

**BID# 03-23-24**

**SANTA CLARA COUNTY OFFICE OF EDUCATION**

**1290 RIDDER PARK BACKUP GENERATORS**

**AUGUST 24, 2023**

**DOCUMENT 00 01 10**

**TABLE OF CONTENTS - CONTRACT DOCUMENTS**

**PROCUREMENT AND CONTRACTING REQUIREMENTS**

<u>Division 0</u>	<u>Section</u>	<u>Title</u>
	00 01 01	Title Page
	00 01 10	Table of Contents (This Document)
	00 01 15	List of Drawings, Tables and Schedules
	00 11 16	Invitation to Bid
	00 21 13	Instructions to Bidders
	00 31 19	Existing Conditions
	00 31 32	Geotechnical Data
	00 41 13	Bid Form
	00 43 13	Bid Bond (Security)
	00 43 36	Designated Subcontractors List
	00 45 01	Site-Visit Certification
	00 45 19	Noncollusion Affidavit
	00 45 22	Iran Contracting Act Certification
	00 45 26	Worker's Compensation Certification
	00 45 50	Prevailing Wage and Related Labor Requirements Certification
	00 45 55	Disabled Veteran's Business Enterprise Participation Certification
	00 45 60	Drug-Free Workplace Certification
	00 45 65	Tobacco-Free Environment Certification
	00 45 70	Hazardous Materials Certification
	00 45 75	Lead-Based Paint Certification
	00 45 80	Imported Materials Certification
	00 45 85	Criminal Background Investigation/Fingerprinting Certification
	00 45 90	Roofing Contract Financial Interest Certification
	00 51 00	Notice of Award
	00 52 13	Agreement
	00 54 60	Hazardous Materials Procedures and Requirements
	00 55 00	Notice to Proceed
	00 61 14	Performance Bond
	00 61 15	Payment Bond (Contractor's Labor and Material Bond)
	00 65 25	Final Settlement Agreement and Release of Claims
	00 65 36	Warranty and Guarantee Form
	00 70 00	General Conditions
	00 71 00	Special Conditions
	00 91 13	Addenda - <b>All addenda issued by SCCOE become part of the Contract.</b>

**SPECIFICATIONS – GENERAL REQUIREMENTS**

<u>Division 1</u>	<u>Section</u>	<u>Title</u>
	01 11 00	Summary of Work
	01 12 10	Contract Forms and Submittals
	01 20 00	Price and Payment Procedures
	01 21 00	Allowances
	01 23 00	Alternates and Unit Pricing
	01 25 10	Product Options and Substitutions
	01 26 00	Contract Modification Procedures
	01 26 10	Requests for Information - Procedures
	01 31 00	Coordination and Project Meetings
	01 32 16	Construction Schedule - Network Analysis
	01 33 00	Submittals
	01 41 00	Regulatory Requirements
	01 42 13	Abbreviations and Acronyms
	01 42 16	General Definitions and References
	01 45 29	Testing Laboratory Services
	01 50 00	Temporary Facilities and Controls
	01 52 10	Site Standards
	01 56 39	Temporary Tree and Plant Protection
	01 57 10	Storm Water Pollution Prevention Plan – Construction
	01 60 00	Materials and Equipment
	01 64 00	Owner Furnished Contractor Installed
	01 66 10	Delivery, Storage and Handling
	01 70 10	Contract Closeout and Final Cleaning
	01 71 10	Field Engineering
	01 73 10	Cutting and Patching
	01 74 10	Demolition Waste Management
	01 78 23	Operation and Maintenance Data
	01 78 36	Warranties
	01 78 39	Record Documents
	01 91 00	Commissioning

**TECHNICAL SPECIFICATIONS**

<b>Division 2</b>		<b>EXISTING CONDITIONS</b>
	02 41 13	Selective Site Demolition
<b>Division 3</b>		<b>CONCRETE</b>
	03 10 00	Concrete Formwork
	03 20 00	Concrete Reinforcement
	03 30 00	Cast-in-Place Concrete
<u>Division 4</u>		<b>MASONRY – NOT USED</b>
<u>Division 5</u>		<b>METALS</b>
	05 12 00	Structural Steel
	05 40 00	Cold-Formed Metal Framing
<u>Division 6</u>		<b>WOOD, PLASTICS, AND COMPOSITES</b>
	06 10 53	Rough Carpentry

<u>Division 7</u>		<b>THERMAL AND MOISTURE PROTECTION</b>
	07 13 26	Self-Adhering Sheet Waterproofing
	07 62 00	Sheet Metal Flashing and Trim
	07 92 00	Joint Sealants
<u>Division 8</u>		<b>OPENINGS – NOT USED</b>
<u>Division 9</u>		<b>FINISHES</b>
	09 24 00	Portland Cement Plastering
	09 91 13	Exterior Painting
<u>Division 10</u>		<b>SPECIALTIES – NOT USED</b>
<u>Division 11</u>		<b>EQUIPMENT – NOT USED</b>
<u>Division 12</u>		<b>FURNISHINGS – NOT USED</b>
<u>Division 13</u>		<b>SPECIAL CONSTRUCTION – NOT USED</b>
<u>Division 14</u>		<b>CONVEYING EQUIPMENT – NOT USED</b>
<u>Division 21</u>		<b>FIRE SUPPRESSION – NOT USED</b>
<u>Division 22</u>		<b>PLUMBING – NOT USED</b>
<u>Division 23</u>		<b>HEATING, VENTILATING, AND AIR CONDITIONING – NOT USED</b>
<u>Division 26</u>		<b>ELECTRICAL</b>
	26 05 00	General Electrical Requirements
	26 05 19	Conductors and Cables
	26 05 20	Raceways and Boxes
	26 05 26	Grounding and Bonding
	26 05 29	Seismic Controls for Electrical Work
	26 05 53	Identification For Electrical Systems
	26 05 73	Power System Study
	26 06 22	Engine Generator
	26 36 24	Manual Transfer Switch
	26 24 13	Switchboards
<u>Division 27</u>		<b>COMMUNICATIONS – NOT USED</b>
<u>Division 28</u>		<b>ELECTRONIC SAFETY AND SECURITY – NOT USED</b>
<u>Division 31</u>		<b>EARTHWORK</b>
	31 00 00	Site Clearing
	31 23 33	Trenching, Backfilling & Compacting
<u>Division 32</u>		<b>EXTERIOR IMPROVEMENTS</b>
	32 12 16	Asphalt Paving
	32 13 12	Concrete Paving
	32 31 13	Chain Link Fences and Gates
	32 31 19	Ornamental Metal Fences and Gates
	32 84 00	Planting Irrigation
	32 90 00	Planting

END OF DOCUMENT

**DOCUMENT 00 01 15**

**LIST OF DRAWINGS, TABLES AND SCHEDULES**

**DRAWINGS**

<u>Sheet number</u>	<u>Description</u>
ARCHITECTURAL	
A0.01	TITLE SHEET
A1.10	OVERALL SITE PLAN
A1.11	DEMOLITION SITE PLAN
A2.10	ENLARGED SITE PLAN - SOUTH GENERATOR
A2.11	ENLARGED SITE PLAN - NORTH GENERATOR
A8.01	EXTERIOR ELEVATIONS - SOUTH GENERATOR
A8.02	EXTERIOR ELEVATIONS - NORTH GENERATOR
A12.11	SITE DETAILS
A12.12	SITE DETAILS
A12.32	EXTERIOR DETAILS
STRUCTURAL	
S0.0	STRUCTURAL SPECS, ABBREVIATIONS SYMBOLS LEGEND TABLE OF CONTENTS
S1.0	GENERAL PLANS DETAILS
CIVIL	
C0	COVER SHEET
C1	ENLARGED PLAN N BUILDING DEMOLITION PLAN
C1.1	ENLARGED PLAN S BUILDING DEMOLITION PLAN
C2	ENLARGED PLAN N BUILDING GRADING AND UTILITY PLAN
C2.1	ENLARGED PLAN S BUILDING GRADING AND UTILITY PLAN
C3	DETAILS
LANDSCAPE	
L1.1	IRRIGATION PLAN
L1.2	IRRIGATION DETAILS
L1.3	SOUTH BAY RECYCLED WATER IRRIGATION NOTES AND DETAILS
L2.1	PLANTING PLAN
L2.2	TREE MITIGATION PLAN
L2.3	PLANTING DETAILS
ELECTRICAL	
E-1	ELECTRICAL GENERAL
E-2	ELECTRICAL SITE PLAN
E-3	ENLARGED PLAN - SOUTH BUILDING SERVICE
E-4	ENLARGED PLAN - NORTH BUILDING SERVICE
E-5	SINGLE LINE DIAGRAM BLDG #1
E-6	SINGLE LINE DIAGRAM BLDG #3
E-7	GENERATOR DETAILS
E-8	SWITCHBOARD DETAIL - BLDG#1
E-9	SWITCHBOARD DETAIL - BLDG#3
E-10	PG&E SHORT CIRCUIT LETTERS

**TABLES** – [N/A]

**SCHEDULES** – [N/A]

END OF DOCUMENT

**DOCUMENT 00 11 16**

**INVITATION TO BID**

1. Notice is hereby given that the Santa Clara County Office of Education will receive sealed bids for the following project, **Bid No. 03-23-24:**

**PROJECT NAME: SCCOE Backup Generators**

2. Sealed Bids will be received until **3:00 PM on Thursday, September 21, 2023**, at the SCCOE Office, located at 1290 Ridder Park Drive, San Jose, California, at or after which time the bids will be opened and publicly read aloud. Any claim by a bidder of error in its bid must be made in compliance with section 5100 et seq. of the Public Contract Code. Any bid that is submitted after this time shall be non-responsive and returned to the bidder.
3. The Project consists of:

**Installation of two (2) 600 KW Back-Up Generators with concrete pads and enclosures. This project also includes Civil, Landscaping and associated Electrical work.**

4. All bids shall be on the form provided by the SCCOE. Each bid must conform and be responsive to all pertinent Contract Documents, including, but not limited to, the Instructions to Bidders.
5. To bid on this Project, the Bidder is required to possess one or more of the following State of California Contractor Licenses:

**Contractor Licenses B – General Building Contractor**

The Bidder's license(s) must be active and in good standing at the time of the bid opening and must remain so throughout the term of the Contract.

6. As security for its Bid, each bidder shall provide with its Bid form
  - a bid bond issued by an admitted surety insurer on the form provided by the SCCOE,
  - cash, or
  - a cashier's check or a certified check, drawn to the order of the Santa Clara County Office of Education in the amount of ten percent (10%) of the total bid price. This bid security shall be a guarantee that the Bidder shall, within seven (7) calendar days after the date of the Notice of Award, enter into a contract with the SCCOE for the performance of the services as stipulated in the bid.
7. The successful Bidder shall be required to furnish a 100 % Performance Bond and a 100% Payment Bond if it is awarded the contract for the Project.
8. The successful Bidder may substitute securities for any monies withheld by the SCCOE to ensure performance under the Contract, in accordance with the provisions of section 22300 of the Public Contract Code.
9. The successful Bidder and its subcontractors shall pay all workers on the Project not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the SCCOE, pursuant to sections

1770 et seq. of the California Labor Code. Prevailing wage rates are available from the SCCOE or on the Internet at: <<http://www.dir.ca.gov>>. Bidders and Bidders' subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code.

10. Code of Federal Regulations (CFR) Title 29 -Labor: 29 CFR A/48 FR 19540 – Davis Bacon Act: For the Federal Programs at SCCOE, the successful Bidder and its subcontractors shall pay all workers on the Project 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 U.S. Department of Labor for construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. The successful Bidder and its subcontractors shall submit Certified Payroll to SCCOE for any projects in excess of \$2,000.
11. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the SCCOE may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the SCCOE, may be in material breach of its contract with the SCCOE if the violation is not fully disclosed and/or satisfied per SCCOE guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.
12. A **mandatory pre-bid conference** and site visit will be held **on Wednesday, September 6, 2023, at 10:00 am at 1290 Ridder Park Drive, San Jose, CA, 95131.** All participants are required to sign in and the Site Visit is expected to take approximately 1.5 hours. Failure to attend or tardiness will render bid ineligible.
13. Contract Documents are available on **Thursday, August 24, 2023,** for review at the SCCOE at url: <http://www.sccoe.org/depts/bizserve/purchasing/Pages/Bids-Posting-System.aspx>
14. The SCCOE's reserves the right to reject any and all bids and/or waive any irregularity in any bid received. If the SCCOE awards the Contract, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.
15. The SCCOE shall award the Contract, if it awards it at all, to the lowest responsive responsible bidder based on:

**BASE BID AMOUNT**

END OF DOCUMENT



**DOCUMENT 00 21 13**

**INSTRUCTIONS TO BIDDERS**

Bidders shall follow the instructions in this document, and shall submit all documents, forms, and information required for consideration of a Bid.

SCCOE will evaluate information submitted by the apparent low Bidder and, if incomplete or unsatisfactory to SCCOE, Bidder's bid may be rejected at the sole discretion of SCCOE.

1. **Project.** Bids are requested for a general construction contract, or work described in general, for the following project, Bid No. 03-23-24:

**PROJECT NAME: SCCOE Backup Generators**

2. **Bid Schedule**

Mandatory Pre-Bid Conference	10:00 AM	Wednesday, September 6, 2023
Final Questions		Tuesday, September 12, 2023
Final Addendum		Friday, September 15, 2023
Sealed Bid Opening	3:00 PM	Thursday, September 21, 2023
Notice to Proceed - Issued Approximately		Late October 2023
Start Date Approximately		Early November 2023
Completion Date from Approx. Start Date		210 Calendar Days

3. **Sealed Bids.** SCCOE will receive sealed Bids from Bidders as indicated in the Notice to Bidders and each Bidder shall ensure that its Bid:
  - a. Is sealed and marked with name and address of the Bidder, the Project name and number, the bid number and bid package (if applicable), and the date for opening bids;
  - b. Contains all documents as required herein; and
  - c. Is submitted by date and time shown in the Notice to Bidders.
4. **Bid Opening.** Bids will be opened at or after the time indicated for receipt of bids.
5. **Bid Form.** Bidders must submit Bids on the Bid Form and all other required SCCOE forms. Bids not submitted on the SCCOE's required forms shall be deemed non-responsive and shall not be considered. Additional sheets required to fully respond to requested information are permissible. Bidders shall not modify the Bid Form or qualify their Bids. Bidders shall not submit scanned, re-typed, word-processed, or otherwise recreated versions of the Bid Form or other SCCOE-provided documents.
6. **Complete Bids.** Bidders must supply all information required by each Bid Document. Bids must be full and complete. SCCOE reserves the right in its sole discretion to reject any Bid as non-responsive as a result of any error or omission in the Bid. Bidders must complete and submit all of the following documents with the Bid Form:

- Bid Bond or other security
  - Designated Subcontractors List
  - Site-Visit Certification, if a site visit was required
  - Noncollusion Affidavit
  - Iran Contracting Act Certification
- a. **Bid Bond or Other Security.** Bidders must submit their Bid Form with cash, a cashier's check or a certified check payable to SCCOE, or a bid bond by an admitted surety insurer of not less than ten percent (10%) of their base Bid amount, including all additive alternates. Required form of corporate surety, Bid Bond, is provided by SCCOE and must be used and fully completed by Bidders choosing to provide a Bid Bond as security. The Surety on Bidders' Bid Bond must be an insurer admitted in the State of California and authorized to issue surety bonds in the State of California. Bids submitted without necessary bid security will be deemed non-responsive and will not be considered.
  - b. **Designated Subcontractors List.** Bidders must submit with the Bid the Designated Subcontractors List for those subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of total Bid. Failure to submit this list when required by law shall result in Bid being deemed non-responsive and the Bid will not be considered.
  - c. **Site Visit Certification.** If a mandatory pre-bid conference and site visit ("Site Visit") is requested as referenced in the Notice to Bidders, then Bidders must submit the Site-Visit Certification with their Bid. SCCOE will transmit to all prospective Bidders of record such Addenda as SCCOE in its discretion considers necessary in response to questions presented at the Site Visit. Oral statements shall not be relied upon and will not be binding or legally effective. Addenda issued by the SCCOE as a result of the Site Visit, if any, shall constitute the sole and exclusive record and statement of the results of the Site Visit.
  - d. **Noncollusion Affidavit.** Bidders shall submit the Noncollusion Affidavit with their Bids. Bids submitted without the Noncollusion Affidavit shall be deemed non-responsive and will not be considered.
  - e. **Iran Contracting Act Certification.** Bidders shall submit the Iran Contracting Act Certification with their Bids. Bids submitted without the Iran Contracting Act Certification shall be deemed non-responsive and will not be considered.
7. **Erasures.** Bids shall be clearly written without erasure or deletions. SCCOE reserves the right to reject any Bid containing erasures or deletions.
  8. **Words / Numerals.** Discrepancies between written words and figures, or words and numerals, will be resolved in favor of written words.
  9. **Prevailing Wages.** Pursuant to sections 1770 et seq. of the California Labor Code, Bidder and all Subcontractors under the Bidder 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 SCCOE. 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 on the internet (<http://www.dir.ca.gov>).

