a final space program and prepare plan layouts to reflect the requirements of all tenant departments.

4.2.2.6. **Construction Documents Phase**

4.2.2.6.1. Prepare Construction Documents for the entire Project in full compliance with all applicable laws, building codes, ordinances, and other requirements by regulatory authorities. The completed Construction Documents are to be delivered to the District and shall consist of the following:

4.2.2.6.1.1. **Drawings.** Provide one reproducible original, and ten (10) printed copies of all approved construction document drawings. Provide one copy of all approved construction document drawings on compact discs (CD) using Computer-Aided Design (CAD) software.

4.2.2.6.1.2. **Specifications.** Provide original and ten (10) printed copies of approved specifications, bound and organized. Provide approved specifications on CDs for all sections for all work applicable to the Project, using a format that complies with the current edition of the Construction Specifications Institute's "Master Format" as directed by the District and in accordance with the following:

4.2.2.6.1.2.1. Electronic computer software in Microsoft Word, latest version for Windows.

4.2.2.6.1.2.2. Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by California Public Contract Code section 3400.

4.2.2.6.1.2.3. All CDs provided shall be indexed and clearly labeled to indicate files contained thereon and the date that the CD was produced. All electronic files shall use fonts and formats used by the District and the discs shall be formatted for easy printing.

4.2.2.6.1.3. Specifications shall not contain restrictions that will limit competitive bids. Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Exceptions shall only be as permitted by California Public Contract Code section 3400.

4.2.2.6.2. Review meetings between the Designer/Builder and the District to review the Construction Document packages shall be scheduled and held so as not to delay the Work. Such review shall not relieve the Designer/Builder from its responsibilities under the Agreement. Such review shall not be deemed an approval or waiver by the District of any deviation from, or of the Designer/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Designer/Builder and approved in writing by the District.

4.2.2.6.3. The Designer/Builder shall submit completed packages of the Construction Documents, in the quantities required by the District to all applicable authorities having jurisdiction (including but not limited to DSA), at the times indicated on the Designer/Builder's Baseline Schedule. Designer/Builder is responsible for completing the designs and submitting them to DSA in a timely fashion in order to obtain DSA approval and complete all Work according to the Project Milestone Schedule. All Work is to be performed in accordance with the requirements of the DSA and the Design-Builder shall be solely responsible for obtaining all approvals from DSA at no additional cost to District.

4.2.2.7. **Design Errors**

The Designer/Builder shall be solely responsible for all design errors and for correction of the same at no additional cost to District, including, but not limited to: errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established in the Contract Documents and the Bridging Documents. The Designer/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Designer/Builder from the Contract Documents and the Bridging Documents before commencing Design activities.

5. **EQUIPMENT AND LABOR:** The Designer/Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services herein described, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
6. **SUBCONTRACTORS:** The Designer/Builder understands that it is required to comply with the subcontract bidding process as stated in Education Code section 17250.35.
   6.1. All subcontractors will be afforded the protections of State law, and all Work is subject to applicable

prevailing wage laws.

6.2. Designer/Builder agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements.

6.3. If Designer/Builder shall subcontract any part of this Contract, Designer/Builder shall be fully responsible to the District for acts and omissions of subcontractors and of persons either directly or indirectly employed by Designer/Builder.

6.4. Nothing contained in the Contract shall create any contractual relations between any subcontractor and the District.

7. **TERMINATION:** If Designer/Builder fails to perform Designer/Builder's duties as required by this Contract, or if Designer/Builder fails to fulfill in a timely and professional manner Designer/Builder's material obligations under this Contract, or if Designer/Builder shall violate any of the material terms or provisions of this Contract, the District shall have the right to terminate this Contract, in whole or in part, unless such failures and violations are caused by the District, effective immediately upon the District giving fourteen (14) days prior written notice thereof to the Designer/Builder, during which time the Designer/Builder may attempt to correct such failures and violations to the District's reasonable satisfaction. In the event of a termination pursuant to this subdivision, Designer/Builder may invoice District for all Services performed until the date of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Designer/Builder's negligent actions, errors, or omissions that caused the District to terminate the Designer/Builder. The District may, at its discretion, provide the Designer/Builder additional time to cure its default or breach.

   7.1. District shall have the right in its sole discretion to terminate the Contract for its own convenience with fourteen (14) days prior written notice. In the event of a termination for convenience, Designer/Builder may invoice District and District shall pay all undisputed invoice(s) for Services performed and all undisputed costs of incurred, including the reasonable costs of termination, from the District's Notice to Proceed until the date of termination.

   7.2. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.

   7.3. The Designer/Builder has the right to terminate this Contract if the District does not fulfill its material obligations under this Contract. Termination shall be effective upon fourteen (14) days prior written notice to the District. Designer/Builder may invoice District and District shall pay all undisputed invoice(s) for Services performed and costs incurred until the date of termination.

   7.4. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Designer/Builder, upon fifteen (15) days' written notice of termination, shall immediately cease Services on the Project. The District shall pay the Designer/Builder only the fee associated with the Services provided from the date of the last paid invoice to the notice of termination.

   7.5. If the District suspends the Project for more than one hundred eighty (180) consecutive days, the Designer/Builder shall be compensated for Services performed prior to the notice of suspension plus the reasonable costs of demobilization. When the Project is resumed, the schedule shall be adjusted and Designer/Builder's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Services. If the District suspends the Project for more than two (2) years, the Designer/Builder may terminate this Contract by giving written notice and shall receive compensation as if District terminated the Contract for its own convenience as described, above.

8. **SAFETY AND SECURITY:** Designer/Builder is responsible for maintaining safety in its performance of this Contract. Designer/Builder shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present, as per the requirements of **Exhibit D,** District's Rules and Regulations, if and as applicable. In the event the District's Rules and Regulations conflict with the terms of this Contract, the terms of this Contract shall prevail.

9. **CHANGE IN SCOPE OF WORK:**

   9.1. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for

or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid, mutually-agreed change order or amendment executed by the Parties.

9.2. Designer/Builder specifically understands, acknowledges, and agrees that the District shall have the right to request any reasonable alterations, deviations, reductions, or additions to the Project which are consistent with the agreed Scope of Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations.

9.3. Designer/Builder also agrees to provide the District in the form of a Proposed Change Order with all information requested to substantiate the cost of the change order or amendment and to inform the District whether the Work will be done by the Designer/Builder or a subcontractor. In addition to any other information requested, Designer/Builder shall submit, prior to approval of the change order or amendment, its request for a time extension (if any), as well as all information necessary to substantiate any alleged delay in the completion of the Work.

9.4. If Designer/Builder fails to submit its request for a time extension or the necessary supporting information within thirty (30) days of Designer/Builder becoming aware of the need for the time extension, Designer/Builder shall be deemed to have waived its right to request an extension.

9.5. **Proposed Change Order**

9.5.1. **Definition of Proposed Change Order**. A Proposed Change Order ("PCO") is a written request prepared by the Designer/Builder requesting that the District issue a Change Order based upon a proposed change to the Work. A PCO shall be submitted by the Designer/Builder to the District within ten (10) days of the event giving rise to the PCO. Designer/Builder's failure to submit a PCO within ten (10) days of the event giving rise to the PCO shall be a complete waiver all rights to additional compensation or time otherwise resulting from the events giving rise to the PCO.

9.5.2. **Changes in Contract Price**. A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.

9.5.3. **Changes in Contract Time**. A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Designer/Builder fails to request a time extension in a PCO, then the Designer/Builder is thereafter precluded from requesting time and/or claiming a delay.

9.5.4. **Unknown and/or Unforeseen Conditions**. If Designer/Builder submits a PCO requesting an increase in Contract Price and/or Contract Time that is based at least partially on Designer/Builder's assertion that Designer/Builder has encountered unknown and/or unforeseen condition(s) on the Project, then Designer/Builder shall base the PCO on provable information that demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Designer/Builder shall complete the Project without any increase in Contract Price and/or Contract Time based on that PCO.

9.5.5. **Time to Submit PCO**. Designer/Builder shall submit its PCO within five (5) days of the date Designer/Builder discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Time is of the essence in Designer/Builder's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address the basis for the PCI. Accordingly, Designer/Builder acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit the District's review and evaluation) within this time frame shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

10. **TRENCH SHORING:** If this Contract is in excess of $25,000 and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker

protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

11. **EXCAVATIONS OVER FOUR FEET**:
    11.1. If this Contract includes excavations over four (4) feet, Designer/Builder shall in compliance with Public Contract Code section 7104, promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Designer/Builder suspects may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the Site that differ from those indicated in the plans or specifications; or (3) Unknown physical conditions at the Site of any unusual nature, or materially different from conditions ordinarily encountered and generally recognized as inherent in the character of the Work. The District shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or involve hazardous waste, and cause a decrease or increase in the Designer/Builder's cost of, or the time required for, performance of any part of the Work, District shall issue a change order or amendment as provided herein.
    11.2. In the event that a dispute arises between the District and the Designer/Builder regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Designer/Builder's cost of, or time required for, performance of any part of the Work, if possible, the Designer/Builder shall proceed with other Work to be performed under the Contract which is not subject to the dispute. The Designer/Builder shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the Parties.
    11.3. Notwithstanding the above, the Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Hazardous Materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("Hazardous Materials"). The Work has been contemplated and priced based on the absence of Hazardous Materials at the Site. Designer/Builder will notify the District immediately if it discovers or suspects the presence of any Hazardous Materials, and such discovery shall entitle Designer/Builder to suspend the Work until the District can arrange proper remediation and the Parties can negotiate mutually-agreeable terms to complete the rest of the Work, if feasible.
12. **LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Designer/Builder must execute the Lead-Based Paint Certification, if applicable.
13. **WORKERS:** Designer/Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Designer/Builder or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from the District. Designer/Builder shall ensure that all its employees and the employees of its subcontractors shall comply with all applicable construction site safety requirements, including, without limitation, those related to COVID-19 or any other similar virus or derivative strain.
14. **CORRECTION OF ERRORS:** Designer/Builder shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Designer/Builder's failure to comply with the Contract.
15. **SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of the District, which shall not be unreasonably withheld.
16. **DESIGNER/BUILDER SUPERVISION:** Designer/Builder shall provide competent supervision of personnel employed on the Site, use of equipment, and quality of workmanship. Designer/Builder shall provide a [full- **or** part-time] Project manager and a [full- **or** part-time], on-Site, non-working Project superintendent subject to acceptance of the District.
17. **MATERIALS AND WORK**: Designer/Builder will be solely and completely responsible for conditions of the

Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. Designer/Builder is responsible for complying with, and the Contract Price includes the costs of complying with, all applicable federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19 and/or any similar virus or derivative strain.

18. **CLEAN UP:** Debris from the Work shall be removed from the Site by the Designer/Builder. The Site shall be in order at all times when Work is not being performed and shall at all times be maintained in a reasonably clean condition.
19. **ACCESS TO WORK:** District shall provide Designer/Builder with the required Site access. District representatives shall at all times have access to the Work. Designer/Builder shall provide safe and proper facilities for District's access.
20. **PROTECTION OF WORK AND PROPERTY:** Designer/Builder shall erect and properly maintain all necessary safeguards, signs, barriers, lights, and security persons for protection of workers, the public and the Work and shall post clear and conspicuous notice warning of any hazards created by the Work. In an emergency affecting life, safety, Work, or adjoining property, Designer/Builder, without special instruction or authorization from District, is permitted to take any action Designer/Builder thinks necessary to prevent such threatened loss or injury.
21. **OTHER CONTRACTS/CONTRACTORS**: Designer/Builder acknowledges that it shall not have exclusive occupancy of the Site or of the Project. District reserves the right to let other contracts, and/or to perform other work with its own forces at the Site. Designer/Builder shall afford District's contractors reasonable opportunity for introduction and storage of materials and execution of contractor's work at the Site. If applicable, Designer/Builder shall properly coordinate and connect the Work with the work of District's contractors. In addition to Designer/Builder's obligation to protect its own Work, Designer/Builder shall use its best efforts to protect the work of any other contractor that Designer/Builder encounters while working on the Project. Designer/Builder shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Site and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Designer/Builder's Contract, Designer/Builder shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.
22. **ASSIGNMENT OF CONTRACT:** The Designer/Builder shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District. This provision shall not limit the Designer/Builder's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the District (i) to direct affiliate of Designer/Builder; (ii) to an entity that is controlled by, controls, or is under common control with Designer/Builder; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
23. **COMPLETION:**
    - 23.1. **Phase 1: Design Development Documents:** Designer/Builder shall be complete with this phase upon District's acceptance of final Design Development Documents.
    - 23.2. **Phase 2: Construction Documents:** Designer/Builder shall be complete with this phase upon District's acceptance of final Construction Documents and Designer/Builder's submittal of those documents to DSA.
    - 23.3. **Phase 3: Construction:**
        - 23.3.1. **<u>Walk-Through as Prerequisite to Determination of Completion</u>**
            - 23.3.1.1. Designer/Builder shall notify the District when it thinks that the Work is complete except for minor corrective items. Designer/Builder shall provide to District a preliminary list of all minor corrective items that must be corrected. District and Designer/Builder shall then schedule a final walk-through of the Project to be attended by the Designer/Builder, the District, and the Inspector to determine whether and to what extent the Work is complete. Any erroneous claims of completion by the Designer/Builder resulting in a

premature walk-through shall be at the Designer/Builder's sole cost and expense, and the District shall be entitled to reduce its payments to the Designer/Builder under the Contract by an amount equal to any costs incurred by the District due to the erroneous claims by the Designer/Builder that the Project is complete.