10. **Code of Federal Regulations (CFR) Title 29 -Labor: 29 CFR A/48 FR 19540 – Davis Bacon Act:** For the Federal Programs at SCCOE, the successful Bidder and its subcontractors shall pay all workers on the Project 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 U.S. Department of Labor for construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. The successful Bidder and its subcontractors shall submit Certified Payroll to SCCOE for any projects in excess of \$2,000.
  
11. **Wage Theft Prevention.** A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the SCCOE may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the SCCOE, may be in material breach of its contract with the SCCOE if the violation is not fully disclosed and/or satisfied per SCCOE guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.
  
12. **Contractor Registration.** Bidder shall ensure that it and its Subcontractors comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner, and are registered pursuant to Labor Code section 1725.5. Bidder and its subcontractors 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.
  
13. **DVBE.** Section 17076.11 of the Education Code requires SCCOEs using funds allocated pursuant to the State of California School Facility Program for the construction and/or modernization of school building(s) to have a participation goal for disabled veteran business enterprises (“DVBE”) of at least three percent (3%) per year of the overall dollar amount expended on projects that receive state funding. For any project that is at least partially state-funded, the low Bidder must submit certification of compliance with the procedures for implementation of DVBE contracting goals with its signed Agreement. DVBE Certification Participation Forms are attached. Bidders should not submit these forms with their Bids.
  
14. **Bidder Diligence.** Submission of Bid signifies careful examination of the Contract Documents and a complete understanding of the nature, extent, and location of Work to be performed. Bidders must complete the tasks listed below as a condition to bidding, and submission of Bid shall constitute the Bidder's express representation to SCCOE that Bidder has fully completed the following:
  - a. Bidder has visited the Project Site, if required, and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto;
  
  - b. Bidder has conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as Bidder considers necessary for the performance or furnishing of Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of Contract Documents, including specifically the provisions of the General

Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by Bidder for such purposes;

- c. Bidder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;
- d. Bidder has given the SCCOE prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by the SCCOE is acceptable to Bidder;
- e. Bidder has made a complete disclosure in writing to the SCCOE of all facts bearing upon any possible interest, direct or indirect, that Bidder believes any representative of the SCCOE or other officer or employee of the SCCOE presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;
- f. Bidder must, prior to bidding, perform the work, investigations, research, and analysis required by the Instructions to Bidders and that Bidder represented in its Bid Form and the Agreement that it performed prior to bidding. Bidder is charged with all information and knowledge that a reasonable bidder would ascertain from having performed this required work, investigation, research, and analysis. Bid prices must include entire cost of all work "incidental" to completion of the Work.
- g. Conditions Shown on the Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, SCCOE only warrants, and Bidder may only rely, on the accuracy of limited types of information.
  - (1) As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Bidder is required to make such verification as a condition to bidding. In submitting its Bid, Bidder shall rely on the results of its own independent investigation. In submitting its Bid, Bidder shall not rely on SCCOE-supplied information regarding above-ground conditions or as-built conditions.
  - (2) As to any subsurface condition shown or indicated in the Contract Documents, Bidder may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. SCCOE is not responsible for the completeness of such information for bidding or construction; nor is SCCOE responsible in any way for any conclusions or opinions of Bidder drawn from such information; nor is SCCOE responsible for subsurface conditions that are not specifically shown (for example, SCCOE is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).
- h. Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to the document entitled Geotechnical Data, and the document entitled Existing Conditions, for identification of:
  - (1) Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Project Site that have been utilized by Architect in preparing the Contract Documents; and

- (2) Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site that has been utilized by Architect in preparing the Contract Documents.
  - (3) These reports and drawings are **not** Contract Documents and, except for any “technical” data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Bidder may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Bidder must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by SCCOE.
15. **As-Builts.** Bidders may examine any available “as-built” drawings of previous work by giving SCCOE reasonable advance notice. SCCOE will not be responsible for accuracy of “as-built” drawings. The document entitled Existing Conditions applies to all supplied “as-built” drawings.
16. **Questions.** All questions about the meaning or intent of the Contract Documents are to be directed in writing to the SCCOE. Interpretations or clarifications considered necessary by the SCCOE in response to such questions will be issued in writing by Addenda faxed, mailed, or delivered to all parties recorded by the SCCOE as having received the Contract Documents. Questions received less than **SEVEN (7)** calendar days prior to the date for opening Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
17. **Addenda.** Addenda may also be issued to modify parts of the Contract Documents as deemed advisable by the SCCOE. Bidder must acknowledge each Addendum in its Bid Form by number or its Bid may be considered non-responsive. Each Addenda shall be part of the Contract Documents. A complete listing of Addenda may be obtained from the SCCOE.
18. **Substitution for Specified Items.** Bids shall be based on products and systems specified in Contract Documents or listed by name in Addenda. All requests must comply with the requirements specified in the Special Conditions, the Specifications and the following:
  - a. **Request for Substitution Prior to Bid.**
    - (1) SCCOE must receive any request for substitution a minimum of **SEVEN (7)** calendar days prior to the date of bid opening.
    - (2) The SCCOE’s denial of a substitution request prior to the date of bid opening shall be conclusive, requiring Bidders to list only approved items. The SCCOE is not responsible and/or liable in any way for a Bidder’s damages and/or claims related, in any way, to that Bidder’s basing its bid on any requested substitution that the SCCOE has not approved. Bidder’s Bid shall be deemed non-responsive if it identifies a product or manufacturer of a non-approved substitution.
    - (3) Approved substitutions shall be listed in Addenda.
    - (4) SCCOE reserves the right not to act upon submittals of substitutions until after the date of bid opening.
  - b. **Request for Substitution after Bid Award.** Substitutions may be requested after Contract has been awarded only if indicated in and in accordance with requirements specified in the Special Conditions.
  - c. **Information with Request.** Requests for substitutions shall contain sufficient information to assess acceptability of the product or system and impact to Project, including, without limitation, the

requirements specified in the Special Conditions and the Specifications. Insufficient information shall be grounds for rejection of substitution.

19. **Alternates.** The Contract may include alternates. Alternates are defined as alternate products, materials, equipment, systems, methods, or major elements of the construction, that may, at the SCCOE's option and under terms established in the Contract and pursuant to section 20103.8 of the Public Contract Code, be selected for the Work. The SCCOE shall award the Contract, if it awards it at all, to the lowest responsive responsible bidder based on the criteria as indicated in the Notice to Bidders.
20. **Notice of Award.** The Bidder awarded the Contract shall execute and submit the following documents by 5:00 p.m. of the **SEVENTH (7<sup>TH</sup>)** calendar day following the date of the Notice of Award. Failure to properly and timely submit these documents entitles SCCOE to, among other remedies, make a claim against Bidder's Bid Bond or deposit Bidder's cash, cashier's check, or certified check. The proceeds thereof may be retained by SCCOE as liquidated damages, in SCCOE's sole discretion.
  - a. Agreement: To be executed by successful Bidder. Submit four (4) copies, each bearing an original signature.
  - b. Escrow of Bid Documentation: This must include all required documentation. See the document Escrow of Bid Documentation for more information.
  - c. Performance Bond (100%): On the form provided in the Contract Documents and fully executed as indicated on the form.
  - d. Payment Bond (100%) (Contractor's Labor and Material Bond): On the form provided in the Contract Documents and fully executed as indicated on the form.
  - e. Insurance Certificates and Endorsements as required.
  - f. Workers' Compensation Certification.
  - g. Prevailing Wage and Related Labor Requirements Certification.
  - h. Disabled Veterans' Business Enterprise Participation Certification.
  - i. Drug-Free Workplace Certification.
  - j. Smoke-Free Environment Certification.
  - k. Hazardous Materials Certification.
  - l. Lead-Based Paint Certification.
  - m. Imported Materials Certification.
  - n. Criminal Background Investigation/Fingerprinting Certification.
  - o. Roofing Contract Financial Interest Certification
21. **Notice to Proceed.** SCCOE may issue a Notice to Proceed within **THREE (3)** months from the date of the Notice of Award. Upon receipt of the Notice to Proceed, Contractor shall complete the Work within the period of time indicated in the Contract Documents. It is further expressly understood by Contractor that

Contractor shall not be entitled to any claim of additional compensation or additional time when the Notice to Proceed is issued within the 3-month period.

- a. The SCCOE may postpone issuing the Notice to Proceed beyond the 3-month period, upon reasonable notice to Contractor.
- b. It is further expressly understood by Contractor that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the issuance of the Notice to Proceed beyond the 3-month period. If the Contractor believes that a postponement of issuance of the Notice to Proceed will cause a hardship to Contractor, the Contractor may terminate the Contract. Contractor's termination due to a postponement beyond the 3-month period shall be by written notice to SCCOE within **SEVEN (7)** calendar days after receipt by Contractor of SCCOE's notice of postponement.
- c. It is further understood by Contractor that in the event Contractor terminates the Contract as a result of postponement by the SCCOE, SCCOE shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement and which the SCCOE had in writing authorized Contractor to perform prior to issuing a Notice to Proceed.
- d. Should Contractor terminate the Contract as a result of a notice of postponement, SCCOE shall have the authority to award the Contract to the next lowest responsive responsible bidder.

22. **Bid Protests.** Any bid protest by any Bidder regarding any other bid on this Project must be submitted in writing to the SCCOE, before 5:00 p.m. of the **THIRD (3<sup>rd</sup>)** business day following the date of bid opening.

- a. The protest must contain a complete statement of any and all bases for the protest.
- b. The protest must refer to the specific portions of all documents that form the bases for the protest.
- c. The protest must include the name, address and telephone number of the person representing the protesting party.
- d. The party filing the protest must concurrently transmit a copy of the protest and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- e. The procedure and time limits set forth in this paragraph are mandatory and are each bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

23. **Rejection of Bids.** SCCOE reserves the right to reject any or all bids, including without limitation the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional bids, to re-bid, and to reject the bid of any bidder if SCCOE believes that it would not be in the best interest of the SCCOE to make an award to that bidder, whether because the bid is not responsive or the bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by SCCOE. SCCOE also reserves the right to waive inconsequential deviations not involving price, time, or changes in the Work. For purposes of this paragraph, an "unbalanced bid" is one having nominal prices for work item(s) that represent substantive work and/or overly-enhanced prices for nominal work item(s).

24. **Bidder Responsibility.** Prior to the award of Contract, SCCOE reserves the right to consider the responsibility of the Bidder. SCCOE may conduct investigations as SCCOE deems necessary to assist in the evaluation of any

bid and to establish the responsibility, including, without limitation, qualifications and financial ability of Bidders, proposed subcontractors, suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to SCCOE's satisfaction within the prescribed time.

END OF DOCUMENT



**DOCUMENT 00 31 19**

**EXISTING CONDITIONS**

**1. Summary**

This document describes existing conditions at or near the Project, and use of information available regarding existing conditions. This document is **not** part of the Contract Documents. See General Conditions for definition(s) of terms used herein.

**2. Reports and Information on Existing Conditions**

- a. Documents providing a general description of the Site and conditions of the Work may have been collected by SCCOE, its consultants, contractors, and tenants. These documents may include previous contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding underground facilities.
- b. Information regarding existing conditions may be inspected at the SCCOE offices or the Construction Manager's offices, if any, and copies may be obtained at cost of reproduction and handling upon Bidder's agreement to pay for such copies. These reports, documents, and other information are **not** part of the Contract Documents.
- c. Information regarding existing conditions may also be included in the Project Manual, but shall **not** be considered part of the Contract Documents.
- d. The reports and other data or information regarding existing conditions and underground facilities at or contiguous to the Project are the following:
  - (1) As-built OR Original Construction Drawings.

**3. Use of Information**

- a. Information regarding existing conditions was obtained only for use of SCCOE and its consultants, contractors, and tenants for planning and design and is **not** part of the Contract Documents.
- b. SCCOE does not warrant, and makes no representation regarding, the accuracy or thoroughness of any information regarding existing conditions. Bidder represents and agrees that in submitting a bid it is not relying on any information regarding existing conditions supplied by SCCOE.
- c. Under no circumstances shall SCCOE be deemed to warrant or represent existing above-ground conditions, as-built conditions, or other actual conditions, verifiable by independent investigation. These conditions are verifiable by Contractor by the performance of its own independent investigation, that Contractor must perform as a condition to bidding, and Contractor should not and shall not rely on this information or any other information supplied by SCCOE regarding existing conditions.
- d. Any information shown or indicated in the reports and other data supplied herein with respect to existing underground facilities at or contiguous to the Project may be based upon information and data furnished to SCCOE by the SCCOE's employees and/or consultants or builders of such underground facilities or others. SCCOE does not assume responsibility for the completeness of this information, and Bidder is solely responsible for any interpretation or conclusion drawn from this information.

- e. SCCOE shall be responsible only for the general accuracy of information regarding underground facilities, and only for those underground facilities that are owned by SCCOE, and only where Bidder has conducted the independent investigation required of it pursuant to the Instructions to Bidders, and discrepancies are not apparent.

**4. Investigations/Site Examinations**

- a. Before submitting a Bid, each Bidder is responsible for conducting or obtaining any additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site or otherwise, that may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or that Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of Contract Documents.
- b. On request, SCCOE will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each Bidder deems necessary for submission of a Bid. Bidders must fill all holes and clean up and restore the Site to its former condition upon completion of its explorations, investigations, tests, and studies. Such investigations and Site examinations may be performed during any and all Site visits indicated in the Notice to Bidders and only under the provisions of the Contract Documents, including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such work, and SCCOE's prior approval.

END OF DOCUMENT

**DOCUMENT 00 31 32**

**GEOTECHNICAL DATA**

**1. Summary**

This document describes geotechnical data at or near the Project that is in the SCCOE's possession available for Contractor's review, and use of data resulting from various investigations. This document is part of the Contract Documents. See General Conditions for definition(s) of terms used herein.

**2. Geotechnical Reports**

- a. Geotechnical reports may have been prepared for and around the Site by soil investigation engineers hired by \_\_\_\_\_ School SCCOE ("SCCOE"), and its consultants, contractors, and tenants.
- b. Geotechnical reports may be inspected at the SCCOE offices or the Construction Manager's offices, if any, and copies may be obtained at cost of reproduction and handling upon Bidder's agreement to pay for such copies. These reports are **not** part of the Contract Documents.
- c. The reports and drawings of physical conditions that may relate to the Project are the following:

**NONE**

**3. Use of Data**

- a. Geotechnical data were obtained only for use of SCCOE and its consultants, contractors, and tenants for planning and design and are **not** a part of Contract Documents.
- b. Except as expressly set forth below, SCCOE does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data. Bidder represents and agrees that in submitting a Bid it is not relying on any geotechnical data supplied by SCCOE, except as specifically allowed below.
- c. Under no circumstances shall SCCOE be deemed to make a warranty or representation of existing above ground conditions, as-built conditions, or other actual conditions verifiable by independent investigation. These conditions are verifiable by Contractor by the performance of its own independent investigation that Contractor should perform as a condition to bidding and Contractor must not and shall not rely on information supplied by SCCOE.

**4. Limited Reliance Permitted on Certain Information**

- a. Reference is made herein for identification of:
  - (1) Reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by SCCOE in preparation of the Contract Documents.
  - (2) Drawings of physical conditions in or relating to existing subsurface structures (except underground facilities) that are at or contiguous to the Site and have been utilized by SCCOE in preparation of the Contract Documents.
- b. Bidder may rely upon the general accuracy of the "technical data" contained in the reports and drawings identified above, but only insofar as it relates to subsurface conditions, provided Bidder has conducted

the independent investigation required pursuant to Instructions to Bidders, and discrepancies are not apparent. The term "technical data" in the referenced reports and drawings shall be limited as follows:

- (1) The term "technical data" shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment or structures, that were encountered during subsurface exploration. The term "technical data" does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.
- (2) The term "technical data" shall not include the location of underground facilities.
- (3) Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder may rely upon the general accuracy of the "technical data" contained in such reports or drawings.
- (4) Bidder is solely responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions, or information provided in the identified reports and drawings.

## **5. Investigations/Site Examinations**

- a. Before submitting a Bid, each Bidder is responsible for conducting or obtaining any additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site or otherwise, that may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or that Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of Contract Documents.
- b. On request, SCCOE will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each Bidder deems necessary for submission of a Bid. Bidders must fill all holes and clean up and restore the Site to its former condition upon completion of its explorations, investigations, tests, and studies. Such investigations and Site examinations may be performed during any and all Site visits indicated in the Notice to Bidders and only under the provisions of the Contract Documents, including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such work, and SCCOE's prior approval.

END OF DOCUMENT

**DOCUMENT 00 41 13**

**BID FORM**

To: Santa Clara County Office of Education

From: \_\_\_\_\_  
(Proper Name of Bidder)

The undersigned declares that the Contract Documents including, without limitation, the Notice to Bidders, the Instructions to Bidders, and the Special Conditions have been read, and agrees and proposes to furnish all necessary labor, materials, and equipment to perform and furnish all work in accordance with the terms and conditions of the Contract Documents, including, without limitation, the Drawings and Specifications of Bid No. B03-23-24.

PROJECT: **SCCOE Backup Generators**

("Project" or "Contract") and will accept in full payment for that Work the following total lump sum amount, all taxes included:

_____ Dollars	\$ _____
<b>Bid Item No. 1 for _____ [IDENTIFY SCOPE COMPONENT OF TOTAL BASE BID – IF APPLICABLE]</b>	
_____ Dollars	\$ _____
<b>Bid Item No. 2 for _____ [IDENTIFY SCOPE COMPONENT OF TOTAL BASE BID – IF APPLICABLE]</b>	
_____ Dollars	\$ _____
<b>Bid Item No. 3 for _____ [IDENTIFY SCOPE COMPONENT OF TOTAL BASE BID – IF APPLICABLE]</b>	
_____ Dollars	\$ _____
<b>Bid Item No. 4 for _____ [IDENTIFY SCOPE COMPONENT OF TOTAL BASE BID – IF APPLICABLE]</b>	
_____ dollars	\$ _____
<b>TOTAL BASE BID</b>	

**Additive/Deductive Alternates:**

**Alternate #1**

_____ dollars    \$ _____
<b>[ADD DESCRIPTION]</b> Additive/Deductive:

**Alternate #1**

_____ dollars    \$ _____
<b>[ADD DESCRIPTION]</b> Additive/Deductive:

**Alternate #3**

_____ dollars    \$ _____
<b>[ADD DESCRIPTION]</b> Additive/Deductive:

Descriptions of alternates are primarily scope definitions and do not necessarily detail the full range of materials and processes needed to complete the construction.

1. **Unit Price(s)**. The Bidder's Base Bid includes the following unit price(s), which the Bidder must provide and the SCCOE may, at its discretion, utilize in valuing additive and/or deductive change orders:

**[LIST ANY, IF APPLICABLE]**

2. **Allowance(s)**. The Bidder's Base Bid shall **NOT** include the following potential Allowance(s). The SCCOE will add some or all of the following Allowance(s) amount(s) to the successful bidder's Contract, at the SCCOE's discretion. Contractor shall be permitted to invoice for Work under an Allowance in the identical structure as a Change Order.

_____ <b>Allowance:</b> Allowance to _____ <b>[LIST SCOPE OF ALLOWANCE, IF APPLICABLE]</b>	\$ _____ (TBD) <b>[LIST AMOUNT OF ALLOWANCE]</b>
_____ <b>Allowance:</b> Allowance to _____ <b>[LIST SCOPE OF ALLOWANCE, IF APPLICABLE]</b>	\$ _____ (TBD) <b>[LIST AMOUNT OF ALLOWANCE]</b>

3. **Contract Review.** The undersigned has reviewed the Work outlined in the Contract Documents and fully understands the scope of Work required in this bid, understands the construction and project management function(s) is described in the Contract Documents, and that each Bidder who is awarded a contract shall be in fact a prime contractor, not a subcontractor, to the SCCOE, and agrees that its bid, if accepted by the SCCOE, will be the basis for the Bidder to enter into a contract with the SCCOE in accordance with the intent of the Contract Documents.
  
4. **Requests for Clarification.** The undersigned has notified the SCCOE in writing of any discrepancies or omissions or of any doubt, questions, or ambiguities about the meaning of any of the Contract Documents, and has contacted the Construction Manager before bid date to verify the issuance of any clarifying Addenda.
  
5. **Contract Time.** The undersigned agrees to commence work under this Contract on the date established in the Contract Documents and to complete all work within the time specified in the Contract Documents.
  
6. **Contractual Provisions.** The undersigned hereby acknowledges and agrees to be bound by following provisions and all provisions in the Contract Documents:
  - The liquidated damages clause of the General Conditions and Agreement.
  - The “Changes in the Work” provisions in the General Conditions that limit the permitted charges and mark-ups on change orders and on the amount of home office overhead that the successful bidder can receive from the SCCOE.
  - The “Disputes and Claims” provisions in the General Conditions that delineate the required process to submit and process disputes and claims.
  
7. **Bid Open for 90 Days.** It is understood that the SCCOE reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of ninety (90) days.
  
8. **Attachments.** The following documents are attached hereto:
  - The Bid Bond on the SCCOE's form or other security
  - The Designated Subcontractors List
  - The Site-Visit Certification, if a site visit was required.
  - The Noncollusion Affidavit
  - Iran Contracting Act Certification
  
9. **Addenda Acknowledgement.** Receipt and acceptance of the following addenda is hereby acknowledged:

No.____, Dated _____	No.____, Dated _____
No.____, Dated _____	No.____, Dated _____
<input type="checkbox"/> Or check here if <b>no</b> addenda were issued.	

10. **Bidder's License.**

- Bidder acknowledges that the license required for performance of the Work is as stated in the Invitation to Bid.
- Bidder certifies that it is, at the time of bidding, and shall be throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Contract Documents.

11. **Labor Harmony.** The undersigned hereby certifies that Bidder is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the Work.
12. **DIR Registration.** Bidder shall ensure that it and its Subcontractors comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner, and are registered pursuant to Labor Code section 1725.5.
13. **General Acknowledgement.** The Bidder represents that it is competent, knowledgeable, and has special skills with respect to the nature, extent, and inherent conditions of the Work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the Work that may create, during the Work, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to perform the Work adequately and safely with respect to such hazards.
14. **False Claims Act.** Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the SCCOE will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Contractor may be subject to criminal prosecution.

Furthermore, Bidder hereby certifies to the SCCOE that all representations, certifications, and statements made by Bidder, as set forth in this bid form, are true and correct and are made under penalty of perjury.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Name of Bidder \_\_\_\_\_

Type of Organization \_\_\_\_\_

Signed by \_\_\_\_\_

Title of Signer \_\_\_\_\_

Address of Bidder \_\_\_\_\_

Taxpayer's Identification No. of Bidder \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

E-mail \_\_\_\_\_ Web page \_\_\_\_\_

Bidder's DIR Registration No.:      No.: \_\_\_\_\_



Contractor's License No(s):      No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

   No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

   No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

If Bidder is a corporation, provide the following:

Name of Corporation: \_\_\_\_\_

President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Manager: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 43 13**

**BID BOND (SECURITY)**

**(Note: If Bidder is providing a bid bond as its bid security,  
Bidder must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, \_\_\_\_\_ as Principal ("Principal"),

and \_\_\_\_\_ as Surety ("Surety"),

a corporation organized and existing under and by virtue of the laws of the State of \_\_\_\_\_

and authorized to do business as a surety in the State of California, are held and firmly bound unto the

[SCCOE] School SCCOE ("SCCOE")

of \_\_\_\_\_ County, State of California as Obligee, in the sum of

\_\_\_\_\_ (\$ \_\_\_\_\_)

lawful money of the United States of America, for the payment of which sum well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the principal has submitted a bid to the SCCOE for all Work specifically described in the accompanying bid;

NOW, THEREFORE, if the Principal is awarded the Contract and, within the time and manner required under the Contract Documents, after the prescribed forms are presented to Principal for signature, enters into a written contract, in the prescribed form in accordance with the bid, and files two bonds, one guaranteeing faithful performance and the other guaranteeing payment for labor and materials as required by law, and meets all other conditions to the contract between the Principal and the Obligee becoming effective, or if the Principal shall fully reimburse and save harmless the Obligee from any damage sustained by the Obligee through failure of the Principal to enter into the written contract and to file the required performance and labor and material bonds, and to meet all other conditions to the Contract between the Principal and the Obligee becoming effective, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect. The full payment of the sum stated above shall be due immediately if Principal fails to execute the Contract within seven (7) days of the date of the SCCOE's Notice of Award to Principal.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under 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 the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorneys' fee to be fixed by the Court.

If the SCCOE awards the bid, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Bidder must attach Power of Attorney and Certificate of Authority for Surety and a Notarial Acknowledgment for all Surety's signatures. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.**

END OF DOCUMENT

**DOCUMENT 00 43 36**

**DESIGNATED SUBCONTRACTORS LIST**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

PROJECT: \_\_\_\_\_ (Project Name)

1. Bidder must list hereinafter the name and location of each subcontractor who will be employed, and the scope of Work that each will perform if the Contract is awarded to the Bidder. Bidder acknowledges and agrees that under Public Contract Code section 4100, et seq., it must clearly identify the name and location of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work in an amount in excess of one-half of one percent (1/2 of 1%) of Bidder's total Bid.
2. As to any Work that Bidder fails to list, Bidder agrees to perform that portion itself or be subjected to penalty under applicable law.
3. If alternate bids are called for and Bidder intends to use Subcontractors different from or in addition to those Subcontractors listed for work under the base Bid, Bidder must list Subcontractors that will perform Work in an amount in excess of one half of one percent (1/2 of 1%) of Bidder's total Bid, including alternates.
4. In case more than one subcontractor is named for the same scope of Work, state the portion that each will perform.
5. Bidder need not list entities that are only vendors or suppliers of materials.
6. Bidder must provide the Contactor State License Board number ("CSLB No.") for all listed subcontractors.
7. Bidder must provide the Department of Industrial Relations registration number ("DIR No.") for all listed subcontractors.
8. **The SCCOE will permit each Bidder to submit each listed subcontractor's CSLB No. and the DIR No. no later than twenty-four (24) hours after bid opening.**
9. If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this document.

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**Scope of Work:** \_\_\_\_\_

**If DVBE, Percent of Work:** \_\_\_\_\_ **%** **CSLB No.:** \_\_\_\_\_ **DIR No.:** \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Scope of Work: \_\_\_\_\_

If DVBE, Percent of Work: \_\_\_\_\_ % CSLB No.: \_\_\_\_\_ DIR No.: \_\_\_\_\_

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date: \_\_\_\_\_

Proper Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 01**

**SITE-VISIT CERTIFICATION**

**FOR PROJECTS WHERE A SITE VISIT WAS MANDATORY**

PROJECT: \_\_\_\_\_(Project Name)

Check whichever option applies:

\_\_\_\_\_ I certify that I visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. I fully understand the facilities, difficulties, and restrictions attending the execution of the Work under contract.

\_\_\_\_\_ I certify that \_\_\_\_\_ (Bidder's representative) visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. The Bidder's representative fully understood the facilities, difficulties, and restrictions attending the execution of the Work under contract.

Bidder fully relieves and releases the [SCCOE] School SCCOE, its Architect, its Engineer, its Construction Manager, and all of their respective officers, agents, employees, and consultants from any liability for any monetary or other damage(s), related to conditions that could have been identified during my visit and/or the Bidder's representative's visit to the Site.

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

Date: \_\_\_\_\_

Proper Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 19**

**NONCOLLUSION AFFIDAVIT**  
**Public Contract Code § 7106**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the \_\_\_\_\_ **[PRINT YOUR TITLE]**

of \_\_\_\_\_ **[PRINT FIRM NAME]**,

the party making the foregoing Contract.

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

Any person executing this declaration on behalf of a bidder 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 bidder.

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 Bidder: \_\_\_\_\_

City, State: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)**

END OF DOCUMENT



**DOCUMENT 00 45 22**

**IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

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.

Bidder shall complete **ONLY ONE** of the following two paragraphs.