23.3.1.2. Designer/Builder's preliminary list of all minor corrective items will be used by Designer/Builder to prepare a corrective items list ("Punch-List") that shall be identified in the final walk-through of the Project. The District shall approve the Punch-List and may add omitted or missing items and provide a copy of an updated Punch-List to Designer/Builder.

23.3.1.3. District may, at its sole discretion, accept as complete partial scopes or phases of Work as each is completed prior to completion of the entire Work or Project.

23.3.1.4. If the Designer/Builder and the District (through its District Representative) determine that the Work is eligible for Completion, then the date of that determination shall constitute the final day of the construction phase of the Project as relates to liquidated damages ("Staff Determination"). Additionally, the District shall promptly include the approval and acceptance of the Project and Notice of Completion on the District's governing board's next available agenda.

23.3.2. **District's Acceptance of Work**. District may either:

23.3.2.1. Accept the Work as complete notwithstanding Punch List items (as distinguished from incomplete Work), if the Work has otherwise been completed to the satisfaction of the District and the Inspector; or

23.3.2.2. 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.

23.3.3. The Work shall be accepted as complete by an action of the District's governing board ("Completion" or "Complete").

23.3.4. **Notice of Completion**. Once the District accepts the Work, District may thereafter cause a Notice of Completion to be recorded in the County Recorder's Office.

23.3.5. **Designer/Builder's Failure to Correct Punch-List Items**. If District elects to accept Work with incomplete Punch List items, and the Designer/Builder fails to complete the Punch List items within thirty-five (35) days of Completion, the District shall withhold from the final payment due Designer/Builder an amount equal to one hundred and fifty percent (150%) of the estimated cost, as reasonably determined by the District, of each Punch List item and all portions related thereto, until the item is complete.

23.3.6. **Time Is of the Essence:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

24. **BENEFICIAL USE:** District reserves the right to receive beneficial use of the Work before Completion ("Beneficial Use"). Beneficial Use shall not constitute Completion.

25. **FORCE MAJEURE CLAUSE:**

25.1. The term "Force Majeure" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; strike; loss or shortage of transportation facilities; lock-out; commandeering of materials, product, plant, or facilities by the government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake; tornado; severe storm; civil disobedience; sabotage; restraint by court order or public authority (whether valid or invalid); which is beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably have been expected to avoid and which it has been unable to overcome.

25.2. Neither Party shall be considered to be in default in the performance of any material obligation of the Contract during the time and to the extent that the Party is prevented from obtaining delivery or

performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if its failure is due to causes arising out of the Party's negligence or due to removable or remediable causes which the Party fails to remove or remedy with the exercise of all best efforts within a reasonable time period. Either Party rendered unable to fulfill its obligations under the Contract by reason of an event of Force Majeure shall give prompt written notice of the fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming a Force Majeure event shall provide the other Party satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the Party claiming a Force Majeure event.

25.3. Any delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it render's Designer/Builder's performance of the Work impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

25.4. Designer/Builder is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies ("Review Agencies") may have to approve Designer/Builder-prepared drawings, plans or approve a proposed installation. Designer/Builder shall include in the Project Schedule time for possible review of its drawings, plans, and proposed installation and for reasonable delays or damages that may be caused by the Review Agencies. Designer/Builder shall be entitled to additional time in the Project Schedule for review of Designer/Builder's drawings, plans or proposed installation or other approvals from the Review Agencies, if all of the following conditions have been satisfied:

25.4.1. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule; and

25.4.2. Designer/Builder has diligently pursued approval from the Review Agencies; and

25.4.3. The delay in Review Agencies' approval is not related to an uncured defect, error, or omission in Designer/Builder's drawings, plans, or proposed installation.

26. **INDEMNIFICATION / HOLD HARMLESS CLAUSE:**

26.1. To the furthest extent permitted by California law, Designer/Builder shall defend, indemnify, and hold harmless the District, its trustees, members, agents, representatives, officers, consultants, employees, and volunteers (the "Indemnified Parties") from any and all third party demands, losses, liabilities, claims, suits, and actions (the "Claims") of any kind, nature, and description, including, but not limited to, reasonable attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract to the extent the Claims are caused by the negligence, recklessness, or willful misconduct of Designer/Builder. The District shall have the right to accept or reject any legal representation that Designer/Builder proposes to defend the District. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Designer/Builder to: (1) comply with any provision of law, and (2) timely and properly fulfill all of its obligations under the Contract, including, without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

26.2. Further, Designer/Builder shall be directly liable to the Indemnified Parties for and, to the furthest extent permitted by California law, shall defend, indemnify, and hold harmless the Indemnified Parties from any Claims of any kind, nature, and description arising out of, connected with, or resulting from the design component of the Project.

27. **PAYMENT:**

27.1. **Phase 1 and Phase 2:**

27.1.1. Invoices shall be on a form approved by the District and are to be submitted to the District via the District's authorized representative.

27.1.2. Designer/Builder shall submit to District on a monthly basis documentation showing proof that payments were made to its consultant(s).

27.1.3. Designer/Builder shall submit to the District for approval a copy of the Designer/Builder's monthly pay request format.

27.1.4. Upon receipt and approval of Designer/Builder's invoices, the District agrees to make payments within thirty (30) days of receipt of the invoice.

27.2. **Phase 3:**

27.2.1. On a monthly basis, Designer/Builder shall submit an application for payment based upon the estimated value for materials delivered or Services and Work performed under the Contract as of the date of submission ("Application for Payment") and consistent with the Project Cost Values set forth in **Exhibit C**, attached hereto. Designer/Builder shall certify each Application for Payment and the Inspector shall verify that the materials, Services, or Work were delivered or performed.

27.2.2. **Schedule of Values.** The Designer/Builder shall provide a preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This preliminary schedule of values shall include, at a minimum, the following information and the following structure:

27.2.2.1. Divided into at least the following categories:

27.2.2.1.1. Overhead and profit;
27.2.2.1.2. Supervision;
27.2.2.1.3. General conditions;
27.2.2.1.4. Layout;
27.2.2.1.5. Mobilization;
27.2.2.1.6. Submittals;
27.2.2.1.7. Bonds and insurance;
27.2.2.1.8. Closeout documentation;
27.2.2.1.9. Demolition;
27.2.2.1.10. Installation;
27.2.2.1.11. Rough-in;
27.2.2.1.12. Finishes;
27.2.2.1.13. Testing;
27.2.2.1.14. Punchlist and acceptance.

27.2.2.2. Divided by each of the following areas:

27.2.2.2.1. Site work;
27.2.2.2.2. By each building;
27.2.2.2.3. By each floor.

27.2.2.3. The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:

27.2.2.3.1. Mobilization and layout combined to equal not more than 1%;
27.2.2.3.2. Submittals, samples and shop drawings combined to equal not more than 3%,
27.2.2.3.3. Bonds and insurance combined to equal not more than 2%.

27.2.2.4. **Closeout Documentation**. Closeout Documentation shall have a value in the preliminary schedule 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. Closeout Documentation shall include the following, without limitation:

27.2.2.4.1. A full set of final As-Built Drawings, as further defined herein.
27.2.2.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
27.2.2.4.3. All Warranties, as further defined herein.
27.2.2.4.4. Verified report(s) for all scope(s) of work (DSA-6 Verified Report, Rev 04/08, or more recent revision if available).

27.2.2.5. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Designer/Builder's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid by the

District in equal installments, based on percentage complete, with the disbursement of Progress Payments and the Final Payment.

27.2.2.6. Designer/Builder shall certify that the preliminary schedule of values as submitted to the District is accurate and reflects the costs as developed in preparing Designer/Builder's bid. The preliminary schedule of values shall be subject to the District's review and approval of the form and content thereof. In the event that the District objects to any portion of the preliminary schedule of values, the District shall notify the Designer/Builder, in writing, of the District's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the District's written objection(s), Designer/Builder shall submit a revised preliminary schedule of values to the District for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the District has approved the entirety of the preliminary schedule of values.

27.2.2.7. Once the preliminary schedule of values is approved by the District, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the Designer/Builder without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.

27.2.3. Within thirty (30) days after District's receipt of the Application for Payment, Designer/Builder shall be paid a sum equal to **ninety-five percent (95%)** of the value of the Work performed (assuming the value of the Work performed is verified by Inspector and certified by Designer/Builder) up to the last day of the previous month, less the aggregate of previous payments and amounts to be withheld. District shall retain **five percent (5%)** from all amounts owing Designer/Builder as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

27.2.4. After advance written notice and thirty (30) days opportunity to cure, the District may deduct from any payment an amount reasonably necessary to protect the District from loss due to: (1) liquidated damages which have accrued as of the date of Application for Payment; (2) any sums expended by the District in performing any of Designer/Builder's obligations under the Contract which Designer/Builder has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the scheduled Project completion date; (6) unsatisfactory prosecution of the Work by Designer/Builder; (7) unauthorized material deviations from the Contract; (8) failure of the Designer/Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract during the performance of the Work; (9) knowingly false estimates submitted by the Designer/Builder of the value of the Work performed; (10) any sums representing expenses, losses, or damages reasonably incurred by the District for which Designer/Builder is liable under the Contract; and (11) any other sums which the District is entitled to recover from Designer/Builder under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by District to deduct any of these sums from Designer/Builder's progress payment shall not constitute a waiver of the District's right to the sums.

27.2.5. Payment for materials stored on or off the Site may be allowed at the sole discretion of the District. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage shall be required. Designer/Builder shall furnish to District written consent from Designer/ Builder's Surety approving the advanced payment for materials stored off Site. The maximum prepayment allowed by District shall be one hundred percent (100%) of the actual value of the material being considered, less retention. Designer/Builder shall protect stored materials from damage and shall be liable for any damage thereto. Damaged materials, even though paid for, shall not be incorporated into the Work. Designer/Builder shall be responsible to replace any damaged stored materials at

its sole cost and expense.