1. Bidder's Total Base Bid is less than one million dollars (\$1,000,000).

**OR**

2. Bidder's Total Base Bid is one million dollars (\$1,000,000) or more, but Bidder 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 Bidder 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. Bidder's Total Base Bid is one million dollars (\$1,000,000) or more, but the SCCOE has given prior written permission to Bidder to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the SCCOE is included with Bid.**

I certify that I am duly authorized to legally bind the Bidder 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 Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 26**

**WORKERS' COMPENSATION CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

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:

- 1 By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- 2 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 its 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 of the Contract.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(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 the Contract.)

END OF DOCUMENT

**DOCUMENT 00 45 50**

**WAGE THEFT / PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

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 including, without limitation, the requirement that it and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

I hereby certify that I will conform to the Code of Federal Regulations (CFR) Title 29 -Labor: 29 CFR A/48 FR 19540 – Davis Bacon Act: For the Federal Programs at SCCOE, I shall pay all workers on the Project 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 U.S. Department of Labor for construction projects in excess of \$2,000. I shall submit Certified Payroll to SCCOE for any projects in excess of \$2,000.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 55**

**DISABLED VETERAN BUSINESS ENTERPRISE  
PARTICIPATION CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE") and \_\_\_\_\_  
\_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the  
"Project").

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

Section 2001 of the Public Contract Code requires school SCCOEs to require each Bidder to provide in its bid certain information about its Subcontractors. In addition to completing this certification as indicated herein, each Bidder must provide the information related to DVBEs as required in the Designated Subcontractors List.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.
2. **DVBE Participation Policy.** The SCCOE is committed to achieving this DVBE participation goal. The SCCOE encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the SCCOE of anticipated participation of DVBEs in the contract.
5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.
  - a) Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
  - b) Upon completion of the Work of the Contract, Contractor shall submit a report to the SCCOE in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
    - i) The submission to the SCCOE of this report is a condition precedent to the SCCOE's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the SCCOE's obligation to make payment of the Final Payment.
    - ii) The SCCOE reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

**DVBE PARTICIPATION REPORT**

Contractor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project Number: B03-23-24

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

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

YES \_\_\_\_\_ NO \_\_\_\_\_

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

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 60**

**DRUG-FREE WORKPLACE CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract 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 contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

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

Contractor 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, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the SCCOE 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 sections 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 65**

**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This Tobacco-Free Environment Certification form is required from the successful Bidder.

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and SCCOE Board Policies, all SCCOE sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in SCCOE property. SCCOE property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on SCCOE property.

I acknowledge that I am aware of the SCCOE's policy regarding tobacco-free environments at SCCOE sites, including the Project site 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 Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT



**DOCUMENT 00 45 70**

**HAZARDOUS MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

1. Contractor 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 Contractor's work on the Project for SCCOE.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. 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.
4. 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, at the SCCOE's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work, or material installed with equipment containing "New Hazardous Material" will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the SCCOE.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements and shall comply with all the provisions outlined therein.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 75**

**LEAD-BASED MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the SCCOE if any work may result in the disturbance of lead-containing building materials.

**1. Lead as a Health Hazard**

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the SCCOE, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the SCCOE. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

**2. Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors

subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the SCCOE that all painted surfaces (interior as well as exterior) within the SCCOE contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

**The Contractor must notify the SCCOE if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the SCCOE. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.**

### **3. Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

### **4. Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required

corrective actions, and shall defend, indemnify, and hold harmless the SCCOE, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the SCCOE.

The Contractor shall provide the SCCOE with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The SCCOE may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

The Contractor hereby acknowledges, under penalty of perjury, that it:

1. Has received notification of potential lead-based materials on the SCCOE's property;
2. Is knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

The undersigned warrants that he/she has the authority to sign on behalf of and bind the Contractor. The SCCOE may require proof of such authority.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 80**

**IMPORTED MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This form shall be executed by Contractor and by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site. All Fill shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and the requirements of sections 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

To the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

Certification of:       Delivery Firm/Transporter                       Supplier                       Manufacturer  
                                  Wholesaler     Broker     Retailer  
                                  Distributor     Other \_\_\_\_\_

Type of Entity:       Corporation     General Partnership  
                                  Limited Partnership     Limited Liability Company  
                                  Sole Proprietorship     Other \_\_\_\_\_

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 85**

**CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

The undersigned does hereby certify to SCCOE that:

- (1) He/she is a representative of the Contractor,
- (2) He/she is familiar with the facts herein certified,
- (3) He/she is authorized and qualified to execute this certificate on behalf of Contractor; and
- (4) That the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

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

\_\_\_\_\_ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with SCCOE pupils in the course of providing services pursuant to the Contract, and the California Department of Justice ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at: <http://oag.ca.gov/fingerprints/agencies>) that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with SCCOE pupils during the course and scope of the Contract is attached hereto; and/or

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

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor 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 Contractor's employees and its subcontractors' employees is:

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**X** 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 SCCOE pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor 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/>).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with SCCOE pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 45 90**

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

PROJECT/CONTRACT NO.: B03-23-24 between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

I, \_\_\_\_\_ **[Your Name]**, \_\_\_\_\_ **[Firm Name]**  
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 a 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.

I, \_\_\_\_\_ **[Your Name]**, \_\_\_\_\_ **[Firm Name]**  
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, \_\_\_\_\_ **[Your Name]**, \_\_\_\_\_ **[Firm Name]**  
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: \_\_\_\_\_

For Projects without substantive roofing components, check the following box and execute this certification:

- The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty-one thousand dollars (\$21,000) or less.

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 Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT



**DOCUMENT 00 51 00**

**NOTICE OF AWARD**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
("Contractor")  
\_\_\_\_\_  
(Address)

From: [SCCOE NAME] ("SCCOE" or "Owner")

Re: \_\_\_\_\_ Project  
("Project" or "Contract")

Contractor was awarded the Contract on \_\_\_\_\_, 20\_\_, [**CHOOSE ONE:**] by action of the SCCOE's Board [**OR**] by action of the superintendent or superintendent's designee pursuant to a delegation of authority by the SCCOE's Board.

The Contract Price is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and includes alternates \_\_\_\_\_.

Three (3) copies of each of the Contract Documents (except Drawings) accompany the Notice of Award. Three (3) sets of the Drawings will be delivered separately or otherwise made available. Additional copies are available at cost of reproduction.

Contractor must comply with the following conditions precedent within **SEVEN (7)** calendar days of the date of this Notice of Award.

Contractor shall execute and submit the following Contract Documents by 5:00 p.m. of the **SEVENTH (7<sup>TH</sup>)** calendar day following the receipt of the Notice of Award. Failure to properly and timely submit the following Contract Documents entitles SCCOE to reject Contractor's bid as non-responsive.

- a. Agreement: Submit four (4) copies, each bearing an original signature. **If Contractor is a corporation, Contractor must attach a certified copy of the corporation's by-laws, or the resolution of the Board of Directors of the corporation, authorizing the signatory to execute the Agreement and the bonds required by the Contract Documents.**
- b. Escrow of Bid Documentation: Include all required documentation. Refer to the Escrow of Bid Documentation document for details.
- c. Performance Bond (100%): Fully executed form provided in the Contract Documents.
- d. Payment Bond (100%) (Contractor's Labor and Material Bond): Fully executed form provided in the Contract Documents.
- e. Insurance Certificates and Endorsements.
- f. Workers' Compensation Certification.

- g. Prevailing Wage and Related Labor Requirements Certification.
- h. Disabled Veterans' Business Enterprise Participation Certification.
- i. Drug-Free Workplace Certification.
- j. Smoke-Free Environment Certification.
- k. Hazardous Materials Certification.
- l. Lead-Based Paint Certification.
- m. Imported Materials Certification.
- n. Criminal Background Investigation/Fingerprinting Certification.
- o. Roofing Contract Financial Interest Certification

Failure to comply with these conditions within the time specified will entitle SCCOE to consider Contractor's bid abandoned, to annul the Notice of Award, and to declare Contractor's Bid Security forfeited, as well as any other rights the SCCOE may have against Contractor.

SCCOE will return to Contractor one fully signed counterpart of the Agreement.

\_\_\_\_\_ SCHOOL SCCOE

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 52 13**

**AGREEMENT**

THIS AGREEMENT IS MADE AND ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, by and between the Santa Clara County Office of Education ("SCCOE" or "Owner") and \_\_\_\_\_ ("Contractor") ("Agreement"). The SCCOE and the Contractor agree as follows:

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

PROJECT: SCCOE Backup Generators (Project Name)

("Project" or "Contract" or "Work")

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

2. **The Contract Documents:**

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

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

- (i) SCCOE-approved modifications, beginning with the most recent (if any);
- (ii) Agreement;
- (iii) Special Conditions (if any);
- (iv) Supplemental Conditions (if any);
- (v) General Conditions;
- (vi) Remaining Division 0 documents (Documents beginning with "00");;
- (vii) Division 1 Documents (Specifications – General Conditions; Documents beginning with "01");
- (viii) Division 2 through Division 32 documents (Technical Specifications);
- (ix) Figured dimensions;
- (x) Large-scale drawings;
- (xi) Small-scale drawings.

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

3. **Time For Completion:** It is hereby understood and agreed that the Contractor shall complete the Work within **Two Hundred and Ten ( 210 )** consecutive calendar days ("Contract Time") from the date specified in the SCCOE's Notice to Proceed. The SCCOE shall not approve an early completion schedule by Contractor. A

schedule showing the Work completed in less than the Contract Time indicated in the Contract, shall be considered to have Project Float-

4. **Completion-Extension Of Time:** If Contractor fails to complete the Work within the Contract Time, due allowance being made for the contingencies provided for herein, Contractor shall become liable to SCCOE for all loss and damage that SCCOE may suffer on account thereof. Contractor shall coordinate its Work with the work of all other contractors. The SCCOE shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that allows for timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.
  5. **Liquidated Damages:** Time is of the essence for all Work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that SCCOE will sustain in the event of and by reason of Contractor's delay; therefore, Contractor shall forfeit to SCCOE the following sum(s) ("Liquidated Damages"):
    - **Submittal of any item on approved Submittal Schedule: Main Switchgear with ATS & MTS**  
Five Hundred dollars (\$500.00) 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: site preparation**  
Five Hundred dollars (\$500.00) 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: accepting and installing generators**  
Five Hundred dollars (\$500.00) 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.
    - **Milestone No. 3: accepting and installing switchgear included power cut-over**  
Five Hundred dollars (\$500.00) per day as Liquidated Damages for each and every day's delay beyond the time herein prescribed in finishing the Work of Milestone No. 3.
    - **Project Completion:**  
Five Hundred dollars (\$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 Contractor is late in completing two milestones and the entire Project, Contractor will forfeit three separate Liquidated Damages amounts.
  - b. It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount, nor any portion of the Liquidated Damage amount are penalties.
  - c. SCCOE may deduct Liquidated Damages from money due or that may become due Contractor under this Agreement. Contractor's forfeiture of Liquidated Damages to SCCOE, and SCCOE's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.
  - d. Liquidated Damages are automatically and without notice of any kind forfeited by Contractor upon the accrual of each day of delay. Neither SCCOE's failure or delay in deducting Liquidated Damages from

payments otherwise due the Contractor, nor SCCOE's failure or delay in notifying Contractor of the forfeiture of Liquidated Damages, shall be deemed a waiver of SCCOE's right to Liquidated Damages.

- e. Contractor and Surety shall be liable for and pay to SCCOE the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by SCCOE.
  - f. Liquidated Damages shall be in addition, and not in lieu of, SCCOE's right to charge Contractor for the SCCOE's cost of completing or correcting items of the Work.
  - g. SCCOE may extend the Contract Time if Work is delayed for causes outside the Contractor's control, as further described in the General Conditions. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.
- 6. Loss or Damage:** SCCOE and its authorized representatives shall not be answerable or suffer loss, damage, expense, or liability for any loss or damage that occurs to the Work, or any part thereof, during its construction and before Completion. Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold SCCOE and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever.
- 7. Insurance and Bonds:** Contractor shall provide all required certificates of insurance, and payment and performance bonds.
- 8. Performance of Work:** If Contractor fails to perform the Work properly or fails to perform any provisions of this Contract, the SCCOE, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, cure the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor.
- 9. Authority of Architect and City Inspectors:** Contractor hereby acknowledges that the Architect(s) and the City Inspector(s), have authority to approve and/or stop Work if Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.
- 10. Assignment of Contract:** Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by Contractor without the written approval of SCCOE, nor without the written consent of the Surety on Contractor's Performance Bond (the "Surety"), unless the Surety has waived in writing its right to notice of assignment.
- 11. Classification of Contractor's License:** Contractor hereby acknowledges that it currently holds valid Type **B – General Building Contractor** Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
- 12. Payment of Prevailing Wages:** Contractor and all Subcontractors under Contractor shall pay all workers on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the SCCOE, pursuant to sections 1770 et seq. of the California Labor Code.

13. **Contractor & Subcontractor Registration:** Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including complying with any applicable enforcement by the Department of Industrial Relations.

14. **Contract Price:** In consideration of the foregoing covenants, promises, and agreements, Contractor offers, in the amounts stated below, to perform the Work according to the Contract Documents. SCCOE covenants, promises, and agrees that it will pay and cause to be paid to Contractor in full, and as the Contract Price the following amount(s):

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), (Base Contract Amount)

+

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), (\_\_\_\_\_ Allowance Amount)  
[LIST ALLOWANCE TYPE AND AMOUNT, IF APPLICABLE]

+

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), (\_\_\_\_\_ Allowance Amount)  
[LIST ALLOWANCE TYPE AND AMOUNT, IF APPLICABLE]

+

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), (\_\_\_\_\_ Allowance Amount)  
[LIST ALLOWANCE TYPE AND AMOUNT, IF APPLICABLE]

---

=

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), ("Contract Price")

- a. The above Allowances are within the Contract Price only to the extent Contractor has performed Work encompassed by the Allowance description, Contractor has appropriately invoiced for that Work, and SCCOE has approved Contractor's invoice. Contractor shall invoice only for components of the Work encompassed by the Allowance description, in the identical structure as a Change Order. The unused portion of each Allowance shall be retained by the SCCOE.
- b. The Contract Price shall be paid in lawful money of the United States pursuant to the payment provisions in the General Conditions.

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

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

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

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_ **SCCOE**

\_\_\_\_\_ **CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

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

END OF DOCUMENT

**DOCUMENT 00 54 60**

**HAZARDOUS MATERIALS PROCEDURES & REQUIREMENTS**

**1. Summary**

This document includes information applicable to hazardous materials and hazard waste abatement.

**2. Notice of Hazardous Waste or Materials Conditions**

- a. Contractor shall give written notice to SCCOE, Construction Manager, and Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:
  - (1) Material that Contractor believes may be material that is hazardous waste or hazardous material, 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) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the Project Site.
- b. Contractor's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.
- c. In response to Contractor's written notice, the SCCOE shall investigate the identified conditions.
- d. If SCCOE determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, SCCOE shall so notify Contractor in writing, stating reasons. If SCCOE and Contractor cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Contractor shall proceed with the Work as directed by SCCOE.
- e. If after receipt of notice from SCCOE, Contractor does not agree to resume Work based on a reasonable belief it is unsafe or does not agree to resume Work under special conditions, then SCCOE may order that portion of Work connected with the hazardous condition or affected area, be deleted from the Work, or performed by others, or SCCOE may invoke its rights to terminate the Contract in whole or in part. SCCOE will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work or performing the Work by others.
- f. If Contractor stops Work in connection with any hazardous condition and in any area affected thereby, Contractor shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

**3. Additional Warranties and Representations**

- a. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Project Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be



performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).

- b. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
- c. Contractor represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

#### 4. Monitoring and Testing

- a. SCCOE reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.
- b. Contractor acknowledges that SCCOE has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that SCCOE shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event SCCOE elects to perform these activities and tests, Contractor shall afford SCCOE ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities or tests by SCCOE in the Contract Price and the Scheduled Completion Date.
- c. Notwithstanding SCCOE's rights granted by this paragraph, Contractor may retain its own industrial hygiene consultant at Contractor's own expense and may collect samples and perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and SCCOE reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work and Contractor shall provide that documentation immediately upon request, but in no event later than **THREE (3)** days upon request.

#### 5. Compliance with Laws

- a. Contractor shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.
- b. Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:

- (1) The protection of the public health, welfare and environment;
- (2) Storage, handling, or use of asbestos, PCB, lead, petroleum-based products or other hazardous materials;
- (3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and
- (4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

## 6. Disposal

- a. Contractor has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the Project Site and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable law. SCCOE may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.
- b. Contractor shall develop and implement a system acceptable to SCCOE to track hazardous waste from the Project Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that SCCOE may track the volume of waste deposited in each landfill and receive from each facility a certificate of receipt.
- c. Contractor shall provide SCCOE with the name and address of each waste disposal facility prior to any disposal, and SCCOE shall have the right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which SCCOE has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to SCCOE.

## 7. Permits

- a. Before performing any of the Work, and at such other times as may be required by applicable law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to SCCOE that Contractor and any disposal facility:
  - (1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and
  - (2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to SCCOE. Contractor shall not conduct any Work involving asbestos-containing materials or PCBs unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB

disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Contractor. Contractor shall give all notices and comply with all applicable laws bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying SCCOE in writing of such fact. If Contractor performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

- b. In the case of any permits or notices held in SCCOE's name or of necessity to be made in SCCOE's name, SCCOE shall cooperate with Contractor in securing the permit or giving the notice, but the Contractor shall prepare for SCCOE review and execution upon approval, all necessary applications, notices, and other materials.

## **8. Indemnification**

- a. To the extent permitted by law, the indemnity obligations, defense obligations, and limitations of liability expressed in the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, a waste transporter, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. §§ 9601 et seq.).

## **9. Termination**

- a. SCCOE shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the Contract Documents' provisions related to termination for cause shall apply without modification.

END OF DOCUMENT

**DOCUMENT 00 55 00**

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
("Contractor")  
\_\_\_\_\_  
(Address)

From: **Name of Who will be signing the document** of Santa Clara County Office of Education ("SCCOE" or "Owner")

Re: \_\_\_\_\_ Project  
("Project" or "Contract")

Contractor is hereby notified that the Contract Time under the Contract will commence to run on \_\_\_\_\_, 20\_\_. By that date, Contractor shall start performing its obligations under the Contract Documents. In accordance with the Agreement executed by Contractor, the Contract Time and Project Completion is \_\_\_\_\_, 20\_\_. **[ENSURE THIS PARAGRAPH IS CONSISTENT WITH THE "TIME OF COMPLETION" SECTION OF THE AGREEMENT (DOCUMENT 00 52 13)]**

Contractor must submit the following documents by 5:00 p.m. of the **TENTH (10<sup>TH</sup>)** calendar day following the date of this Notice to Proceed:

1. Contractor's preliminary schedule of construction.
2. Contractor's preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals.
3. Contractor's preliminary schedule of values for all of the Work.
4. Contractor's preliminary Contractor's Safety Plan specifically adapted for the Project.
5. A complete subcontractors list, including the name, address, telephone number, facsimile number, California State Contractor's License number, classification, and monetary value of all Subcontracts.

Thank you. We look forward to a successful Project.

Santa Clara County Office of Education

BY: \_\_\_\_\_

NAME: Sam Hagler

TITLE: Director, General Services

END OF DOCUMENT

**DOCUMENT 00 61 14**

**PERFORMANCE BOND (100% of Contract Price)**

**(Note: Bidders must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, Santa Clara County Office of Education ("SCCOE") and \_\_\_\_\_  
\_\_\_\_\_, ("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:

\_\_\_\_\_ (Project Name)  
("Project" or "Contract")

which Contract dated \_\_\_\_\_, 20\_\_\_, 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 SCCOE 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; and
- Pay to the SCCOE all damages the SCCOE 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 warranties of materials and workmanship, and shall indemnify and save harmless the SCCOE, 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 and/or guarantee period of the Contract, during which time Surety's obligation shall  
continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the  
SCCOE 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 Contractor remains. Nothing herein  
shall limit the SCCOE's rights or the Contractor'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 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 Contract Documents or to the Work.

**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor'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\_\_\_\_.

**Principal**

**Surety**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

**Contractor 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.**

END OF DOCUMENT

**DOCUMENT 00 61 15**

**PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)**

**(Note: Bidders must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, Santa Clara County Office of Education, (or "SCCOE") and \_\_\_\_\_  
\_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and  
transportation, necessary, convenient, and proper to

\_\_\_\_\_ (Project Name)  
("Project" or "Contract")

which Contract dated \_\_\_\_\_, 20\_\_\_, 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 the Civil Code of  
California, including section 9100, and the Labor Code of California, including section 1741.

**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 penal 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 9000 through 9566 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.

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 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 Contract Documents or to the Work.

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\_\_.

**Principal**

**Surety**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

**Contractor 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.**

END OF DOCUMENT



FINAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

[THIS RELEASE SHALL ONLY BE USED AT THE END OF THE PROJECT, AT SCCOE'S DISCRETION, TO FORMALIZE FINAL COMPLETION OF THE PROJECT AND CAN ACCOMPANY THE FINAL APPLICATION FOR PAYMENT.]

THIS FINAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Final Settlement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between:

Santa Clara County Office of Education ("SCCOE") and

\_\_\_\_\_ ("Contractor"), whose place of business is \_\_\_\_\_.

SCCOE and Contractor entered into PROJECT/CONTRACT NO.: [PROJECT NUMBER]

("Contract" or "Project") in the County of \_\_\_\_\_, California.

The Work under the Contract has been completed.

NOW, THEREFORE, it is mutually agreed between SCCOE, and Contractor as follows:

AGREEMENT

1. Total Payable. SCCOE shall pay Contractor as detailed below:

(Original Contract Sum \$ \_\_\_\_\_ For information only)

Modified Contract Sum	\$ _____
- Payment to Date	\$ _____ (subtract)
- Liquidated Damages	\$ _____ (subtract)
- [Other _____]	\$ _____ (subtract)
<hr/>	
= Payment Due Contractor	\$ _____ ("Total Payable")

Subject to the provisions hereof, SCCOE shall forthwith pay to Contractor the Total Payable amount, less any amounts represented by any notice to withhold funds on file with SCCOE as of the date of such payment.

2. **No Claims or Disputes.** Contractor acknowledges and hereby agrees that there are no unresolved or outstanding Claims or Disputes (as defined in the Contract Documents) against SCCOE arising from the performance of work under the Contract, except for the claims described in the "Disputed Claims" section herein and the obligations described in the "Continuing Obligations" section herein. It is the intention of the parties in executing this Final Settlement that this Final Settlement shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against SCCOE, all its respective agents, employees, inspectors, assignees and transferees except for the claims described in the "Disputed Claims" section herein and the obligations described in the "Continuing Obligations" section herein.
3. **Disputed Claims.** The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Final Settlement:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
------------------	-----------------------------	------------------------	-----------------------------

**[INSERT INFORMATION, INCLUDING ATTACHMENT IF NECESSARY]**

4. **Release.** Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in the "Total Payable" section herein, Contractor hereby releases and forever discharges SCCOE, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
5. **Continuing Obligations.** Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
6. **Contract Indemnity.** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the SCCOE, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
7. **Waiver.** Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

8. **Survivability.** The provisions of this Final Settlement are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Final Settlement shall also remain in full force and effect, and shall be enforceable.
9. **Reservation of Rights.** All rights of SCCOE shall survive completion of the Work or termination of Contract, and execution of this Release.

**\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \***

Accepted and agreed on the date indicated below:

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

Santa Clara County Office of Education  
(SCCOE)

\_\_\_\_\_, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 65 36**

**WARRANTY AND GUARANTEE FORM**

1. \_\_\_\_\_ ("Contractor")  
hereby agrees that the \_\_\_\_\_ ("Work" of Contractor)  
which Contractor has installed for the Santa Clara County Office of Education ("SCCOE")  
for the following project: \_\_\_\_\_ ("Project" or "Contract")  
was performed in accordance with the requirements of the Contract Documents and that the Work as  
installed fulfills the requirements of the Contract Documents.
2. Contractor agrees to repair or replace all of the Work that may prove to be defective in workmanship or  
material and any other adjacent Work that may be displaced in connection with such replacement within a  
period of \_\_\_\_\_ **YEAR(S)** from the date of Completion as defined in the Contract, ordinary wear  
and tear and unusual abuse or neglect excepted. The date of completion is \_\_\_\_\_, 20\_\_.
3. In the event Contractor fails to comply with the above-mentioned conditions within a reasonable period of  
time, as determined by SCCOE, but not later than **SEVEN (7)** calendar days after being notified in writing by  
SCCOE, Contractor authorizes SCCOE to proceed to repair or replace the defective Work at the expense of  
Contractor. Contractor shall pay the costs and charges therefor upon demand.

4. **Representatives to be contacted for service subject to the terms of Contract:**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE NO.: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

Date: \_\_\_\_\_  
Proper Name of Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00 70 00**

**TABLE OF CONTENTS**

**GENERAL CONDITIONS**

1. CONTRACT TERMS AND DEFINITIONS .....1

1.1. Definitions.....1

1.2. Laws Concerning the Contract.....5

1.3. No Oral Agreements .....5

1.4. No Assignment .....5

1.5. Notice And Service Thereof.....5

1.6. No Waiver .....5

1.7. Substitutions for Specified Items .....6

1.8. Materials and Work .....6

2. SCCOE..... Error! Bookmark not defined.

3. ARCHITECT .....7

4. CONSTRUCTION MANAGER .....8

5. INSPECTOR, INSPECTIONS AND TESTS .....8

5.1. Project Inspector.....8

5.2. Tests and Inspections.....8

5.3. Costs for After Hours and/or Off Site Inspections .....9

6. CONTRACTOR .....9

6.1. Status of Contractor.....9

6.2. Contractor’s Supervision .....9

6.3. Duty to Provide Fit Workers .....10

6.4. Personnel .....11

6.5. Purchase of Materials and Equipment.....11

6.6. Documents on Work .....12

6.7. Preservation of Records.....13

6.8.	Integration of Work .....	13
6.9.	Obtaining of Permits and Licenses .....	13
6.10.	Work to Comply with Applicable Laws and Regulations .....	14
6.11.	Safety/Protection of Persons and Property .....	15
6.12.	Working Evenings and Weekends .....	16
6.13.	Cleaning Up .....	17
7.	SUBCONTRACTORS .....	17
8.	OTHER CONTRACTS/CONTRACTORS .....	18
9.	DRAWINGS AND SPECIFICATIONS .....	19
9.8.	Ownership of Drawings .....	19
10.	CONTRACTOR'S SUBMITTALS AND SCHEDULES .....	20
10.1.	Schedules, Safety Plan and Complete Subcontractor List .....	20
10.2.	Monthly Progress Schedule(s) .....	22
10.3.	Material Safety Data Sheets (MSDS) .....	22
10.4.	Logistic Plan .....	23
11.	SITE ACCESS, CONDITIONS AND REQUIREMENTS .....	23
11.1.	Site Investigation .....	23
11.2.	Soils Investigation Report .....	23
11.3.	Access to Work .....	23
11.4.	Layout and Field Engineering .....	23
11.5.	Utilities .....	24
11.6.	Sanitary Facilities .....	24
11.7.	Surveys .....	24
11.8.	Regional Notification Center .....	24
11.9.	Existing Utility Lines .....	24
11.10.	Notification .....	25
11.11.	Hazardous Materials .....	25

11.12.	No Signs .....	25
12.	TRENCHES.....	25
12.1.	Trenches Greater Than Five Feet.....	25
12.2.	Excavation Safety .....	25
12.3.	No Tort Liability of SCCOE.....	25
12.4.	No Excavation without Permits.....	25
12.5.	Discovery of Hazardous Waste, Unusual Conditions and/or Unforeseen Conditions.....	26
13.	INSURANCE AND BONDS .....	26
13.1.	Insurance.....	26
13.2.	Contract Security – Bonds.....	29
14.	WARRANTY/GUARANTEE/INDEMNITY .....	29
14.1.	Warranty/Guarantee .....	29
14.2.	Indemnity .....	30
15.	TIME .....	31
15.1.	Notice to Proceed .....	31
15.2.	Hours of Work.....	31
15.3.	Progress and Completion.....	31
15.4.	Schedule .....	31
15.5.	Expeditious Completion.....	32
16.	EXTENSIONS OF TIME – LIQUIDATED DAMAGES .....	32
16.1.	Contractor’s Notice of Delay .....	32
16.2.	Excusable and Compensable Delay(s) .....	33
16.3.	Excusable Delay(s) .....	33
16.4.	Unexcused Delay(s) – Liquidated Damages .....	34
17.	CHANGES IN THE WORK .....	34
17.1.	No Changes Without Authorization .....	34
17.2.	Architect Authority .....	35

17.3.	Change Orders.....	35
17.4.	Construction Change Directives / Unilateral Change Orders .....	36
17.5.	Force Account Directives .....	36
17.6.	Price Request .....	37
17.7.	Proposed Change Order.....	37
17.8.	Format for Proposed Change.....	37
17.9.	Change Order Certification .....	41
17.10.	Determination of Change Order Cost .....	41
17.11.	Deductive Change Orders .....	42
17.12.	Discounts, Rebates and Refunds .....	42
17.13.	Accounting Records.....	42
17.14.	Notice Required .....	42
17.15.	Applicability to Subcontractors .....	42
17.16.	Alteration to Change Order Language .....	42
17.17.	Failure of Contractor to Execute Change Order .....	43
18.	REQUEST FOR INFORMATION .....	43
19.	PAYMENTS .....	43
19.1.	Contract Price.....	43
19.2.	Applications for Progress Payments.....	43
19.3.	Progress Payments.....	46
19.4.	Decisions to Withhold Payment .....	47
19.5.	Subcontractor Payments .....	49
20.	COMPLETION OF THE WORK .....	49
20.1.	Completion.....	49
20.2.	Closeout Procedures .....	50
20.3.	Final Inspection .....	51
20.4.	Costs of Multiple Inspections .....	52