28. **PERMITS, APPROVALS, AND LICENSES:**
    28.1. Designer/Builder and its employees, agents, and subcontractors shall secure and maintain in force, at Designer/Builder's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, Services or Work.
    28.2. Designer/Builder is responsible for obtaining on behalf of the District and at Designer/Builder's expense, local and county permits and approvals (including DSA approval), required for the building, installation, and start-up of the Work which are required to complete the Project.
    28.3. District will cooperate and assist Designer/Builder in obtaining all permits required by the Contract or to perform the Work.
    28.4. District shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable.
29. **INDEPENDENT CONTRACTOR STATUS:** While performing the Services, Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Designer/Builder shall be solely responsible for its Worker's Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its actions, including Designer/Builder's negligence or gross negligence, and shall be liable for the acts, omissions, or errors of Designer/Builder's agents or employees.
30. **ANTI-DISCRIMINATION:** It is the policy of the District that in connection with any work performed under contract with District, there be no discrimination against any employee engaged in the work because of race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of persons. Designer/Builder shall comply, and require compliance by all Designer/Builder subcontractors, with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, Government Code section 12900 et seq., and Labor Code section 1735.
31. **DISABLED VETERAN BUSINESS ENTERPRISES (DVBE):** Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Designer/Builder, before it executes the Contract, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Contract, and documentation demonstrating the Designer/Builder's good faith efforts to meet these DVBE goals.
32. **PAYMENT BOND AND PERFORMANCE BOND:** Designer/Builder shall not commence Work until it provides the District, in the form provided by District herein, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Contract Price. The Payment and Performance Bonds must be issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.
33. **DESIGNER/BUILDER'S INSURANCE:** During the entire term of the Contract, Designer/Builder shall have and maintain in force, the minimum policy limits indicated in this Article. Designer/Builder shall not commence Work, nor allow any subcontractor, employee, or agent to commence Work until the insurance required of the Designer/Builder, subcontractor, or agent has been obtained. Designer/Builder's policy(ies) shall be primary and any insurance carried by District shall be secondary and supplemental. All policies shall contain waivers of subrogation against the District. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.
    33.1. All of Designer/Builder's insurance shall be placed with insurers **ADMITTED** in California with a current A.M. Best's rating of no less than **A—** or **A:VII**. Designer/Builder shall provide documentation to the District demonstrating this rating.
    33.2. The limits of insurance shall not be less than the following amounts:

Commercial General Liability	Includes: Personal & Advertising Injury, Product Liability and Completed Operations	$1,000,000 each occurrence; $2,000,000 general aggregate

Automobile Liability – <u>Any</u> Auto	Combined Single Limit	$1,000,000 per occurrence
Excess Liability (Umbrella)		$5,000,000 per occurrence; $5,000,000 aggregate
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$2,000,000 each accident, each disease; $2,000,000 policy limit
Builder's Risk (Course of Construction)		Issued for the value and scope of Work indicated herein.
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
Professional Liability		$1,000,000 each occurrence; $2,000,000 general aggregate

33.3. **<u>Commercial General Liability Insurance</u>.** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (12/07), without endorsements that limit the policy terms with respect to: (1) the definition of an Insured Contract, (2) provisions for severability of interest, (3) explosion, collapse, underground hazard. District shall be named as an additional insured on Designer/Builder's Commercial General Liability policy for any liability arising out of the Work.

33.4. **<u>Automobile Liability</u>.** Coverage to be written on an occurrence form. District shall be named as an additional insured on Designer/Builder's Automobile Liability policy for any liability arising out of the Work.

33.5. **<u>Excess Liability Insurance</u>**. Coverage to be written on an occurrence form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers Liability. District, by way of policy language, shall be an additional insured on the Designer/Builder's Excess Liability Insurance which follows the underlying insurance policy.

33.6. **<u>Workers Compensation</u>**: Statutory limits.

33.7. **<u>Employers' Liability</u>**: As indicated above.

33.8. **<u>Builder's Risk Insurance</u>**. Designer/Builder shall, prior to the commencement of the Work, procure and maintain a Builder's Risk Insurance Policy in relation to the Project. Such policy shall (i) be written on a full replacement cost, "all risk" form, (ii) include a waiver of any coinsurance penalty, (iii) cover the entire Work, including all equipment, materials, machinery, supplies, structures and other items intended to become a part of the Project, (iv) cover all property described in the preceding clause (iii) which is in transit or stored off-site, and (v) be maintained until the Commercial Operation Date. This Builder's Risk Insurance Policy shall include the interests of District, Designer/Builder, subcontractors, sub-subcontractors, vendors, and suppliers in the Work, naming each as loss payees.

33.9. **<u>Professional Liability Insurance</u>.**

33.9.1. Coverage to be written on a claims-made form and shall cover all non-construction Services including, without limitation, all programming, design, engineering, and architectural Services performed by Designer/Builder.

33.9.2. **Subcontractors / Subconsultants.** Subcontractors who perform non-construction services for the Project shall carry professional liability insurance at the same limits required of the Designer/Builder to cover that subcontractor's work.

34. The Designer/Builder shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The certificate of insurance shall provide that should any of the above-described policies be cancelled or reduced in coverage or limits while the Work is in progress, before the expiration date thereof,

notice will be delivered in accordance with the policy provisions, pursuant to ISO ACORD Form 25 (05/2010). Designer/Builder shall provide District at least thirty (30) days' prior written notice of the cancellation, non-renewal or reduction in coverage or limits of the insurance. Furthermore, Designer/Builder shall indemnify District for any loss suffered by District to the extent that the loss is attributable to Designer/Builder's failure to provide District with thirty (30) days' prior written notice. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.

35. **WARRANTY/QUALITY:** Except for any longer warranty called for elsewhere in the Contract Designer/Builder, manufacturer, or assigned agents shall guarantee the Work or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from date of Completion of the Work or when District accepts Beneficial Use, whichever comes first. If the District accepts Beneficial Use, Designer/Builder shall prepare a list of exceptions for specific items or components for which the period of warranty shall not commence ("Exception List"). District shall approve the Exception List. The period of warranty for any item on the Exception List shall commence upon District's acceptance of that item's Beneficial Use or completion of that item, whichever comes first. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards. This warranty shall not apply to (a) equipment that has been repaired or altered by other than Designer/Builder so as to affect the same adversely, or (b) equipment that has been subject to negligence, accident, or damage by circumstances beyond Designer/Builder's control, or improper operation, maintenance or storage, or other than normal use and service. The Parties agree that any implied warranties of merchantability or fitness for a particular purpose shall also expire at the same time as the express warranties stated in this section.
36. **CONFLICT OF INTEREST:** Designer/Builder understands that its professional responsibility is solely to the District. Designer/Builder warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under the Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a District project; (b) entity(ies) connected or related to a trade union or joint labor management committee; or (c) the District.
37. **COMPLIANCE WITH LAWS:** Designer/Builder shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Designer/Builder observes that any of the Work is at variance with any laws, ordinance, rules or regulations, Designer/Builder shall notify the District, in writing, and, at District's option, any necessary changes to the scope of the Work shall be made and the Contract shall be appropriately amended in writing, or the Contract shall be terminated effective upon Designer/Builder's receipt of a written notice of termination. If Designer/Builder performs any Work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Designer/Builder shall bear all costs or expenses arising therefrom.
38. **STANDARD OF CARE:** Designer/Builder shall perform the Work and Services to the standard of care of an entity performing similar work for California school districts in or around the same geographic area of the District, as follows:
39. For all non-construction Services, the standard of care of architects or professional engineers; and
40. For all construction Services, the standard of care of licensed contractors.
41. If Designer/Builder has not met this standard of care, Designer/Builder shall be held liable consistent with the "Indemnification/Hold Harmless Clause" herein.
42. **DISTRICT'S RIGHT TO AUDIT**: District retains the right to review and audit, at District's sole cost and expense, and the reasonable right of access to Designer/Builder's and any sub-consultant's non-confidential and non-proprietary records to review and audit the Designer/Builder's compliance with the provisions of the Contract ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies of any and all non-confidential and non-proprietary Project-related records with appropriate safeguards. The District shall keep this information confidential, as allowed by applicable law.
    - 42.1. The District's Right includes the right to examine any and all non-confidential and non-proprietary Project books, records, documents and any other evidence of Project-related procedures and practices that are reasonably necessary to discover and verify that the Designer/Builder is in compliance with all requirements of the Contract.
    - 42.2. If there is a claim for additional compensation or for extra services or work, the District's Right

includes the right to examine non-confidential and non-proprietary Project-related books, records, documents, and accounting procedures and practices that are reasonably necessary to discover and verify all Project-related direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

42.3. The Designer/Builder shall maintain complete and accurate Project-related records in accordance with generally accepted accounting practices in the industry, and in no event for less than five (5) years after Completion. The Designer/Builder shall make available to the District for review and audit all Project-related accounting records and documents, and any other financial data. Upon District's request, the Designer/Builder shall submit exact duplicates of originals of all requested records to the District.

42.4. The Designer/Builder shall include these audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subcontractors.

42.5. Designer/Builder shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Designer/Builder's Project-related records and information.

CLAIMS RESOLUTION:

42.6. **Exclusive Remedy**.

42.6.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Designer/Builder's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").

42.6.2. Designer/Builder acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the Contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

42.6.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

42.7. **Performance during Claim Resolution Process**. The Designer/Builder shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Designer/Builder as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Designer/Builder's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Designer/Builder's rights under this Contract.

42.8. **Waiver.** If Designer/Builder fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Designer/Builder waives and releases its rights regarding further review of its Claim, unless Designer/Builder and District mutually agree in writing to other time limits.

42.9. **Intention.** The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

42.10. **Other Provisions.** If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

42.11. **Claim Presentation**

42.11.1. **Claim**: A claim is a written demand by Designer/Builder (or by Designer/Builder on behalf of a Subcontractors) that the Designer/Builder must submit by **registered mail or certified mail return receipt requested** for:

42.11.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;

42.11.1.2. Payment of money or damages arising from work done by, or on behalf of, the Designer/Builder pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Designer/Builder is not otherwise entitled; or

42.11.1.3. Payment that is disputed by the District.

("**Claim**")

42.12. **Subcontractors.**

42.12.1. Public Contract Code section 9204(d)(5) states that the Designer/Builder may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Designer/Builder present a claim for Work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Designer/Builder shall notify the subcontractor in writing as to whether the Designer/Builder presented the claim to the District and, if the Designer/Builder did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

42.12.2. Designer/Builder is responsible for providing this Claims Resolution Process to its subcontractors and for ensuring that all subcontractors or others who may assert Claims by and through subcontractors and/or the Designer/Builder are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Designer/Builder shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its subcontractors or others who may assert Claims by and through subcontractors and/or the Designer/Builder.

42.12.3. **Designer/Builder Must Timely Identify, Present and Document Any Claim**

42.12.3.1. Every Claim shall be stated with specificity in writing and signed by Designer/Builder under penalty of perjury and presented to the District within ten (10) calendar days from the date Designer/Builder discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Designer/Builder to make a Claim. This shall include the Designer/Builder's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the Designer/Builder believes there should an adjustment of the Contract Price or Contract Time. Designer/Builder shall provide this writing even if Designer/Builder has not yet been damaged, delayed, or incurred extra cost when Designer/Builder discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

42.12.3.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

42.12.3.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

42.12.3.1.3. Identify in detail line-item costs if the Claim seeks money.

42.12.3.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the Designer/Builder is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

42.12.3.1.5. An affirmative representation under penalty of perjury by Designer/Builder and any affected Subcontractor and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

42.12.3.1.6. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Designer/Builder, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

42.12.3.1.7. Designer/Builder shall not be entitled to compensation for escalation of materials costs unless Designer/Builder demonstrates to the satisfaction of the District that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Designer/Builder, and were not reasonably foreseeable at the time of the award of the Contract. Designer/Builder shall provide evidence to District of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Designer/Builder timely ordered the materials at issue.

42.12.3.2. The writing shall be accompanied by all documents substantiating Designer/Builder's position regarding the Claim.

42.12.3.3. A Claim that asserts an effect on any schedule milestones and/or contract time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or contract time.

42.12.4. **Certification.** Each copy of the Claim Documentation shall be certified by a responsible officer of the Designer/Builder in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Designer/Builder's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit***." The Designer/Builder acknowledges that this requirement is not a mere formality but is intended to ensure that the Designer/Builder only submits Claims that it believes are true and correct, substantiated and have merit. Should Designer/Builder fail to submit the foregoing written statement signed under penalty of perjury, Designer/Builder waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractors(s) or others who are asserting Claims by and through Subcontractors and/or the Designer/Builder

42.12.5. **District's Written Statement/Decision on Claim.** The District shall issue a written statement/decision regarding the Claim to the Designer/Builder within forty-five (45) days of

receipt of the written Claim from the Designer/Builder, or three (3) days after the District's first regular governing board meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

42.12.6. **Designer/Builder Must Demand an Informal Meet and Confer Conference if Designer/Builder Pursues Any Claim**

42.12.6.1. **FAILURE OF A DESIGNER/BUILDER TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**

42.12.6.2. **Where There Is No Agreement:** If there is no agreement between Designer/Builder and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Designer/Builder pursues that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested,** a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below.