20.5.	Partial Occupancy or Use Prior to Completion .....	52
21.	<b>FINAL PAYMENT AND RETENTION .....</b>	<b>52</b>
21.1.	Final Payment .....	52
21.2.	Prerequisites for Final Payment .....	52
21.3.	Retention.....	53
21.4.	Substitution of Securities.....	53
22.	<b>UNCOVERING OF WORK .....</b>	<b>54</b>
23.	<b>NONCONFORMING WORK AND CORRECTION OF WORK .....</b>	<b>54</b>
23.1.	Nonconforming Work .....	54
23.2.	Correction of Work .....	54
23.3.	SCCOE's Right to Perform Work .....	54
24.	<b>TERMINATION AND SUSPENSION .....</b>	<b>55</b>
24.1.	SCCOE's Right to Terminate Contractor for Cause.....	55
24.2.	Emergency Termination of Public Contracts Act of 1949 .....	57
24.3.	Termination of Contractor for Convenience .....	57
24.4.	Suspension of Work .....	58
24.5.	Scope Reduction .....	58
25.	<b>DISPUTES AND CLAIMS .....</b>	<b>58</b>
25.1.	Performance during Dispute and Claim Resolution Process. ....	58
25.2.	Waiver. ....	58
25.3.	Intention.....	58
25.4.	Exclusive Remedy.....	58
25.5.	Other Provisions. ....	59
25.6.	Subcontractors.....	59
25.7.	Dispute and Claim Resolution Process .....	59
25.8.	Documentation of Resolution. ....	63
25.9.	Dispute and Claim Resolution Process – Non-Applicability.....	63

<b>26.</b>	<b>LABOR, WAGE &amp; HOUR, APPRENTICE AND RELATED PROVISIONS.....</b>	<b>64</b>
26.1.	Contractor & Subcontractor Registration .....	64
26.3.	Hours of Work.....	65
26.5.	Apprentices .....	67
26.6.	Non-Discrimination.....	68
26.7.	Labor First Aid .....	69
<b>27.</b>	<b>MISCELLANEOUS.....</b>	<b>69</b>
27.1.	Assignment of Antitrust Actions.....	69
27.2.	Excise Taxes.....	70
27.3.	Taxes.....	70
27.4.	Shipments .....	70
27.5.	Compliance with Government Reporting Requirements .....	70

**GENERAL CONDITIONS**

**1. CONTRACT TERMS AND DEFINITIONS**

**1.1. Definitions**

**Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:**

**1.1.1. Adverse Weather:** 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) occurring at the Project Site.

**1.1.2. Allowance(s):** Amount(s) stated in the Agreement for specific scopes of work for which Contractor may bill its time, materials, and other items in the identical structure as a Change Order.

**1.1.3. Approval, Approved, and/or Accepted:** Refer to written authorization, unless stated otherwise.

**1.1.4. Architect:** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect that has the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the SCCOE's Architect on this Project or the Architect's authorized representative.

**1.1.5. As-Built Drawings:** A reproducible full-size sets of drawings to be prepared on a monthly basis, and upon Project Completion, pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal.

**1.1.6. Bidder:** A contractor who intends to provide a bid to the SCCOE to perform the Work of the Contract.

**1.1.7. Change Order:** A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Contract Price or Contract Time.

**1.1.8. Completion:** When the entire Work shall have been completed to the satisfaction of SCCOE, including all punch list items.

**1.1.9. Construction Change Directive:** A written order prepared and issued by the SCCOE, the Construction Manager, and/or the Architect and signed by the SCCOE and the Architect, directing a change in the Work.

**1.1.10. Construction Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the SCCOE. If no Construction Manager is used on the Project, then all references in the Contract Documents to Construction Manager shall be read to refer to SCCOE.

**1.1.11. Construction Schedule:** The progress schedule of construction of the Project as provided by Contractor and approved by SCCOE.

**1.1.12. Contract, Contract Documents:** The Contract consists exclusively of the documents evidencing the agreement of the SCCOE and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

- 1.1.12.1. Invitation to Bid
- 1.1.12.2. Instructions to Bidders
- 1.1.12.3. Bid Form
- 1.1.12.4. Bid Bond (Security)
- 1.1.12.5. Designated Subcontractors List
- 1.1.12.6. Site-Visit Certification
- 1.1.12.7. Noncollusion Affidavit
- 1.1.12.8. Iran Contracting Act Certification
- 1.1.12.9. Worker's Compensation Certification
- 1.1.12.10. Prevailing Wage and Related Labor Requirements Certification
- 1.1.12.11. Disabled Veteran's Business Enterprise Participation Certification
- 1.1.12.12. Drug-Free Workplace Certification
- 1.1.12.13. Tobacco-Free Environment Certification
- 1.1.12.14. Hazardous Materials Certification
- 1.1.12.15. Lead-Based Materials Certification
- 1.1.12.16. Imported Materials Certification
- 1.1.12.17. Criminal Background Investigation/Fingerprinting Certification
- 1.1.12.18. Roofing Contract Financial Interest Certification
- 1.1.12.19. Notice of Award
- 1.1.12.20. Agreement
- 1.1.12.21. Escrow of Bid Documentation (if applicable)
- 1.1.12.22. Escrow Agreement for Security Deposits in Lieu of Retention
- 1.1.12.23. Storm Water Pollution Prevention Plan (if applicable)
- 1.1.12.24. Hazardous Materials Procedures and Requirements
- 1.1.12.25. Notice to Proceed
- 1.1.12.26. Performance Bond
- 1.1.12.27. Payment Bond (Contractor's Labor and Material Bond)
- 1.1.12.28. SCCOE Contract Forms (if applicable)

- 1.1.12.29. SCCOE Closeout Forms (if applicable)
  - 1.1.12.30. Final Settlement Agreement and Release of Claims
  - 1.1.12.31. Warranty and Guarantee Form
  - 1.1.12.32. General Conditions
  - 1.1.12.33. Special Conditions
  - 1.1.12.34. Project Plans, Specifications, Technical Specifications, and Drawings
  - 1.1.12.35. Addenda to any of the above documents
  - 1.1.12.36. Schedules if approved in writing by the SCCOE
  - 1.1.12.37. Change Orders or written modifications to the above documents if approved in writing by the SCCOE
- 1.1.13. **Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.1.14. **Contract Time:** The time period stated in the Agreement for the Completion of the Work.
- 1.1.15. **Contractor:** The person or persons identified in the Agreement as contracting to perform the Work, or the legal representative of such person(s).
- 1.1.16. **Daily Job Report(s):** Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.
- 1.1.17. **Day(s):** Unless otherwise designated, day(s) means calendar day(s).
- 1.1.18. **SCCOE:** The public agency or the school SCCOE for which the Work is performed.
- 1.1.19. **Drawings:** (or "Plans") The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- 1.1.20. **DSA:** Division of the State Architect.
- 1.1.21. **Force Account Directive:** A process that may be used when the SCCOE and the Contractor cannot agree on a price for a specific scope of work or before Contractor prepares a price for the scope of work, Contractor performs on a time and materials basis.
- 1.1.22. **Premises:** The real property owned by the SCCOE on which the Project Site is located.
- 1.1.23. **Product(s):** New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the SCCOE for reuse.
- 1.1.24. **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a material, product, or system for a scope of the Work.
- 1.1.25. **Project:** The planned undertaking as provided for in the Contract Documents.

**1.1.26. Project Inspector:** (or "Inspector") Individual(s) retained by the SCCOE in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

**1.1.27. Program Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the SCCOE. If no Program Manager is designated for the Project, then all references to Project Manager shall refer to SCCOE.

**1.1.28. Provide:** Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

**1.1.29. Request for Information:** (or "RFI") A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address issues that have arisen under field conditions.

**1.1.30. Request for Substitution:** A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

**1.1.31. Safety Orders:** Written and/or verbal orders for construction issued by the California Division of Industrial Safety ("CalOSHA") or by the United States Occupational Safety and Health Administration ("OSHA").

**1.1.32. Safety Plan:** Contractor's safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Conditions.

**1.1.33. Samples:** Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

**1.1.34. Shop Drawings:** All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

**1.1.35. Site:** The Project site as shown on the Drawings.

**1.1.36. Specifications:** That portion of the Contract Documents, Division 1 through Division 17, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

**1.1.37. Subcontractor:** A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work.

**1.1.38. Submittal Schedule:** The schedule of submittals as provided by Contractor and approved by SCCOE.

**1.1.39. Surety:** The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

**1.1.40. SWPPP:** The SCCOE's Storm Water Pollution Prevention Plan.

**1.1.41. Work:** All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and Completion of the Project.

**1.2. Laws Concerning the Contract**

Contract is subject to all provisions of the Constitution and laws of California and the United States, governing, controlling, or affecting SCCOE, or the property, funds, operations, or powers of SCCOE, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

**1.3. No Oral Agreements**

No oral agreement or conversation with any officer, agent, or employee of SCCOE, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in the Contract Documents.

**1.4. No Assignment**

Contractor shall not assign the Contract or any part thereof including, without limitation, any services or money to become due without the prior written consent of the SCCOE. Assignment without SCCOE's prior written consent shall be null and void. Any assignment of money due or to be come due under the Contract shall be subject to a prior lien for services rendered or material supplied for Work performed in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for Liquidated Damages or withholding of payments as determined by SCCOE in accordance with the Contract. Contractor shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the SCCOE.

**1.5. Notice And Service Thereof**

**1.5.1.** Any notice required by the Contract shall be in writing, dated and signed by the party giving notice or by a duly authorized representative of that party. Notice shall be served and considered effective if given in one of the following manners:

**1.5.1.1.** By personal delivery, considered delivered on the day of delivery.

**1.5.1.2.** By overnight delivery service, considered delivered one (1) day after date deposited, as indicated by the delivery service.

**1.5.1.3.** By depositing same in United States mail, enclosed in a sealed envelope; considered delivered three (3) days after date deposited, as indicated by the postmarked date.

**1.5.1.4.** By registered or certified mail with postage prepaid, return receipt requested; considered delivered on the day the notice is signed for.

**1.6. No Waiver**

The failure of SCCOE in any one or more instances to insist upon strict performance of any term of the Contract or to exercise any SCCOE option shall not be construed as a waiver or relinquishment of the right to assert or rely upon any such term or option on a future occasion. No action or failure to act by the SCCOE, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the

SCCOE under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

**1.7. Substitutions for Specified Items**

See Special Conditions.

**1.8. Materials and Work**

**1.8.1.** Except as otherwise stated in the Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete the Contract within the Contract Time.

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

**1.8.3.** Materials shall be furnished in sufficient quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required.

**1.8.4.** For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

**1.8.5.** Contractor shall, after award of Contract by SCCOE and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from SCCOE, present documentary evidence showing that orders have been placed.

**1.8.6.** SCCOE reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.

**1.8.7.** Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Completion of all Work to deliver the Site to SCCOE, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise SCCOE as to owner thereof.

**1.8.8.** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under law permitting such protection or any rights under law permitting such persons to look to funds due Contractor in hands of SCCOE (e.g., stop payment notices). This provision shall be inserted in all



subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

**1.8.9.** Title to new materials and/or equipment for the Work and attendant liability for its protection and safety shall remain with Contractor until incorporated in the Work of this Contract and accepted by SCCOE. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to SCCOE or its authorized representative and shall, at the SCCOE's request, forward it to the SCCOE.

**1.8.10.** Contractor certifies that it shall comply with the recycled product requirements of Public Contract Code section 22150, et seq., including, without limitation, section 22154 which states, "All businesses shall certify in writing to the contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to any local public entity."

## **2. SCCOE**

**2.1.1.** The SCCOE or its designees will act for the SCCOE in all matters pertaining to the Contract.

**2.1.2.** The SCCOE may, at any time,

**2.1.2.1.** Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the SCCOE; and/or

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

**2.1.3. SCCOE's Rights if Contractor Fails to Perform.** If the SCCOE at any time believes that the Contractor is behind schedule, is failing to construct the Project pursuant to the Contract Documents or is otherwise failing to perform any provisions of this Contract, the SCCOE, after **FORTY-EIGHT (48)** hours written notice to the Contractor, may take any action necessary or beneficial to the SCCOE to complete the Project, take over the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor and the Surety shall be liable to the SCCOE for any cost incurred by the SCCOE in those actions and the SCCOE has the right to deduct the cost thereof from any payment then or thereafter due the Contractor.

## **3. ARCHITECT**

**3.1.** Architect shall have the authority to act on behalf of SCCOE to the extent expressly provided in the Contract Documents and to the extent determined by SCCOE to, among other things, observe the progress and quality of the Work on behalf of the SCCOE. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

**3.2.** Architect shall, with the SCCOE and on behalf of the SCCOE, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the SCCOE, interpret all other Contract Documents.

**3.3.** Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

3.4. Contractor shall provide SCCOE and the Construction Manager with a copy of all written communication between Contractor and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

#### 4. **CONSTRUCTION MANAGER**

4.1. If a Construction Manager is used on this Project, the Construction Manager will provide administration of the Contract on the SCCOE's behalf. After execution of the Contract and Notice to Proceed, all correspondence and/or instructions from Contractor and/or SCCOE shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Contractor's responsibility.

4.2. Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the SCCOE, the Architect, and/or the Project Inspector. Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Contractor, any Subcontractor, their agents, employees, or other persons performing any of the Work. Construction Manager shall have free access to all parts of Work at any time.

4.3. If the SCCOE does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as SCCOE.

#### 5. **INSPECTOR, INSPECTIONS AND TESTS**

##### 5.1. **Project Inspector**

5.1.1. One or more Project Inspector(s), including special Project Inspector(s), as required, maybe assigned to the work by the Building Department, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project.

5.1.2. The Project Inspector(s) shall have free access to all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Contractor from the obligation to fulfill the Contract.

##### 5.2. **Tests and Inspections**

5.2.1. Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

5.2.2. The SCCOE will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the SCCOE's representative and not by the Contractor. The Contractor shall notify the SCCOE's representative a sufficient time in advance of its readiness for required observation or inspection.

5.2.3. The Contractor shall notify the SCCOE's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the SCCOE may arrange for the testing of same at the source

of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that must be tested.

**5.2.4.** Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed required testing and inspection or prior to the receipt of notice from the representative that testing, and inspection will not be required, shall not be incorporated into and/or onto the Project.

**5.2.5.** The SCCOE will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the SCCOE and reimbursed by the Contractor or deducted from the Contract Price.

### **5.3. Costs for After Hours and/or Off-Site Inspections**

**5.3.1.** If the Contractor performs Work outside the Inspector's regular working hours or requests the Inspector to perform inspections off Site, costs of any inspections required outside regular working hours or off Site shall be borne by the Contractor and may be invoiced to the Contractor by the SCCOE or the SCCOE may deduct those expenses from the next Progress Payment.

## **6. CONTRACTOR**

Contractor shall construct the Work for the Contract price including any adjustment(s) to the Contract Price pursuant to provisions herein regarding changes to the Contract Price. Except as otherwise noted, Contractor shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Completion of the Work, except as indicated herein.

### **6.1. Status of Contractor**

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

**6.1.2.** As required by law, Contractor and all Subcontractors shall be properly licensed and regulated by the Contractor's State License Board, located at 9821 Business Park Drive, , Sacramento, California 95827, with a mailing address of Post Office Box 26000, Sacramento, California, and with a website at <http://www.cslb.ca.gov>.