42.12.6.3. **Where There Is Partial Agreement**: If Designer/Builder and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Designer/Builder pursues those issues from that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested,** a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.

42.12.6.4. **Meet and Confer Conference.** District and Designer/Builder shall schedule the meet and confer conference as soon as reasonably possible after Designer/Builder's written demand for a meet and confer conference, but in no case later than thirty (30) days after Designer/Builder's demand.

42.12.6.5. **District's Written Decision.** Within ten (10) **business** days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

42.12.6.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to.

42.12.6.5.2. If the District rejects the Designer/Builder's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.

42.12.6.5.3. Designer/Builder's costs incurred in seeking relief for Claims are not recoverable from District.

42.12.7. **Mediation**.

42.12.7.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

42.12.7.2. The District and Designer/Builder shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to

mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

42.12.8. **Designer/Builder's Obligation to File a Government Code Claim.** Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Designer/Builder's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Designer/Builder is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Designer/Builder may proceed under the post-mediation provisions of this Claims Resolution Process.

42.12.9. **Post Mediation Provisions**

42.12.9.1. **Claims of $375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

42.12.9.2. **Litigation of Claims in Excess of $375,000**. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

42.12.10. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq*., made to the District by the Designer/Builder or any subcontractors under the standards set forth in Government Code section 12650 *et seq*. Any Designer/Builder or subcontractors who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Designer/Builder or subcontractors who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to $11,000 for each false claim.

42.13. **Documentation of Resolution.** If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

42.14. **Claim Resolution Process – Non-Applicability**. The procedures and provisions in this Claims Resolution section shall **not** apply to:

42.14.1. District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

42.14.2. District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a Designer/Builder from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

42.14.3. Personal injury, wrongful death or property damage claims;

42.14.4. Latent defect or breach of warranty or guarantee to repair;

42.14.5. Stop notices or stop payment notices; or

42.14.6. Any other District rights as set forth herein.

42.15. The District's failure to respond to a Claim from the Designer/Builder within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

42.16. If District fails timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Designer/Builder is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

43. **LABOR CODE REQUIREMENTS**: Pursuant to sections 1770 et seq. of the California Labor Code, Designer/Builder and all subcontractors under the Designer/Builder shall pay all workers on all Work performed pursuant to the 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 State of California Department of Industrial Relations (DIR) for the type of Work performed and the locality in which the Work is to be performed within the boundaries of the District. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the DIR, are available from the District or on the internet (http://www. dir.ca.gov).

43.1. Designer/Builder shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

43.2. Designer/Builder acknowledges that, for purposes of Labor Code section 1725.5, this Work is a public work to which Labor Code section 1771 applies. Designer/Builder shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all "subcontractors" (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Designer/Builder represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

43.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Designer/Builder shall post job site notices, as prescribed by regulation. Designer/Builder shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

43.4. **Skilled and Trained Workforce Requirement**

43.4.1. Contractor is familiar with the hiring requirements set forth in Public Contract Code section 2601, et. seq., and as a condition of entering into this Facilities Lease, Contractor understands and agrees that Contractor and its Subcontractors at every tier will use a skilled and trained workforce, as defined in Public Contract Code section 2601 ("Skilled and Trained Workforce"), to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades.

43.4.2. **Monthly Workforce Report**. The Contractor will provide to the governing board of the District on a monthly basis while the Project is being performed, a report demonstrating compliance by Contractor and its Subcontractors at every tier with the skilled work force requirements described in Public Contract Code section 2601 ("Workforce Report(s)").

43.4.2.1. Each monthly Workforce Report shall include all work performed during the preceding month and must be submitted to the District no later than thirty days after the end of the preceding month. (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30.)

43.4.2.2. **No Report or Incomplete Report.** If the Contractor fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the following shall apply:

43.4.2.2.1. The District shall withhold further payments until Contractor provides a complete Workforce Report for that month.

43.4.2.2.2. If the Workforce Report is incomplete due to the failure of a Subcontractor to timely submit to Contractor information demonstrating compliance at every tier with the skilled workforce requirements, the District shall only withhold from the Contractor an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the Subcontractor that failed to submit the required information to Contractor.

43.4.2.2.3. If Contractor, after complying with the process set forth in Public Contract Code section 4100, et seq., substitutes a Subcontractor for failing to provide a complete report as required herein with a Subcontractor who provides to the Contractor an enforceable commitment that the substituting Subcontractor shall use a Skilled and Trained Workforce to complete the Contract, the District shall immediately resume making payments to the Contractor, including all payments previously withheld from the Contractor by the District.

43.4.2.3. **Report Without All Levels Met.** If the Contractor provides a Workforce Report that does not demonstrate that each apprenticeable occupation has met the applicable participation level, the following shall apply:

43.4.2.3.1. The District shall withhold further payments until the Contractor provides a plan to achieve substantial compliance with the requirements with respect to the relevant apprenticeable occupation, prior to Completion of the Contract.

43.4.2.3.2. If the Contractor or Subcontractor fails to comply with the provisions set forth herein, the District shall withhold one hundred and fifty percent (150%) of the value of the monthly billing of the Contractor or Subcontractor, as applicable.

43.4.2.3.3. If Contractor, after complying with the process set forth in Public Contract Code section 4100, et seq., substitutes a Subcontractor for failing to demonstrate compliance with the requirements of

Public Contracts Code section 2601, et seq. with a Subcontractor who provides to the Contractor an enforceable commitment that the substituting Subcontractor shall use a Skilled and Trained Workforce to complete the Contract, the District shall immediately resume making payments to the Contractor, including all payments previously withheld from the Contractor by the District.

43.4.2.3.4. If the Contractor submits to the District a plan to achieve substantial compliance with the requirements of Public Contract Code section 2601, et seq., the District shall immediately resume making payments to the Contractor, including all payments previously withheld from the Contractor by the District.

43.4.2.3.5. The District shall forward a copy of the Workforce Report(s) that does not demonstrate that each apprenticeable occupation has met the applicable participation level, any plan submitted by Contractor to achieve substantial compliance with the requirements of Public Contracts Code section 2601, et seq., and the District's responses thereto, to the California Labor Commissioner.

44. **ANTI-TRUST CLAIM**: Designer/Builder and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Designer/Builder, without further acknowledgment by the Parties.
45. **GOVERNING LAW:** The Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located.
46. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
47. **BINDING CONTRACT:** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
48. **WAIVER:** Waiver by either Party of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
49. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
50. **ENTIRE CONTRACT:** The Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter herein. The Contract may be modified only by a writing evidencing mutual consent of the Parties.
51. **OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS**: District shall not, by virtue of the Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Project. Designer/Builder shall grant to District a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for District to continue to operate, maintain, and repair all equipment that is part of the Project in a manner consistent with its continued use.
52. **OWNERSHIP OF ANY EXISTING EQUIPMENT**: Ownership of any equipment and materials existing at the Site at the time the Contract is executed, shall remain the property of the District even if it is replaced or its

operation made unnecessary by Work performed by Designer/Builder. If applicable, Designer/Builder shall advise District in writing of all equipment and materials that will be replaced at the Site and District shall, within five (5) business days of Designer/Builder' notice, designate in writing to Designer/Builder which replaced equipment and materials should not be disposed of off-Site by Designer/Builder (the "Retained Items"). It is understood and agreed to by both Parties that District shall be responsible for and designate the location and storage for the Retained Items. Designer/Builder shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Designer/Builder shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize any damage.

53. **RESPONSIBILITIES OF THE DISTRICT**

53.1. District shall examine the documents submitted by the Designer/Builder and shall render decisions so as to avoid unreasonable delay in the performance of Work.

53.2. District shall verbally and in writing promptly advise the Designer/Builder if the District becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in the Designer/Builder's documents. Failure to provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.

53.3. In the event Hazardous Materials are present at the Site, and unless the District and the Designer/Builder agree that a Hazardous Materials consultant shall be a consultant of the Designer/Builder, the District shall furnish the services of a Hazardous Materials consultant or other consultants when the services are requested in writing by Designer/Builder and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into documents prepared by Designer/Builder. If the hazardous materials consultant is furnished by the District and not a consultant of the Designer/Builder, the specifications shall include a note to the effect that they are included in the Designer/Builder's documents for the District's convenience and have not been prepared or reviewed by the Designer/Builder. The note shall also direct questions about the specifications to its preparer. District shall be responsible for the abatement and certification of identified hazardous materials, as applicable.

53.4. District personnel and/or its designated representatives shall coordinate with Designer/Builder as may be requested and desirable for the coordination or management of work related to the Project.

53.5. District shall provide Designer/Builder all relevant information in District's possession regarding the Project that Designer/Builder needs to perform its Services. District shall provide this information in a timely manner.

54. **LIABILITY OF DISTRICT**

54.1. Other than as provided in the Contract, District's financial obligations under the Contract shall be limited to the payment of the Contract Price. In no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract for the Services or Work.

54.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Designer/Builder, or by its employees, even though such equipment be furnished or loaned to Designer/Builder by District.

NON-COLLUSION DECLARATION
Public Contract Code Section 7106

TO BE EXECUTED BY DESIGNER/BUILDER

The undersigned declares:

I am the Owner

of Jeff Luchetti Construction

the party making the foregoing Contract.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Designer/Builder has not directly or indirectly induced or solicited any other designer/builder to put in a false or sham Contract. The Designer/Builder has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham Contract, or to refrain from proposing. The Designer/Builder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract price of the Designer/Builder or any other proposer, or to fix any overhead, profit, or cost element of the Contract price, or of that of any other proposer. All statements contained in the Contract are true. The Designer/Builder has not, directly or indirectly, submitted his or her Contract price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Contract depository, or to any member or agent thereof, to effectuate a collusive or sham Contract, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a designer/builder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Designer/Builder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
>
> b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, 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 employees.

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.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District that (1) he/she is a representative of the Designer/Builder, (2) he/she is familiar with the facts herein certified, (3) he/she is authorized and qualified to execute this certificate on behalf of Designer/Builder; and (4) that the following is true and correct:

1. **Education Code.** Designer/Builder has taken at least one of the following actions with respect to the Project (check all that apply):

   _____ The Designer/Builder has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Designer/Builder's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Designer/Builder's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

   _____ Pursuant to Education Code section 45125.2, Designer/Builder has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Designer/Builder's employees and District pupils at all times; and/or

   _____ Pursuant to Education Code section 45125.2, Designer/Builder certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Designer/Builder who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Designer/Builder's employees and its subcontractors' employees is:

   Name: Jeff Luchetti
   Title: Owner

   _____ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Designer/Builder that will be on the Project site and the employees of the subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Designer/Builder's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Designer/Builders of the Designer/Builder.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990 ("Act"), requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the Designer/Builder or grantee may be subject to debarment from future contracting, if the contracting 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 Designer/Builders on District projects to comply with the provisions and requirements of the Act. Designer/Builder shall certify that it will provide a drug-free workplace by doing all of the following:

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

2 Establishing a drug-free awareness program to inform employees about all of the following:
   a. The dangers of drug abuse in the workplace.
   b. The person's or organization's policy of maintaining a drug-free workplace.
   c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
   d. The penalties that may be imposed upon employees for drug abuse violations.

3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

In addition, and pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project Site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property. I acknowledge that I am aware of the District's policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Designer/Builder hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material") shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Designer/Builder's Work on the Project for District.

Designer/Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure. The costs of any such tests shall be paid by Designer/Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material"-containing equipment will be immediately rejected and this Work will be removed at Designer/Builder's expense at no additional cost to the District.

Designer/Builder has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

LEAD-PRODUCT(S) CERTIFICATION

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Department of Education (CDE), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

Because the Designer/Builder and its employees will be providing Services for the District, Designer/Builder is hereby notified of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise, and it is assumed by the District that all painted surfaces (interior as well as exterior) within the Facilities contain some level of lead.

The CDE mandates that school districts utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. The Parties acknowledge and agree that Designer/Builder does not perform such lead-based work, nor does it employ lead-certified personnel. Accordingly, if Designer/Builder suspects the Work may result in the disturbance of lead-containing building materials, Designer/Builder will immediately cease work in that area and notify the District so that the District can test and arrange for proper remediation if required.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. If requested, the Designer/Builder shall provide the District with any sample results of the Work to confirm that Designer/Builder is not using lead-based materials.

If Designer/Builder brings lead-based materials to the Work Site, the Designer/Builder will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims to the extent arising therefrom.

THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT HE OR SHE HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE DISTRICT'S PROPERTY, AND THAT DESIGNER/BUILDER AGREES TO COMPLY WITH THE REQUIREMENTS OF THIS CERTIFICATION. THE UNDERSIGNED ALSO WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE DESIGNER/BUILDER.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION (Public Contract Code § 3006)

I, Jeff Luchetti, Jeff Luchetti Construction
Name Name of Designer/Builder

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I Jeff Luchetti, Jeff Luchetti Construction
Name Name of Designer/Builder

certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, Jeff Luchetti, Jeff Luchetti Construction
Name Name of Designer/Builder

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____

Mailing address: _____

Address of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

END OF DOCUMENT

IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars ($1,000,000) or more.

Designer/Builder shall complete **ONLY ONE** of the following two paragraphs.

☐ 1. Designer/Builder's Proposal is less than one million dollars ($1,000,000).

OR

☐ 2. Designer/Builder's Proposal is one million dollars ($1,000,000) or more, but Designer/Builder is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code § 2203(b), and Designer/Builder is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

☐ 3. Designer/Builder's Proposal is one million dollars ($1,000,000) or more, but the District has given prior written permission to Designer/Builder to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Contract**.

I certify that I am duly authorized to legally bind the Designer/Builder to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Designer/Builder: Jeff Luchetti Construction

Signature: _____

Print Name: Jeff Luchetti

Title: Owner

END OF DOCUMENT

PERFORMANCE BOND
(100% of Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **San Leandro Unified School District**, ("District") and Jeff Luchetti Construction , ("Principal)" have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Bancroft & John Muir Middle School Modular Classroom Projects (Project Name)
("Project" or "Contract")

which Contract dated June 30th, 2021, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of _____ DOLLARS ($_____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project with persons, firms, and or entities acceptable to the District; and

- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warrantees of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty period of the Contract, during which time Surety's obligation shall continue if Designer/Builder shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Designer/Builder remains. Nothing herein shall limit the District's rights or the Designer/Builder's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Designer/Builder'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, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 20___.

(Affix Corporate Seal)

_____
Principal

_____
By

_____
Surety

_____
By

_____
Name of California Agent of Surety

_____
Address of California Agent of Surety

_____
Telephone Number of California Agent of Surety

Designer/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND
(Labor & Material Bond)
(100% of Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **San Leandro Unified School District**, (or "District") and Jeff Luchetti Construction, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

Bancroft & John Muir Middle School Modular Classroom Projects (Project Name)
("Project" or "Contract")

which Contract dated June 30th, 2021, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and_____, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ _____ Dollars ($_____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 20___.

(Affix Corporate Seal)

_____
Principal

_____
By

_____
Surety

_____
By

_____
Name of California Agent of Surety

_____
Address of California Agent of Surety

_____
Telephone Number of California Agent of Surety

Designer/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

Exhibit A

SCOPE OF WORK

Article 1. DESIGN SERVICES

1.1. During the Design and Construction Phases of the Project, Designer/Builder will meet with District to review equipment, scope of work, and installation plans that relate to the design and construction of the Project.

1.2. During the course of the Work, and at least weekly, Designer/Builder will provide reports to the District of the general status and progress of the Work.

1.3. Although the Parties acknowledge that the Designer/Builder's Services are not completely severable between design, procurement, installation, construction, commissioning, and training, the following scope of services will be generally referred to as the Services that the Designer/Builder shall perform during the Design and Construction Phases of the Project, for the scope of work for which Designer/Builder is designing the Project, which shall be as indicated in the Construction Documents.

1.4. **Scope, Responsibilities, and Services of Designer/Builder**

1.4.1. Designer/Builder shall provide Services that shall comply with professional engineering standards, recognized industry standards professional skill and judgment, and applicable requirements of federal, state, and local law.

1.4.2. Designer/Builder acknowledges that all California school districts are now obligated to develop and implement storm water requirements.

1.4.3. Designer/Builder shall contract for or employ at Designer/Builder's expense, consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical, structural, civil engineers, landscape architects, low voltage, data, and telephone consultants as necessary, licensed as required by the State of California. Nothing in the foregoing procedure shall create any contractual relationship between the District and any consultant employed by the Designer/Builder under terms of the Contract.

1.4.4. The District shall provide to Designer/Builder information and documentation that the District currently has related to the Site including geotechnical reports, topographic surveys, and related items. If Designer/Builder believes that the information or documentation the District provides is insufficient for purposes of design or if the Designer/Builder believes it needs additional information, including a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; determinations of the location of all subsurface utilities; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other tests reasonably related to performance of the Project, the Designer/Builder shall inform the District of that fact and the Parties shall mutually agree on the items required and the process and responsibility to procure those items.

1.4.5. Designer/Builder shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination, or management of other work on the Site.

1.4.6. Where applicable, Designer/Builder shall identify the regulatory agencies that have

jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies or their authorized agents, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State Fire Marshal, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.

1.4.7. As required, Designer/Builder shall provide Services required to obtain local agencies' (e.g., City, County, etc.) approval for off-Site work related to the Project including review by regulatory agencies having jurisdiction over the Project, if applicable.

1.4.8. Designer/Builder shall coordinate with the District's DSA Project Inspector(s).

1.4.9. Designer/Builder shall use its best efforts to provide pictures downloaded to computer files, updated as requested by the District, that the District may use on its website. Pictures shall be limited to Designer/Builder's Project scope.

1.4.10. As part of the Services, Designer/Builder is NOT responsible for the following, however, it shall coordinate and integrate its Work with any of the following information and/or services provided by District:

1.4.10.1. Ground contamination or hazardous material analysis.

1.4.10.2. Any asbestos and/or lead testing, design or abatement.

1.4.10.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Designer/Builder agrees to coordinate its Work with that of any CEQA consultants retained by the District, to provide any reasonably available information, such as current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District. If the District and/or its CEQA consultant do not provide mitigation measures to the Designer/Builder when reasonably required for incorporation into the Project design, the Designer/Builder may invoice the District for the work required to incorporate those mitigation measures as Extra Services.

1.4.10.4. Historical significance report.

1.5. **Designer/Builder Staff**

1.5.1. The Designer/Builder has been selected to perform the Services herein because of its skills and expertise.

1.5.2. The Designer/Builder shall not change any of the key personnel without prior written approval by District, unless said personnel cease to be employed by Designer/Builder. In either case, District shall be allowed to interview and approve replacement personnel. Such approval shall not be unreasonably withheld or delayed.

1.5.3. If any designated lead or key person fails to perform to the reasonable satisfaction of the District, then upon written notice the Designer/Builder shall have five (5) days to remove that person from the Project and replace that person with one reasonably acceptable to the District.

1.5.4. Designer/Builder shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

1.6. **Ownership of Data**

1.6.1. Pursuant to Education Code section 17316, the Contract creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Designer/Builder or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to this Work.

1.6.2. The Designer/Builder retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Designer/Builder or its consultants prepares or causes to be prepared pursuant to this Contract.

1.6.3. The Designer/Builder shall perform the Services and prepare design documents under the Contract with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Designer/Builder shall deliver to the District, on request "thumb" drive, and/or compact disc format and compatible with AutoCAD 2006 (not .pdf). As to any drawings that Designer/Builder provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

1.6.4. In order to document exactly what CADD information was given to the District, Designer/Builder and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Designer/Builder produces the CADD information. District agrees to release Designer/Builder from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Designer/Builder or Consultant(s) subsequent to it being given to the District.

1.6.5. Following the termination of the Contract, for any reason whatsoever, the Designer/Builder shall promptly deliver to the District upon written request the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word), assuming the District has made all payments to Designer/Builder as required by the termination provisions in this Contract.

1.6.5.1. One set of the Contract, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

1.6.5.2. Where applicable, one set of fixed image CADD files in DXF format of the drawings that are part of the Contract.

1.6.5.3. Where applicable, one set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.

1.6.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, and reports prepared by the Designer/Builder under the Contract.

1.6.6. In the event the District changes or uses any fully or partially completed documents without the Designer/Builder's knowledge and participation, the District agrees to release Designer/Builder of responsibility for such changes, and shall indemnify, defend and hold the Designer/Builder harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Designer/Builder is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Designer/Builder's full involvement, the District shall remove all title blocks and other information that might identify the Designer/Builder and the Designer/Builder's consultants.

1.7. **Certificate of Designer/Builder.** Designer/Builder certifies that the Designer/Builder is properly

licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

Article 2. DESIGN SERVICES BY PHASE

2.1. **EARLY DESIGN PHASE(S).** Designer/Builder agrees to provide the services described below:

2.1.1. Designer/Builder shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by Designer/Builder under the Contract, as well as coordination with all Master plans, studies, reports and other information provided by District. Designer/Builder shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.

2.1.2. The District shall provide all information available to it to the extent the information relates to Designer/Builder's scope of work. This information shall include, if available,

2.1.2.1. Physical characteristics;

2.1.2.2. Legal limitations and utility locations for the Project site(s);

2.1.2.3. Written legal description(s) of the Project site(s);

2.1.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;

2.1.2.5. Adjacent drainage;

2.1.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);

2.1.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;

2.1.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;

2.1.2.9. Surveys, reports, as-built drawings;

2.1.2.10. Subsoil data, chemical data, and other data logs of borings;

2.1.2.11. DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of Work.

2.1.3. Designer/Builder shall Visually Verify this information and all existing utilities and systems related to the Project, including capacity, and document the location of existing utility lines, vents, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District. "Visually Verify" means to verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

2.1.4. **Technology Backbone.** Designer/Builder shall be responsible for the coordination of the design and the layout of the technology backbone system of the Work with the District's Information Technology Department and/or the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Designer/Builder and consultant(s) shall prepare and be responsible for documents prepared by the Designer/Builder based on the information provided by the District's technology consultant as appropriate to the level of

design completion.

2.2. **SCHEMATIC DESIGN PHASE.**

Upon District's acceptance of Designer/Builder's Work in the previous Phase and assuming District has not delayed or terminated the Contract, the Designer/Builder shall prepare for the District's review a Schematic Design, containing the following items as applicable to the Project scope, as follows:

2.2.1. Prepare and review with District staff a scope of Work list and Work plan identifying specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities of the Designer/Builder, required completion times necessary for the review and approval by the District and by pertinent regulatory agencies and additional definition of deliverables.

2.2.2. Review the developed Work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

2.2.3. **Architectural**

2.2.3.1. Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.

2.2.3.2. Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.

2.2.3.3. As applicable, identify proposed roof system, deck, insulation system, and drainage technique.

2.2.3.4. Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.

2.2.3.5. Identify code requirements, include occupancy classification(s) and type of construction.

2.2.4. **Structural**

2.2.4.1. Layout structural systems with dimensions and floor elevations. Identify structural systems (including pre-cast, structural steel with composite deck, structural steel bar joists); with preliminary sizing identified.

2.2.4.2. Identify foundation systems (including fill requirements, piles, caissons, spread footings); with preliminary sizing identified.

2.2.5. **Mechanical**

2.2.5.1. Calculate block heating, ventilation, and cooling loads including skin versus internal loading.

2.2.5.2. Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.

2.2.5.3. Show selected system on drawings as follows:

2.2.5.4. Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.

2.2.5.5. Location and preliminary sizing of all major equipment and duct work in allocated spaces.

2.2.5.6. Schematic piping.

2.2.5.7. Temperature control zoning.

2.2.5.8. Provide design criteria to include the intent base of design for the projects.

2.2.5.9. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

2.2.6. **Electrical**

2.2.6.1. Calculate overall approximate electrical loads.

2.2.6.2. Identify proposed electrical system for service, power, lighting, low voltage and communication loads, including proposed or planned additional buildings or other facilities on the Project site.