### **6.2. Contractor's Supervision**

**6.2.1.** During progress of the Work, Contractor shall keep on the Premises, and at all other locations where any Work related to the Contract is being performed, a competent project manager and construction superintendent who are employees of the Contractor, to whom the SCCOE does not object and at least one of whom shall be fluent in English, written and verbal.

**6.2.2.** The project manager and construction superintendent shall both speak fluently the predominant language of the Contractor's employees.

**6.2.3.** Before commencing the Work, Contractor shall give written notice to SCCOE of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to SCCOE, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, SCCOE, any of the SCCOE's employees, agents, the Construction Manager, or the Architect, in which case, Contractor shall notify SCCOE in writing. SCCOE retains the right to reasonably refuse Contractor's replacement personnel. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

**6.2.4.** Contractor shall give efficient supervision to Work, using its best skill and attention. Contractor shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to SCCOE, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to SCCOE's Project Inspector(s). The Contractor shall have responsibility for discovery of errors, inconsistencies, or omissions.

**6.2.5.** The Contractor's project manager shall devote sufficient time to the Project on site, and in the Contractor's home office to pre-plan activities to meet the Project schedule and fulfill all Contract obligations. This includes making timely submittals, issuing and disseminating necessary RFI's, promptly processing and distributing bulletins, change orders and payments, keeping required logs current etc. If any of these activities fall behind contract requirements or dates necessary to complete the Project on time, the Contractor must provide a full-time project manager on the Project Site dedicated solely to the Project, until the deficiencies are corrected.

**6.2.6.** The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing Work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Project Documents before commencing work. Errors, inconsistencies or omissions discovered shall be immediately reported to the SCCOE. Upon commencement of any item of Work, the Contractor shall be responsible for dimensions related to the Work and shall make any corrections necessary to make Work properly fit at no additional cost to SCCOE. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

**6.2.7.** Omissions from the Drawings or Specifications, or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed Work, but they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications.

**6.2.8.** The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

### **6.3. Duty to Provide Fit Workers**

**6.3.1.** Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. SCCOE may require Contractor to permanently remove unfit persons from Project Site.

**6.3.2.** Any person in the employ of Contractor or Subcontractor(s) whom SCCOE may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of SCCOE.

**6.3.3.** The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

**6.3.4.** If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the SCCOE. The SCCOE shall determine if Contractor's intended change is permissible while performing the Contract.

**6.3.5. Compliance with Immigration Reform and Control Act of 1986.** As required by law, Contractor and all Subcontractors shall employ individuals for the Work in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq.

#### **6.4. Personnel**

**6.4.1.** All persons working for Contractor and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

**6.4.2.** The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years' experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the SCCOE and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable to the SCCOE. The superintendent shall not be changed without the written consent of the SCCOE unless the superintendent ceases to be employed by the Contractor.

**6.4.3.** The Contractor shall employ a competent estimator and necessary assistants or contact for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years' experience in estimating. The estimator shall be satisfactory to the SCCOE and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The estimator shall not be changed without the written consent of the SCCOE unless the estimator ceases to be employed by the Contractor. The Contractor shall submit PCO's requested by the SCCOE within fourteen (14) calendar days.

**6.4.4.** The Contractor shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years' experience in scheduling. The scheduler shall be satisfactory to the SCCOE and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The scheduler shall not be changed without the written consent of the SCCOE unless the scheduler ceases to be employed by the Contractor.

**6.4.5.** Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

**6.4.6.** If Contractor or any Subcontractor on the Project site fails to comply with any provision herein, the SCCOE may have the offending person(s) immediately removed from the Site, and the person(s) shall be replaced within three (3) days, at no additional expense to the SCCOE. Contractor, on behalf of it and its Subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

#### **6.5. Purchase of Materials and Equipment**

**6.5.1.** Error! Bookmark not defined.The Contractor is required to order and obtain materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from SCCOE to assure that there will be no delays.

**6.5.2. Off-Site Storage of Materials and Equipment.** Contractor shall not store materials and/or equipment off site without first obtaining the SCCOE's express, written consent. If Contractor receives SCCOE's consent to store materials and/or equipment off site ("Stored Materials"), Contractor shall comply with all of the following:

**6.5.2.1. Property of Others Insurance.** Contractor shall procure and maintain, during the entire time Stored Materials are in off-site storage, insurance coverage acceptable to the SCCOE that shall protect Contractor and SCCOE from all claims for Stored Materials that are lost, stolen, or damaged. The SCCOE shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint check to the Contractor and SCCOE. If approved in advance by SCCOE, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

**6.5.2.2. Payment for Stored Materials.** SCCOE shall only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by the SCCOE and provided that Contractor submits an itemized list of all Stored Materials with Contractor's Application for Payment. Contractor's itemized list of all Stored Materials shall be supported by all of the following:

**6.5.2.2.1.** Itemized breakdown of the Stored Materials for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material; and

**6.5.2.2.2.** Verified invoices for the Stored Materials; and

**6.5.2.2.3.** Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy, or an Employee Theft Protection Bond based on the type of insurance required by the SCCOE. These documents shall include certificates and endorsements stating the coverage and that the SCCOE is a loss payee or obligee, as appropriate.

## **6.6. Documents on Work**

**6.6.1.** Contractor shall at all times keep on the Work Site, or at another location as the SCCOE may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code (electronic versions are acceptable), all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to SCCOE, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, title 24, part 1, California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

### **6.6.2. Daily Job Reports.**

**6.6.2.1.** Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

**6.6.2.1.1.** A brief description of all Work performed on that day.

- 6.6.2.1.2. A summary of all other pertinent events and/or occurrences on that day.
- 6.6.2.1.3. The weather conditions on that day.
- 6.6.2.1.4. A list of all Subcontractor(s) working on that day,
- 6.6.2.1.5. A list of each Contractor employee working on that day and the total hours worked for each employee.
- 6.6.2.1.6. A complete list of all equipment on Site that day, whether in use or not.
- 6.6.2.1.7. A complete list of all materials, supplies, and equipment delivered on that day.
- 6.6.2.1.8. A complete list of all inspections and tests performed on that day.

6.6.2.2. Each day Contractor shall provide a copy of the previous day’s Daily Job Report to the SCCOE or the SCCOE’s Construction Manager.

**6.7. Preservation of Records**

SCCOE shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor’s project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the SCCOE. These documents may be duplicative and/or be in addition to any Bid Documents held in escrow by the SCCOE. Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

**6.8. Integration of Work**

- 6.8.1. Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as SCCOE and/or Architect may direct.
- 6.8.2. All cost caused by defective or ill-timed Work shall be borne by Contractor, inclusive of repair work.
- 6.8.3. Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with written consent of SCCOE.

**6.9. Obtaining of Permits and Licenses**

- 6.9.1. Contractor shall secure and pay for all permits, licenses, and certificates as indicated in the Special Conditions.

## **6.10. Work to Comply with Applicable Laws and Regulations**

**6.10.1.** Contractor shall give all notices and comply with all applicable laws, ordinances, rules, and regulations relating to the Work, including the specific laws, ordinances, rules, and regulations as indicated and specified in the Contract Documents and identified below, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor shall promptly notify SCCOE in writing and any changes deemed necessary by SCCOE shall be made as provided in Contract for changes in Work.

**6.10.1.1.** National Electrical Safety Code, U. S. Department of Commerce

**6.10.1.2.** National Board of Fire Underwriters' Regulations

**6.10.1.3.** Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments

**6.10.1.4.** Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America

**6.10.1.5.** Industrial Accident Commission's Safety Orders, State of California

**6.10.1.6.** Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes

**6.10.1.7.** Americans with Disabilities Act

**6.10.1.8.** Education Code of the State of California

**6.10.1.9.** Government Code of the State of California

**6.10.1.10.** Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies

**6.10.1.11.** Public Contract Code of the State of California

**6.10.1.12.** California Art Preservation Act

**6.10.1.13.** U. S. Copyright Act

**6.10.1.14.** U. S. Visual Artists Rights Act

**6.10.2.** Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code sections 21000 et. seq.)

**6.10.3.** If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom.

**6.10.4.** Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.



## **6.11. Safety/Protection of Persons and Property**

**6.11.1.** Contractor 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.

**6.11.2.** The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

**6.11.3.** Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

**6.11.4.** Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.

**6.11.5.** Contractor shall furnish to the SCCOE a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

**6.11.6.** Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the performance of the Contract and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by SCCOE. All Work shall be solely at Contractor's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

**6.11.7.** Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

**6.11.8. Hazards Control.** Contractor shall store volatile wastes in covered metal containers and remove them from the Site daily. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

**6.11.9.** Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to SCCOE by Contractor.

**6.11.10.** Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

**6.11.11. Storm Water.** Contractor shall comply with the SCCOE's Storm Water Pollution Prevention Plan (SWPPP) and, if indicated in the Special Conditions, shall be the SCCOE's Qualified SWPPP Practitioner, at no additional cost to the SCCOE.

**6.11.12.** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury.

Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

**6.11.13.** All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the SCCOE reserves the right to designate certain items of value that shall be turned over to the SCCOE unless otherwise directed by SCCOE.

**6.11.14.** All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the SCCOE during the entire progress of the Work.

**6.11.15.** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

**6.11.16.** Contractor shall protect and preserve the Work from all damage or accident, providing temporary roofs, window and door coverings, boxing, or other construction as required by the Architect. Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefor. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace same at its expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the SCCOE and others.

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

**6.11.18.** Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor shall enforce all instructions of SCCOE and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

**6.11.19.** Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. SCCOE may require Contractor to permanently remove noncomplying persons from Project Site.

**6.11.20.** Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to SCCOE.

**6.11.21.** In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the SCCOE prior to entering the adjacent property. The Contractor shall also indemnify the SCCOE as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

## **6.12. Working Evenings and Weekends**

Contractor may be required to work evenings and/or weekends at no additional cost to the SCCOE. Contractor shall give the SCCOE seventy-two (72) hours' notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon SCCOE's written approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the SCCOE for any Inspector charges necessitated by the Contractor's evening and/or weekend work.

### **6.13. Cleaning Up**

**6.13.1.** The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until its Completion and final acceptance by SCCOE. Dust barriers shall be provided to isolate dust and dirt from construction operations. At Completion of the Work and portions thereof, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

**6.13.2.** Contractor at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, SCCOE may do so, and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the SCCOE as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

**6.13.3.** If the Construction Manager, Architect, or SCCOE observes the accumulation of trash and debris, the SCCOE will give the Contractor a 24-hour written notice to mitigate the condition.

**6.13.4.** Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the SCCOE, the SCCOE will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Contract Price, or SCCOE may withhold those amounts from payment(s) to Contractor.

## **7. SUBCONTRACTORS**

**7.1.** Contractor shall provide the SCCOE with information for all Subcontracts as required in the Contractor's Submittals and Schedules Section.

**7.2.** No contractual relationship exists between the SCCOE and any Subcontractor, supplier, or sub-subcontractor by reason of the Contract.

**7.3.** Contractor agrees to bind every Subcontractor by terms of the Contract as far as those terms are applicable to Subcontractor's work. If Contractor shall subcontract any part of the Contract, Contractor shall be as fully responsible to SCCOE for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

- 7.4. SCCOE's consent to, or approval of, or failure to object to, any Subcontractor under the Contract shall not in any way relieve Contractor of any obligations under the Contract and no such consent shall be deemed to waive any provisions of the Contract.
- 7.5. Contractor is directed to familiarize itself with sections 4100 through 4114 of the Public Contract Code of the State of California, as regards subletting and subcontracting, and to comply with all applicable requirements therein. In addition, Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.
- 7.6. No Contractor whose Bid is accepted shall, without consent of the awarding authority and in full compliance with section 4100, et seq, of the Public Contract Code, including, without limitation, sections 4107, 4107.5, and 4109 of the Public Contract Code, either:
- 7.6.1. Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or
- 7.6.2. Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the original Subcontractor listed in the Bid; or
- 7.6.3. Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of the Contractor's total bid as to which his original bid did not designate a Subcontractor.
- 7.7. The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.
- 7.8. Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.
- 7.9. Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Conditions.

**8. OTHER CONTRACTS/CONTRACTORS**

- 8.1. SCCOE reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Contractor shall afford other contractors' reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.
- 8.2. In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Project.
- 8.3. If any part of Contractor's Work depends for proper execution or results upon work of SCCOE or any other contractor, Contractor shall inspect and promptly report to the SCCOE in writing before proceeding with its Work any defects in SCCOE's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to SCCOE for SCCOE's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all SCCOE's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in SCCOE's or any other contractor's work after execution of Contractor's Work.

- 8.4. To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the SCCOE in writing any discrepancy between that executed work and the Contract Documents.
- 8.5. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of SCCOE's or any other contracts that have been or may be awarded by SCCOE in completion of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.
- 8.6. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. The SCCOE shall have complete access to the Project site for any reasonable purpose at all times. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to SCCOE 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 Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the SCCOE of the resolution.

**9. DRAWINGS AND SPECIFICATIONS**

- 9.1. A complete list of all Drawings that form a part of the Contract is to be found as an index on the Drawings themselves, and/or may be provided to the Contractor and/or in the Table of Contents.
- 9.2. Materials or Work described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.
- 9.3. Trade Name or Trade Term. It is not the intention of the Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.
- 9.4. The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.
- 9.5. Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify SCCOE and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.
- 9.6. In the case of discrepancy or ambiguity in the Contract Documents, the order of precedence in the Agreement shall prevail. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide SCCOE with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, SCCOE will furnish clarifications with reasonable promptness.
- 9.7. Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and were referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations.
- 9.8. **Ownership of Drawings**

**9.8.1.** All copies of the Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by SCCOE, are the property of SCCOE. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to SCCOE on request at Completion of Work or may be used by SCCOE as it may require without any additional costs to SCCOE. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. SCCOE hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

## **10. CONTRACTOR'S SUBMITTALS AND SCHEDULES**

Contractor's submittals shall comply with the provisions and requirements of the Specifications including, without limitation Submittals.

### **10.1. Schedules, Safety Plan and Complete Subcontractor List**

**10.1.1.** Within **TEN (10)** calendar days after the date of the Notice to Proceed (unless otherwise specified in the Notice to Proceed or in the Special Conditions), Contractor shall prepare and submit to the SCCOE for review, in a form supported by sufficient data to substantiate its accuracy as the SCCOE may require:

**10.1.1.1. Schedule of Work.** Contractor shall provide a preliminary schedule of construction indicating the starting and completion dates of the various stages of the Work, including any information and following any form as may be specified in the Specifications. Once approved by SCCOE, this shall become the Construction Schedule. This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task, all contract milestones and each milestone's completion date(s) as may be required by the SCCOE, and the date of Project Completion.

**10.1.1.1.1. Proposed Advanced Schedule.** The SCCOE is not required to accept an early completion ("advanced") schedule, i.e., one that shows early completion dates for the Contract completion or milestones. Contractor shall not be entitled to extra compensation if the SCCOE allows the Contractor to proceed performing the Contract on an earlier ("advanced") schedule and Contractor completes the Project, for whatever reason, beyond the date shown in that earlier ("advanced") schedule, but within the Time for Completion indicated in the Contract. A schedule showing the work completed in less than the Time for Completion indicated in the Contract, shall be considered to have Project Float.