2.2.6.3. Show system(s) selected on drawings as follows:

2.2.6.4. Single line drawing(s) showing major distribution system.

2.2.6.5. Location and preliminary sizing of all major electrical systems and components including:

2.2.6.5.1. Load centers.

2.2.6.5.2. Main panels.

2.2.6.5.3. Switch gear.

2.2.6.6. Provide design criteria to include the intent base of design for the projects.

2.2.6.7. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

2.2.7. **Civil**

2.2.7.1. Develop on and off site utility systems such as sewer, water, storm drain, firewater lines, and fire hydrants.

2.2.7.2. Identify surface improvements including roadways, walkways, parking (with assumed wheel weights), preliminary finish grades, and drainage.

2.2.7.3. Coordinate finish floor elevations with architectural site plan.

2.2.8. **Landscape.** Develop and coordinate landscape design concepts entailing analysis of existing conditions, proposed components and how the occupants will use the facility. Include location and description of planting, ground improvements, and visual barriers.

2.2.9. **Specifications.** Prepare proposed revisions to the specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. Designer/Builder is to use District's standardized equipment/material list for new construction and modernization in development of the Project design and specifications.

2.2.10. **Meetings.** During this Phase, Designer/Builder shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

2.2.11. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to the District one hard

copy of the above noted items produced in this phase, together with one copy of each item in electronic format

2.2.11.1. Two copies of meeting Reports/Minutes;

2.2.11.2. Two copies of Schematic Design Package with alternatives;

2.2.11.3. Two copies of a statement indicating changes made to the Architectural Program and Schedule;

2.2.11.4. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Designer/Builder has not met or corresponded with DSA.

2.2.12. **Presentation**

2.2.12.1. Designer/Builder shall present and review with the District the detailed Schematic Design.

2.2.12.2. The Schematic Design shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been accepted and approved by the District at no additional cost to the District.

2.3. **DESIGN DEVELOPMENT PHASE.**

Upon District's acceptance of Designer/Builder's Work in the previous Phase and assuming District has not delayed or terminated the Contract, the Designer/Builder shall prepare from the accepted deliverables from the Schematic Design Phase the Design Development Phase documents consisting of the following for each proposed system within Designer/Builder's scope of Work:

2.3.1. **Architectural**

2.3.1.1. Scaled, dimensioned floor plans with final room locations including all openings.

2.3.1.2. 1/8" scale building sections showing dimensional relationships, materials, and component relationships.

2.3.1.3. Identification of all fixed equipment to be installed in contract.

2.3.1.4. Site plan completely drawn with beginning notes and dimensions including grading and paving.

2.3.1.5. Preliminary development of details and large scale blow-ups.

2.3.1.6. Legend showing all symbols used on drawings.

2.3.1.7. Floor plans identifying all fixed and major movable equipment and furniture.

2.3.1.8. Further refinement of Outline Specification for architectural, structural, mechanical, electrical, civil and landscape manuals, systems and equipment.

2.3.1.9. Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing:

2.3.1.10. Light fixtures.

2.3.1.11. Ceiling registers or diffusers.

2.3.1.12. Access Panels.

2.3.2. **Structural**

2.3.2.1. Structural drawing with all major members located and sized.

2.3.2.2. Establish final building and floor elevations.

2.3.2.3. Preliminary specifications.

2.3.2.4. Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center.

2.3.3. **Mechanical**

2.3.3.1. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.

2.3.3.2. Major mechanical equipment should be scheduled indicating size and capacity.

2.3.3.3. Ductwork and piping should be substantially located and sized.

2.3.3.4. Devices in ceiling should be located.

2.3.3.5. Legend showing all symbols used on drawings.

2.3.3.6. More developed Outline Specifications indicating quality level and manufacture.

2.3.3.7. Control Systems to be identified.

2.3.3.8. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

2.3.4. **Electrical**

2.3.4.1. All lighting fixtures should be located and scheduled showing all types and quantities of fixtures to be used, including proposed lighting levels for each usable space.

2.3.4.2. All major electrical equipment should be scheduled indicating size and capacity.

2.3.4.3. Complete electrical distribution including a one line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers, and emergency generators, if required. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.

2.3.4.4. Legend showing all symbols used on drawings.

2.3.4.5. More developed and detailed Outline Specifications indicating quality level and manufacture.

2.3.4.6. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

2.3.5. **Civil**

2.3.5.1. Further refinement of Schematic Design Phase development of on and off site utility systems for sewer, electrical, water, storm drain and fire water. Includes, without limitation, pipe sizes, materials, invert elevation location and installation details.

2.3.5.2. Further refinement of Schematic Design Phase roadways, walkways, parking and storm drainage improvements. Includes details and large scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.

2.3.6. **Landscape.** Further refinement of Schematic Design concepts. Includes coordination of hardscape, landscape planting, ground cover and irrigation main distribution lines.

2.3.7. **Deliverables and Numbers of Copies**

2.3.7.1. Two copies of Design Development drawing set from all professional disciplines necessary to deliver the Project;

2.3.7.2. Two copies of continued proposed revision to Specifications;

2.3.7.3. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Designer/Builder has not met or corresponded with DSA.

2.3.7.4. The Design Development deliverables shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget.

2.3.8. **Meetings.** During this Phase, Designer/Builder shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

2.4. **CONSTRUCTION DOCUMENTS PHASE**

Upon District's acceptance of Designer/Builder's Work in the previous Phase and assuming District has not delayed or terminated the Contract, Designer/Builder shall prepare a set of 90% complete construction documents for review by the District. Upon approval by District, said construction documents shall be completed and then submitted to, as required, local planning or inspection office, DSA, or other agency with approval jurisdiction over the Project. The Designer/Builder shall prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Designer/Builder's scope of Work:

2.4.1. **General.** Verify lead times and availability of all Project equipment, materials, supplies, and furnishings and ensure that all of these will be available to the contractor(s) in a timely fashion so as to not delay the Project and/or delay the District's Beneficial Use of the Project. The Designer/Builder shall also provide other options to the District regarding other possible and more available equipment, materials, supplies, or furnishings.

2.4.2. **Architectural**

2.4.2.1. Completed site plan.

2.4.2.2. Completed floor plans, elevations, and sections.

2.4.2.3. Architectural details and large blow-ups completed.

2.4.2.4. Finish, door, and hardware schedules completed, including all details.

2.4.2.5. Fixed equipment details and identification completed.

2.4.2.6. Reflected ceiling plans completed.

2.4.3. **Structural**

2.4.3.1. Structural floor plans and sections with detailing completed.

2.4.3.2. Structural calculations completed.

2.4.3.3. Completed cover sheet with general notes, symbols and legends.

2.4.4. **Mechanical**

2.4.4.1. Large scale mechanical details complete.

2.4.4.2. Mechanical schedules for equipment completed.

2.4.4.3. Completed electrical schematic for environmental cooling and exhaust equipment.

2.4.4.4. Complete design of Emergency Management System ("EMS").

2.4.4.5. Complete energy conservation calculations and report.

2.4.5. **Electrical**

2.4.5.1. Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.

2.4.5.2. Distribution information on all power consuming equipment, including lighting, power, signal, and communication device(s) branch wiring completed.

2.4.5.3. All electrical equipment schedules completed.

2.4.5.4. Special system components plans completed.

2.4.5.5. Electrical load calculations completed.

2.4.5.6. Complete design of low voltage system. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.

2.4.6. **Civil.** All site plans, site utilities, parking and roadway systems completed.

2.4.7. **Landscape.** All landscape, hardscape, and irrigation plans completed and reflecting updated revisions from Design Development Phase Documents.

2.4.8. **Specifications**

2.4.8.1. Complete proposed revisions to the technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

2.4.8.2. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless the District has given prior approval.

2.4.9. **Constructability Review.** The District and/or its designee shall conduct a construction review of the Construction Documents. A report shall be given to the Designer/Builder who shall make necessary changes along with providing written comments for each item listed in the report.

2.4.10. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

2.4.10.1. Two copies of reproducible copies of working drawings;

2.4.10.2. Two copies of proposed revisions to specifications;

2.4.10.3. Two copies of engineering calculations;

2.4.10.4. Two copies of statement of requirements for testing and inspection of service for compliance with Contract Documents and applicable codes;

2.4.10.5. Two copies of DSA file including all correspondence, meeting, back check comments, checklists to date;

2.4.10.6. Two copies of a statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

2.4.11. **Construction Documents (CD) Final Back-Check Stage (where applicable)**

2.4.11.1. The Construction Documents final back-check stage shall be for the purpose of Designer/Builder incorporating all regulatory agencies' comments into the drawings, specifications, and schedules. All changes made by the Designer/Builder during this stage shall be at no additional cost to the District.

2.4.11.2. The final Construction Documents delivered to the District upon completion of the Designer/Builder's Work shall be the final set and shall consist of the original drawings with designers' and engineers' State license stamp.

2.4.11.3. **Meetings.** Designer/Builder shall attend, take part in, and, conduct meetings and site visits as required for the Work and Services at no additional cost to the District.

2.5. **Record Drawings.** During construction, Designer/Builder shall incorporate all information on As-Builts, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of electronic drawings, changes from As-Builts, sketches, details, and clarifications. The Designer/Builder shall deliver the Record Drawings to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.

2.6. **O&M Manuals / Warranties.** Designer/Builder shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications. The Designer/Builder shall deliver the O&M Manuals / Warranties to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.

Article 3. DESCRIPTION OF CONSTRUCTION SERVICES WORK AND SERVICES BY SCOPE

3.1. **General.**

3.1.1. Designer/Builder shall design, install, and construct the Work at the Site. The Work shall be installed and constructed to conform to Division of the State Architect ("DSA") requirements and all applicable building codes. Designer/Builder's Work shall include meetings and discussions as needed with DSA and others as needed to achieve project approval.

3.1.2. In addition to all other requirement herein, the Designer/Builder shall comply with all requirements of the Plans and Specifications referenced herein in **Exhibit E.**

3.2. **DSA Approvals & Permits**

3.2.1. Designer/Builder, its designers, contractors, and inspectors shall provide documentation required for all approvals by DSA.

3.2.2. Designer/Builder shall notify the District and the District's Project Inspector(s) of required inspections and shall provide reasonable access and accommodations for inspections.

3.3. **Protection of Existing Structures and Utilities**

3.3.1. The Site has above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist in the area of the Work. Designer/Builder shall locate these existing installations before proceeding with excavation and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Work. Should damage occur to these existing installations, then the costs of repair shall be at the Designer/Builder's expense and made to the District's satisfaction.

3.3.2. Designer/Builder shall be alert to the possibility of the existence of additional structures and utilities. If Designer/Builder encounters additional structures and utilities, Designer/Builder will immediately report to the District for disposition of same as indicated in the General Conditions.

3.3.3. Designer/Builder shall conduct an engineering evaluation to determine whether any undergrounding power lines will create the potential for electrolytic corrosion of any other underground utilities near such power lines. Were the potential for electrolytic corrosion exists, Designer/Builder shall also design and install a cathodic protection system to protect such utilities.

3.4. **Specific measures include:**

3.4.1. Written Designer/Builder Safety Plans, signs and temporary fencing as needed

3.4.2. Engineering and stamped drawings for District and DSA approval.

3.4.3. Layout drawings for Fire Department review

3.4.4. Single line and electrical drawings for Pacific Gas & Electric

3.5. **Commissioning**

3.5.1. **Summary**

3.5.1.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract.

3.5.1.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.

3.5.1.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.

3.5.1.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

3.5.1.5. The hiring of the commissioning agent shall be the responsibility of the District.

3.5.2. **Description**

3.5.2.1. Designer/Builder Startup: prior to District's acceptance of Work, Designer/Builder shall perform a program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.

3.5.2.1.1. The District and the DSA Project Inspector (IOR) shall be present to observe, inspect, and identify deficiencies in Building Systems Operations.

3.5.2.2. The completion of startup means the entire Project including startup and fine tuning has been performed to the requirements of the Contract and is verified in writing by the District and the IOR.

3.5.2.3. Fine Tuning: Fine tuning is the responsibility of Designer/Builder after District occupancy and ending one year after District occupancy. During this time the Designer/Builder is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.

3.5.2.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.

3.5.2.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

3.5.3. **Definition of Terms**

3.5.3.1. Designer/Builder's Pre-Commissioning Checklists: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.

3.5.3.2. Installation Verification Process: Includes the on-site inspection and review of related system components for conformance to the Contract. The Designer/Builder

shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the District and the IOR for future resolution.

3.5.3.3. Functional Performance Testing Process: Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Designer/Builder certifies that systems are 100% complete and ready for functional testing. The contractors will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.

3.5.3.4. Deficiencies and Resolutions List: Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the District and the IOR Deficiencies are defined as those issues where products execution or performance does not satisfy the Contract and/or the design intent.

3.5.4. **Commissioning Duties and Responsibilities**

3.5.4.1. Designer/Builder Duties and Responsibilities:

3.5.4.1.1. Assure the participation and cooperation of subcontractors and suppliers under their jurisdictions as required to complete the commissioning process.

3.5.4.1.2. Complete Commissioning Report Forms. Reports are to be completed in a neat easily readable condition.

3.5.4.1.3. Complete the respective start-up and check out procedures and insure readiness of equipment and systems prior to the start of the functional performance testing. Written confirmation of system readiness for performance testing is required.

3.5.4.1.4. Provide qualified representatives for the functional performance commissioning process.

3.5.4.2. Assure that all subcontractors and suppliers include in their respective contracts cost necessary to participate in and complete the commissioning process.

3.5.4.3. Duties and responsibilities of others for Commissioning: The commissioning process requires the active participation of the District and the IOR, and any other related Consultants on the project.

Article 4. PROJECT DESCRIPTION

4.1. **Bancroft Middle School**

The project includes the design and construction (design-build) of four (4) new modular classrooms, staff & student restrooms, associated utilities, sitework improvements, demolition, start-up, commissioning and all other associated work required to provide a complete turnkey project at the Bancroft Middle school site. The design shall be based on the bridging documents and District Standards provided in the Bid Package. The Design-Build team will provide Design Development Drawings, Constructability Review and Value Engineering services per the Bid Package for discussion and implementation as approved by the District and its representatives.

4.2. **John Muir Middle School**

The project includes the design and construction (design-build) of nine (9) new modular classrooms, staff & student restrooms, shade structure (add-alternate), associated utilities, sitework improvements including parking lot up grades, demolition, start-up, commissioning and all other associated work required to provide a complete turnkey project at the John Muir Middle school site.

The design shall be based on the bridging documents and District Standards provided in the Bid Package. The Design-Build team will provide Design Development Drawings, Constructability Review and Value Engineering services per the Bid Package for discussion and implementation as approved by the District and its representatives.

Article 5. **ADDITIONAL CLARIFICATIONS TO THE SUMMARY OF WORK**

None at this time

Exhibit B

PROJECT SCHEDULE
(MILESTONE SCHEDULE)

The days indicated below will begin once the District issues a Notice to Proceed for the Project. The Parties acknowledge the following. The District intends to issue a Notice to Proceed for the Project on or before **June 30, 2021.**

- Except for the Project Completion milestone date indicated herein, the other milestone dates are for reference only. Any delay in achieving the milestone dates indicated herein shall not be a basis upon which Designer/Builder can request an extension of the last milestone – Project Completion.

- Designer/Builder shall have no right to request additional time to perform the Work unless the condition(s) constitute a Force Majeure event as defined in the Contract or Adverse Weather as indicated in this Exhibit.

Milestone	Date to Complete	Liquidated Damages per Calendar Day
District Issues a Notice to Proceed	June 30, 2021	n/a
Designer/Builder Completes Final Engineering, Design, and DSA Submittal	September 30, 2021	$2,500.00
Construction Mobilization	March 30, 2022	$2,500.00
Project Completion Bancroft Muir	280 Calendar Days (Bancroft) 365 Calendar Day (Muir)	$2,500.00

Adverse Weather

- "Adverse Weather" shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.

- The Designer/Builder will only be allowed a time extension for Adverse Weather conditions if requested by Designer/Builder and only if all of the following conditions are met.

    - The weather conditions constitute Adverse Weather, as defined herein;

    - Designer/Builder can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

    - The Designer/Builder's crew is dismissed as a result of the Adverse Weather; and

    - The number of days of delay for the month exceed those indicated in this table:

January	**11**	July	**0**
February	**10**	August	**0**
March	**10**	September	**1**
April	**6**	October	**4**

May	**3**	November	**7**
June	**1**	December	**10**

A day-for-day extension will only be allowed for those days in excess of those indicated in this table.

- The Designer/Builder shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Project Schedule, and to protect the Work under construction from the effects of weather, all at no further cost to the District.

- The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

Exhibit C

DETAILED PROJECT COST VALUES
AND
OTHER PRICING COMPONENTS

San Leandro Unified School District **Bancroft & John Muir Middle Schools Modular Classroom Project** **Design-Build Project Cost Breakdown**		
[Designer/Builder may add and/or revise subdivisions or components as outlined in this sample form and format as applicable to the Project.]		
	Design through Design Development	$142,680
	Design from Construction Documents to Submittal to DSA	$285,360
01000	General Requirements / General Conditions	$968,000
	Project Manager	$_____
	Project Superintendent	$_____
	Foreman	$_____
	Clerical	$_____
	Safety Officer / Coordinator	$_____
	Vehicles	$_____
	Trailer	$_____
	Communications	$_____
	Office Equipment / Supplies	$_____
	Security	$_____
	Temporary Utilities	$_____
	Site Cleaning	$_____
	Toilets	$_____
	Mobilization / Layout (no more than 1%)	$_____
	Layout	$_____
	Fencing / Barricades	$_____
	Dust Control	$_____
	Waste Disposal	$_____
	Count/City/Etc. Fees	$_____
	Submittals, shop drawings (no more than 3%)	$_____
	Close-out Documentation (not less than 5%)	$_____
	Testing	$_____
	Punch-List	$_____
	Clean Up	$_____
	Miscellaneous	$_____
	Subtotal	**$**_____
(Add all subdivisions as required for detailed pricing)		
[2]	[EXISTING CONDITIONS]	$_____

[3]	[CONCRETE]	$_____
[5]	[METALS]	$_____
[6]	[WOOD AND PLASTICS]	$_____
[7]	[THERMAL AND MOISTURE PROTECTION]	$_____
[8]	[OPENINGS]	$_____
[9]	[FINISHES]	$_____
[10]	[SPECIALTIES]	$_____
[21]	[FIRE SUPRESSION]	$_____
[22]	[PLUMBING]	$_____
[23]	[HVAC]	$_____
[26]	[ELECTRICAL]	$_____
[31]	[EARTHWORK]	$_____
[32]	[EXTERIOR IMPROVEMENTS]	$_____
[33]	[UTILITIES]	$_____
	Subtotal	**$11,650,213**
	Bonds	$124,106
	Insurance	$135,031
	Overhead & Profit	$584,549
	District Contingency	$601,148
	Allowances	$_____
	(Preliminary) Project Cost	**$13,135,823**

Other Contract Price Components

A COMPLETE SCHEDULE OF VALUES WILL BE PROVIDED BY DESIGNER/BUILDER PRIOR TO CONSTRUCTION COMMENCING

Exhibit D

DISTRICT'S RULES AND REGULATIONS

1. **Access**. Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a RGM Kramer Inc. employee will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Designer/Builder's Work, the overtime wages for the custodian will be paid by the Designer/Builder, unless, at the discretion of the District, other arrangements are made in advance.

2. **Maintaining Services**. The Designer/Builder is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities. These shall be only as arranged in advance with the District. Designer/Builder shall provide temporary services to all facilities interrupted by Designer/Builder's Work.

3. **Maintaining Utilities**. The Designer/Builder shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area. Designer/Builder shall provide temporary services to all facilities interrupted by Designer/Builder's Work.

4. **Alcohol & Firearms**. Designer/Builder shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Designer/Builder shall immediately remove from the Site and terminate the employment of any employee(s) found in violation of this provision.

5. **Work during Instructional Time**. Designer/Builder affirms that Work may be performed during ongoing instruction in existing facilities. If so, Designer/Builder agrees to cooperate to the best of its ability to minimize any disruption to the school up to, and including, rescheduling specific work activities, at no additional cost to District.

6. **No Work during Student Testing**. Designer/Builder shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State-required tests.

7. **Badge Policy For Designer/Builders**. All Designer/Builders doing Work for the District will provide their workers with identification badges. These badges will be worn by all members of the Designer/Builder's staff who are working in a District facility.

    7.1. Badges must be filled out in full and contain the following information:

        7.1.1. Name of Designer/Builder
        7.1.2. Name of Employee
        7.1.3. Designer/Builder's address and phone number

    7.2. Badges are to be worn when the Designer/Builder or his/her employees are on site and must be visible at all times. Designer/Builders must inform their employees that they are required to allow District employees or the Project Inspector to review the information on the badges upon request.

    7.3. Failure to display identification badges as required by this policy may result in the assessment of fines against the Designer/Builder.

8. Language. Unacceptable and/or loud language will not be tolerated, "cat calls" or other derogatory language toward students or public will not be allowed.

9. Disturbing the Peace (Noise and Lighting).

9.1. Designer/Builder shall observe the noise ordinance of the Site at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.

9.2. The use of radios, etc., shall be controlled to keep all sound at a level that cannot be heard beyond the immediate area of use. The District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios (e.g., Nextel phones or radios).

9.3. If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.

9.4. Equipment and impact tools shall have intake and exhaust mufflers.

9.5. Designer/Builder shall cooperate with District to minimize and/or seize the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.

9.6. Designer/Builder acknowledges that adjacent facilities may remain in operation during all or a portion of the Work period, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.

9.7. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to the District a minimum of forty-eight (48) hours in advance of their performance.

10. Utility Shutdowns And Interruptions.

10.1. Designer/Builder shall give the District a minimum of three (3) days written notice in advance of any need to shut off existing utility services or to effect equipment interruptions. The District will set exact time and duration for shutdown, and will assist Designer/Builder with shutdown. Work required to re-establish utility services shall be performed by the Designer/Builder.

11. Traffic.

11.1. Driving on the Premises shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require.

11.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance. Any damage will be repaired to the pre-damaged condition by the Designer/Builder.

11.3. The District shall designate a construction entry to the Site. If Designer/Builder requests, the District determines it is required, and to the extent possible, the District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be approved in advance with the District and at Designer/Builder's expense.

11.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

12. Barriers and Enclosures.

12.1. Designer/Builder shall obtain the District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.

12.2. Designer/Builder shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Site and/or Premises, the public, and workers. Designer/Builder shall also protect the Work and existing facilities from the elements, and adjacent construction and improvements, persons, and trees and plants from damage and injury from demolition and construction operations.

12.3. Designer/Builder shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

13. Tree and Plant Protection.

13.1. Designer/Builder shall preserve and protect existing trees and plants on the Premises that are not designated or required to be removed, and those adjacent to the Premises.

13.2. Designer/Builder shall provide barriers to a minimum height of 4'-0" around drip line of each tree and plant, around each group of trees and plants, as applicable, in the proximity of demolition and construction operations.

13.3. Designer/Builder shall not park trucks, store materials, perform Work or cross over landscaped areas. Designer/Builder shall not dispose of paint thinners, water from cleaning, plastering or concrete operations, or other deleterious materials in landscaped areas, storm drain systems, or sewers. Plant materials damaged as a result of the performance of the Work shall, at the option of the District and at Designer/Builder's expense, either be replaced with new plant materials equal in size to those damaged or by payment of an amount representing the value of the damaged materials as determined by the District.

13.4. Designer/Builder shall remove soil that has been contaminated during the performance of the Work by oil, solvents, and other materials which could be harmful to trees and plants, and replace with good soil, at Designer/Builder's expense.

14. Excavation around Trees.

14.1. Excavation within drip lines of trees shall be done only where absolutely necessary and with written permission from the District.

14.2. Where trenching for utilities is required within drip lines, tunneling under and around roots shall be by hand digging and shall be approved by the District. Main lateral roots and taproots shall not be cut. All roots 2 inches in diameter and larger shall be tunneled under and heavily wrapped with wet burlap so as to prevent scarring or excessive drying. Smaller roots that interfere with installation of new work may be cut with prior approval by the District. Roots must first be cut with a Vermeer, or equivalent, root cutter prior to any trenching.

14.3. Where excavation for new construction is required within drip line of trees, hand excavation shall be employed to minimize damage to root system. Roots shall be relocated in backfill areas wherever

possible. If encountered immediately adjacent to location of new construction, roots shall be cut approximately 6 inches back from new construction.

14.4. Approved excavations shall be carefully backfilled with the excavated materials approved for backfilling. Backfill shall conform to adjacent grades without dips, sunken areas, humps, or other surface irregularities. Do not use mechanical equipment to compact backfill. Tamp carefully using hand tools, refilling and tamping until Final Acceptance as necessary to offset settlement.

14.5. Exposed roots shall not be allowed to dry out before permanent backfill is placed. Temporary earth cover shall be provided, or roots shall be wrapped with four layers of wet, untreated burlap and temporarily supported and protected from damage until permanently relocated and covered with backfill.

14.6. Accidentally broken roots should be sawed cleanly 3 inches behind ragged end.

15. Security.

15.1. The Designer/Builder shall be responsible for Project security for materials, tools, equipment, supplies, and completed and partially completed Work.

16. Dust and Dirt.

16.1. Designer/Builder shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities.

16.2. Designer/Builder shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.

16.3. Designer/Builder shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.

16.4. Designer/Builder shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

17. Job Sign(s): Signs other than a District-approved Project sign and/or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.

18. Publicity Releases. Designer/Builder shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s).

Exhibit E

LIST OF PLANS AND SPECIFICATIONS

The Parties agree to supplement this **Exhibit E** after execution of the Contract to include those technical plans, drawings, or specifications relevant to Designer/Builder's Scope of Work and required for plan check and permitting.

Bridging Documents: https://www.dropbox.com/sh/n4dxbeytffvgszh/AAAPs8ki2i-zZgZ6g5hGOcBaa?dl=0

Bancroft Middle School:

General

G0.01 Cover Sheet
G0.02 Abbreviations and Symbols

Civil

C1.1 Demolition Plan
C2.1 Grading Plan
C3.1 Utility Plan
C3.2 Utility Plan

Architectural

A1.01 Removal Site Plan
A1.02 Site Plan – Interim Housing
A1.03 Site Plan and Code Information
A2.01 First Floor Plan and Roof Plan
A3.01 Exterior Elevations and Section
A4.01 Typical Classroom Enlarged Floor Plan and Interior Elevations
A4.02 Enlarged Plan and Interior Elevations Restrooms
A6.01 First Floor Reflected Ceiling Plans
A10.10 Door, Window, and Louvre Types and Schedules
A10.30 Interior and Exterior Finish Schedules

Mechanical

M0.01 Mechanical Legends and Notes
M0.02 Mechanical Schedules
M2.01 HVAC Floor Plan

Fire Protection

FP0.01 Fire Protection Legend and Notes
FP2.01 Fire Protection Floor Plan

Plumbing

P0.01 Plumbing Legends, Schedules and Notes
P0.02 Plumbing Fixture Specification and Connection Schedule
P2.00 Plumbing Site Plan
P2.01 Plumbing Floor Plan

Electrical

E0.1 General Notes, Symbols and Abbreviations
E1.0 Electrical Ste Plan Removal
E1.1 Electrical Site Plan – Interim Housing
E1.2 Electrical Site Plan
E2.1 Electrical Roof and Floor Plan
E3.1 Electrical Lighting Plan
E4.1 Electrical Low Voltage Plan
E6.1 Single Line Diagram

John Muir Middle School

General

G0.01 Cover Sheet
G0.02 Abbreviations and Symbols

Civil

C0.01 Overall Site Plan
C1.1 Demolition Plan
C1.2 Demolition Plan
C2.1 Grading Plan
C2.2 Grading Plan
C3.1 Utility Plan
C3.2 Utility Plan
C3.3 Utility Plan

Architectural

A1.01 Removal Site Plan
A1.02 Site Plan and Code Information
A1.03 Trash Enclosure Floor Plan and Elevations
A2.01 First Floor and Mechanical Loft Floor Plans
A2.02 Roof Plans
A3.01 Exterior Elevations
A3.02 Sections
A4.01 Typical Classroom Enlarged Floor Plan and Interior Elevations
A4.02 Enlarged Plan and Interior Elevations Restrooms & Custodial Room
A4.03 Interior Elevations Restrooms Continued
A5.01 Interior Elevations Corridor
A5.02 Interior Elevations Corridor
A6.01 First Floor First Floor Reflected Ceiling Plan
A10.10 Interior and Exterior Finish Schedules
A10.20 Door, Window, and Louver Schedule
A10.21 Gate and Louver Schedules

Fire Protection

FP0.01 Fire Protection Legend and Notes
FP2.01 Fire Protection Floor Plan

Mechanical

M0.01 Mechanical Legend and Notes
M0.02 Mechanical Schedules
M2.01 HVAC Floor Plan

Plumbing

P0.01 Plumbing Legend, Schedules and Notes
P0.02 Plumbing Fixture
P2.00 Plumbing Site Plan
P2.01 Plumbing Floor Plan

Electrical

E0.1 General Notes, Symbols List and Abbreviations
E1.1 Electrical Site Plan – Removal
E1.2 Electrical Site Plan
E2.1 Electrical Power Plan
E3.1 Electrical Lighting Plan
E4.1 Electrical Low Voltage Plan
E6.1 Single Line Diagram

Specifications: See Dropbox ink for Specifications
https://www.dropbox.com/sh/reldcnypswbdvb4/AACnyge64JeWIKcJRIBTavlta?dl=0

DIVISION 1	**GENERAL REQUIREMENTS**
Section No.	**Section Title**
01 11 00	Summary of Work
01 33 00	Submittals
01 40 00	Quality Control – **To be included in proposal phase**
01 41 00	Regulatory Requirements
01 42 00	General Definitions and References
01 42 13	Abbreviations
01 52 10	Site Standards
01 60 00	Materials and Equipment
01 66 10	Delivery, Storage and Handling
01 71 10	Field Engineering
01 72 23	Operation and Maintenance Data
01 73 10	Cutting and Patching
01 77 00	Contract Closeout
01 78 36	Warranties
01 78 39	Record Documents

Bancroft Middle School Specifications:

INTRODUCTORY INFORMATION

00 01 01 Project Title Page

00 01 07 Signature Pages [N]

00 01 02 Table of Contents

DIVISION 00 - PROCUREMENT AND CONTRACT REQUIREMENTS

District Division 00 Sections (D) [N]

DIVISION 01 GENERAL REQUIREMENTS

District Division 01 Sections (D) [N]

01 81 13 CALGreen Requirements

DIVISION 02 EXISTING CONDITIONS

02 41 19 Selective Demolition

DIVISION 03 CONCRETE

03 35 50 Polished and Sealed Concrete Floors

DIVISION 05 METALS

05 50 00 Metal Fabrications

DIVISION 06 WOOD AND PLASTIC

06 40 23 Interior Architectural Woodwork

DIVISION 07 THERMAL AND MOISTURE PROTECTIONS

07 26 16 Below-Slab Vapor Barrier

07 41 13 Metal Roof Panels

07 62 00 Sheet Metal and Flexible Flashing

07 92 00 Joint Sealants

DIVISION 08 OPENINGS

08 11 13 Hollow Metal Doors and Frames

08 14 16 Flush Wood Doors

08 51 13 Aluminum Windows
08 71 00 Door Hardware
08 80 00 Glazing

DIVISION 09 FINISHES

09 24 00 Portland Cement Plaster
09 29 00 Gypsum Board
09 51 13 Acoustical Panel Ceilings
09 65 00 Resilient Flooring
09 65 13 Resilient Base and Accessories
09 67 13 Resinous Composition Flooring
09 77 30 Fiberglass Reinforced Panel
09 91 13 Exterior Painting
09 91 23 Interior Painting

DIVISION 10 SPECIALTIES

10 11 00 Marker Boards
10 11 23 Vinyl Tackboard Panels
10 14 00 Signage
10 21 13 Toilet Partitions
10 28 00 Toilet Accessories
10 52 00 Fire Protection Specialties

DIVISION 21 FIRE SUPPRESSION 22 PLUMBING and DIVISION 23 HVAC

21 22 23 Fire Sprinkler, Plumbing and HVAC Outline Specifications (M)
22 00 00 Plumbing Systems Performance Criteria (M)
23 00 00 HVAC Systems Performance Criteria (M)

DIVISIONS 26 ELECTRICAL

26 00 00 Electrical Design Requirements (E)

DIVISIONS 31 EARTHWORK

31 01 30 Grout (C)
31 10 00 Demolition Clearing and Grubbing (C)
31 22 00 Earthwork (C)
31 23 33 Trench Excavation and Backfill (C)

DIVISIONS 32 EXTERIOR IMPROVEMENTS

32 12 00 Asphalt Pavement Grinding and Surface Treatments (C)
32 16 00 Site Concrete (C)

DIVISIONS 33 UTILITIES

33 05 16 Precast Concrete Utility Boxes Inlets and Wheel Stops (C)
33 11 16 Potable Water Distribution Piping (C)
33 31 00 Sanitary Sewer (C)
33 41 00 Storm Drainage (C)

John Muir Middle School Specifications:

INTRODUCTORY INFORMATION

00 01 01 Project Title Page
00 01 07 Signature Pages [N]
00 01 02 Table of Contents

DIVISION 00 - PROCUREMENT AND CONTRACT REQUIREMENTS

District Division 00 Sections (D) [N]

DIVISION 01 GENERAL REQUIREMENTS

District Division 01 Sections (D) [N]

01 81 13 CALGreen Requirements

DIVISION 02 EXISTING CONDITIONS

02 41 19 Selective Demolition

DIVISION 03 CONCRETE

03 35 50 Polished and Sealed Concrete Floors

DIVISION 05 METALS

05 50 00 Metal Fabrications

DIVISION 06 WOOD AND PLASTIC

06 40 23 Interior Architectural Woodwork

DIVISION 07 THERMAL AND MOISTURE PROTECTIONS

07 26 16 Below-Slab Vapor Barrier
07 41 13 Metal Roof Panels
07 62 00 Sheet Metal and Flexible Flashing
07 92 00 Joint Sealants

DIVISION 08 OPENINGS

08 11 13 Hollow Metal Doors and Frames
08 14 16 Flush Wood Doors
08 51 13 Aluminum Windows
08 71 00 Door Hardware
08 80 00 Glazing

DIVISION 09 FINISHES

09 24 00 Portland Cement Plaster
09 29 00 Gypsum Board
09 51 13 Acoustical Panel Ceilings
09 65 00 Resilient Flooring
09 65 13 Resilient Base and Accessories
09 67 13 Resinous Composition Flooring
09 68 00 Walk-Off Mats
09 77 30 Fiberglass Reinforced Panel
09 91 13 Exterior Painting
09 91 23 Interior Painting

DIVISION 10 SPECIALTIES

10 11 00 Marker Boards
10 11 23 Vinyl Tackboard Panels
10 14 00 Signage
10 21 13 Toilet Partitions
10 26 00 Wall Protection
10 28 00 Toilet Accessories
10 51 13 Metal Lockers
10 52 00 Fire Protection Specialties

DIVISION 12 FURNISHINGS

12 21 13 Horizontal Louver Blinds

DIVISION 21 FIRE SUPPRESSION 22 PLUMBING and DIVISION 23 HVAC

21 22 23 Fire Sprinkler, Plumbing and HVAC Outline Specifications (M)
22 00 00 Plumbing Systems Performance Criteria (M)
23 00 00 HVAC Systems Performance Criteria (M)

DIVISIONS 26 ELECTRICAL

26 00 00 Electrical Design Requirements (E)

DIVISIONS 31 EARTHWORK

31 01 30 Grout (C)
31 10 00 Demolition Clearing and Grubbing (C)

31 22 00 Earthwork (C)
31 23 33 Trench Excavation and Backfill (C)

DIVISIONS 32 EXTERIOR IMPROVEMENTS

32 12 00 Asphalt Pavement Grinding and Surface Treatments (C)
32 16 00 Site Concrete (C)
32 17 23 Pavement Stripes and Markings (C)
32 31 19 Steel Ornamental Fences and Gates

DIVISIONS 33 UTILITIES

33 05 16 Precast Concrete Utility Boxes Inlets and Wheel Stops (C)
33 11 16 Potable Water Distribution Piping (C)
33 31 00 Sanitary Sewer (C)
33 41 00 Storm Drainage (C)
33 47 27 Bioretention (C)

END OF DOCUMENT