**10.1.1.1.2. Float or Slack in the Schedule.** Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the SCCOE or the Contractor, but its use shall be determined solely by the SCCOE.

**10.1.1.2. Schedule of Submittals.** The Contractor shall provide a preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once approved by SCCOE, this shall become the Submittal Schedule. All submittals shall be forwarded to the SCCOE by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals shall be forwarded to the SCCOE so as not to delay the Construction Schedule.

**10.1.1.3. Schedule of Values.** The Contractor shall provide a preliminary schedule of values for all component parts of the Work for which progress payments may be requested. The schedule of values must include quantities and prices of items totaling the Contract Price and must subdivide the

Work into component parts in sufficient detail to serve as the basis for progress payments during construction. The preliminary schedule of values should include, at a minimum, the following information and the following structure:

**10.1.1.3.1.** Divided into at least the following categories:

- 10.1.1.3.1.1.** Overhead and profit;
- 10.1.1.3.1.2.** Supervision;
- 10.1.1.3.1.3.** General conditions;
- 10.1.1.3.1.4.** Layout;
- 10.1.1.3.1.5.** Mobilization;
- 10.1.1.3.1.6.** Submittals;
- 10.1.1.3.1.7.** Bonds and insurance;
- 10.1.1.3.1.8.** Closeout documentation;
- 10.1.1.3.1.9.** Demolition;
- 10.1.1.3.1.10.** Installation;
- 10.1.1.3.1.11.** Rough-in;
- 10.1.1.3.1.12.** Finishes;
- 10.1.1.3.1.13.** Testing;
- 10.1.1.3.1.14.** Punchlist and acceptance.

**10.1.1.3.2.** Divided by each of the following areas:

- 10.1.1.3.2.1.** Site work;
- 10.1.1.3.2.2.** By each building;
- 10.1.1.3.2.3.** By each floor.

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

- 10.1.1.3.3.1.** Mobilization and layout combined to equal not more than 1%;
- 10.1.1.3.3.2.** Submittals, samples and shop drawings combined to equal not more than 3%;
- 10.1.1.3.3.3.** Bonds and insurance combined to equal not more than 2%.

**10.1.1.3.4. 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.

**10.1.1.3.5.** Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid by the SCCOE in equal installments, based on percentage complete, with the disbursement of Progress Payments and the Final Payment.

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

**10.1.1.3.7.** Once the preliminary schedule of values is approved by the SCCOE, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the Contractor without the prior written consent and approval of the SCCOE, which may be granted or withheld in the sole discretion of the SCCOE.

**10.1.1.4. Safety Plan.** The Contractor shall provide a preliminary Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements:

**10.1.1.4.1.** All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

**10.1.1.4.2.** All provisions regarding Project safety, including all applicable provisions in these General Conditions.

**10.1.1.4.3.** Contractor's Safety Plan shall be prepared in both English and in the predominate language(s) of the Contractor's and its Subcontractors' employees.

**10.1.1.5. Complete Subcontractor List.** Contractor shall provide a preliminary Subcontractor List stating the name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for the Project.

**10.1.2.** Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the SCCOE.

**10.1.3.** The SCCOE will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the SCCOE and resubmit the schedules until approved by the SCCOE.

**10.1.4.** The SCCOE shall have the right at any time to revise the Schedule of Values if, in the SCCOE's sole opinion, the Schedule of Values does not accurately reflect the value of the Work performed.

**10.1.5.** All submittals and schedules must be approved by the SCCOE before Contractor can rely on them as a basis for payment.

## **10.2. Monthly Progress Schedule(s)**

**10.2.1.** Contractor shall provide Monthly Progress Schedule(s) to the SCCOE. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The Monthly Progress Schedule shall be sent to the SCCOE and shall be in a format acceptable to the SCCOE and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for SCCOE approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

**10.2.2.** Contractor shall also submit Monthly Progress Schedule(s) with all payment applications.

## **10.3. Material Safety Data Sheets (MSDS)**



Contractor is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substances brought onto the Project Site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the SCCOE.

#### **10.4. Logistic Plan**

Contractor shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the SCCOE prior to the Contractor mobilizing on the Site.

### **11. SITE ACCESS, CONDITIONS AND REQUIREMENTS**

#### **11.1. Site Investigation**

Before bidding on the Work, Contractor shall make a careful investigation of the Site and thoroughly familiarize itself with the requirements of the Contract. By the act of submitting a bid for the Work included in the Contract, Contractor shall be deemed to have made a complete study and investigation, and to be familiar with and accepted the existing conditions of the Site.

#### **11.2. Soils Investigation Report**

**11.2.1.** When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of the Contract. Any information obtained from that report, or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of the Contract, and Contractor may not rely thereon. By submitting its bid, Contractor acknowledges that it made visual examination of Site and made whatever tests Contractor deems appropriate to determine underground condition of soil.

**11.2.2.** Contractor agrees that no claim against SCCOE will be made by Contractor for damages and hereby waives any rights to damages if, during progress of Work, Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the work of the character provided for in Plans and Specifications, except as indicated in the provisions of these General Conditions regarding trenches, trenching, and/or existing utility lines.

#### **11.3. Access to Work**

SCCOE and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor shall provide safe and proper facilities for access so that SCCOE's representatives may perform their functions.

#### **11.4. Layout and Field Engineering**

**11.4.1.** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer approved in writing by SCCOE and Architect. Any required Record and/or As-Built Drawings of Site development shall be prepared by the approved civil engineer.

**11.4.2.** Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. SCCOE shall not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

**11.4.3.** Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of SCCOE. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of SCCOE and with SCCOE's approval.

**11.5. Utilities**

Utilities shall be provided as indicated in the Specifications.

**11.6. Sanitary Facilities**

Sanitary facilities shall be provided as indicated in the Specifications.

**11.7. Surveys**

Contractor shall provide surveys done by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.

**11.8. Regional Notification Center**

Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the SCCOE, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the SCCOE the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

**11.9. Existing Utility Lines**

**11.9.1.** Pursuant to Government Code section 4215, SCCOE assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under the Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of SCCOE or the owner of a utility to provide for removal or relocation of such utility facilities.

**11.9.2.** Locations of existing utilities provided by SCCOE shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. SCCOE shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

**11.9.3.** No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the Work. Nothing in this Article shall be deemed to require SCCOE to indicate

the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site.

**11.9.4.** If Contractor, while performing Work, discovers utility facilities not identified by SCCOE in Contract Plans and Specifications, Contractor shall immediately, but in no case longer than two (2) business days, notify the SCCOE and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the SCCOE shall be borne by the Contractor.

**11.10. Notification**

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the SCCOE pursuant to these provisions is to allow the SCCOE to investigate the condition(s) so that the SCCOE shall have the opportunity to decide how the SCCOE desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the SCCOE in writing, pursuant to the applicable provisions of these General Conditions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

**11.11. Hazardous Materials**

Contractor shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

**11.12. No Signs**

Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the SCCOE.

**12. TRENCHES**

**12.1. Trenches Greater Than Five Feet**

Pursuant to Labor Code section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the SCCOE and/or a registered civil or structural engineer employed by the SCCOE or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

**12.2. Excavation Safety**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the SCCOE or by the person to whom authority to accept has been delegated by the SCCOE.

**12.3. No Tort Liability of SCCOE**

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the SCCOE or any of its employees.

**12.4. No Excavation without Permits**

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

#### **12.5. Discovery of Hazardous Waste, Unusual Conditions and/or Unforeseen Conditions**

**12.5.1.** Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor shall immediately, but in no case longer than two (2) business days, and before the following conditions are disturbed, notify the SCCOE, in writing, of any:

**12.5.1.1.** Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

**12.5.1.2.** Subsurface or latent physical conditions at the Site differing from those indicated.

**12.5.1.3.** Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

**12.5.2.** The SCCOE shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

**12.5.3.** In the event that a dispute arises between SCCOE and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided by the Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and PCO provisions of the Contract Documents. Contractor's failure to submit a proposed change order pursuant to the terms of the Contract Documents shall be deemed a waiver of Contractor's right to an adjustment of the Contract Price of Contract Time.

### **13. INSURANCE AND BONDS**

#### **13.1. Insurance**

Unless different provisions and/or limits are indicated in the Special Conditions, all insurance required of Contractor and/or its Subcontractor(s) shall be in the amounts and include the provisions set forth herein.

##### **13.1.1. Commercial General Liability and Automobile Liability Insurance**

**13.1.1.1.** Contractor shall procure and maintain, during the life of the Contract, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, SCCOE, State, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Contract. This coverage shall be provided in a form at least as broad as the Insurance Services Office (ISO) standard form. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and any Auto including owned, non-owned, and hired, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

**13.1.1.2.** Contractor's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed \$25,000 unless approved in writing by SCCOE.

**13.1.2. Umbrella Liability Insurance**

**13.1.2.1.** Contractor may procure and maintain, during the life of the Contract, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required.

**13.1.2.2.** There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, SCCOE, State, Construction Manager(s), Project Manager(s), and Architect(s) in amounts and including the provisions as set forth in the Supplementary Conditions (if any) and/or Special Conditions, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**13.1.3. Subcontractor(s):** Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits equal to the amounts required of the Contractor.

**13.1.4. Workers' Compensation and Employers' Liability Insurance**

**13.1.4.1.** In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

**13.1.4.2.** Contractor shall procure and maintain, during the life of this Contract, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in Work under the Contract, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, are not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

**13.1.5. Builder's Risk Insurance: Builder's Risk "All Risk" Insurance.**

Contractor shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the SCCOE, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

**13.1.6. Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates**

**13.1.6.1.** Contractor shall not commence Work, nor shall it allow any Subcontractor to commence Work under the Contract, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the SCCOE complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the SCCOE has approved these documents.

**13.1.6.2.** Endorsements, certificates, and insurance policies shall include the following:

**13.1.6.2.1.** A clause stating:

**13.1.6.2.1.1.** "This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to SCCOE, Architect, and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

**13.1.6.2.1.2.** In lieu of receiving an endorsement with this clause, the SCCOE may, at its sole discretion, accept written notification from Contractor and its insurer to the SCCOE of any amendments, modifications, cancellations or reduction in coverage, not less than thirty (30) days prior to such coverage changes occur.

**13.1.6.2.2.** Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

**13.1.6.3.** All endorsements, certificates and insurance policies shall state that SCCOE, its trustees, employees and agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance.

**13.1.6.4.** Contractor's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by SCCOE, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

**13.1.6.5.** All endorsements shall waive any right to subrogation against any of the named additional insureds.

**13.1.6.6.** All policies shall be written on an occurrence form.

**13.1.6.7.** Unless otherwise stated in the Special Conditions, all of Contractor's insurance shall be with admitted insurance companies with an A.M. Best rating of no less than **A: VII**.

**13.1.6.8.** The insurance requirements set forth herein shall in no way limit the Contractor's liability arising out or relating to the performance of the Work or related activities.

**13.1.6.9.** Failure of Contractor and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Agreement.

**13.1.7. Insurance Policy Limits**

Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

<b>Commercial General Liability</b>	Combined Single Limit	\$2,000,000 per occurrence; \$4,000,000 aggregate
	Product Liability and Completed Operations	\$2,000,000 per occurrence; \$4,000,000 aggregate
<b>Automobile Liability – Any Auto</b>	Combined Single Limit	\$1,000,000 per occurrence.
<b>Workers Compensation</b>		Worker’s Compensation Liability of no less than \$1,000,000 per accident
<b>Employers’ Liability</b>		\$2,000,000
<b>Builder’s Risk (Course of Construction)</b>		Issued for the value and scope of Work indicated herein.
<b>Property of Others Insurance</b>		Coverage for all claims for Stored Materials that are lost, stolen, or damaged. Please indicate if included in Builder’s Risk.
<b>Excess Liability</b>		\$4,000,000

**13.2. Contract Security – Bonds**

**13.2.1.** Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

**13.2.1.1. Performance Bond:** A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

**13.2.1.2. Payment Bond:** A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with the Contract.

**13.2.2.** Cost of bonds shall be included in the Bid and Contract Price.

**13.2.3.** All bonds related to the Project shall be in the forms set forth in the Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

**14. WARRANTY/GUARANTEE/INDEMNITY**

**14.1. Warranty/Guarantee**

**14.1.1.** Contractor shall obtain and preserve for the benefit of the SCCOE, manufacturer’s warranties on materials, fixtures, and equipment incorporated into the Work.

**14.1.2.** In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work against all defects for a period of **ONE (1)** year after the later of the following dates:

**14.1.2.1.** The date of completion as defined in Public Contract Code section 7107, subdivision (c),

**14.1.2.2.** The commissioning date for the Project, if any.

**14.1.3.** At the SCCOE's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of Completion as defined above without expense whatsoever to SCCOE. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within **TEN (10)** days after being notified in writing, Contractor and Surety hereby acknowledge and agree that SCCOE is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

**14.1.4.** If, in the opinion of SCCOE, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to SCCOE or to prevent interruption of operations of SCCOE, SCCOE will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with SCCOE's request for correction within a reasonable time as determined by SCCOE, SCCOE may, notwithstanding the above provision, proceed to make all corrections and/or provide attentions the SCCOE believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in the Contract Documents.

**14.1.5.** The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to SCCOE all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by SCCOE.

**14.1.6.** Nothing herein shall limit any other rights or remedies available to SCCOE.

## **14.2. Indemnity**

**14.2.1.** To the furthest extent permitted by California law, Contractor shall indemnify, defend with legal counsel reasonably acceptable to the SCCOE, keep and hold harmless the SCCOE and its consultants, the Architect and its consultants, the Construction Manager and its consultants, separate contractors, and their respective board members, officers, representatives, contractors, agents, and employees, in both individual and official capacities ("Indemnitees"), 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 performance of the Work by Contractor, its Subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any stop payment notices actions or liens, including liens by the California Department of Labor Standards Enforcement.

**14.2.2.** Contractor shall give prompt notice to the SCCOE in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the



default, negligence, or act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

**14.2.3.** In any and all claims against any of the Indemnitees by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**14.2.4.** The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Agreement.

## **15. TIME**

### **15.1. Notice to Proceed**

**15.1.1.** SCCOE may issue a Notice to Proceed as indicated in the Instructions to Bidders.

### **15.2. Hours of Work**

#### **15.2.1. Sufficient Forces**

Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the performance of the Work in accordance with the Construction Schedule.

#### **15.2.2. Performance During Working Hours**

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the SCCOE and approval of any required governmental agencies.

### **15.3. Progress and Completion**

#### **15.3.1. Time of the Essence**

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

#### **15.3.2. No Commencement Without Insurance**

**15.3.2.1.** Contractor shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to SCCOE's claim for damages.

### **15.4. Schedule**

Contractor shall provide to SCCOE, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in the Notice to Proceed and the Contractor's Submittals and Schedules section of these General Conditions.

**15.5. Expeditious Completion**

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

**16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

**16.1. Contractor's Notice of Delay**

**16.1.1.** In addition to the requirements indicated in this subsection, Contractor shall notify the SCCOE pursuant to the claim's provisions in these General Conditions of any anticipated delay and its cause.

**16.1.2.** Contractor shall, within **FIVE (5)** calendar days of any delay impacting the critical path in completing the Work, notify SCCOE in writing of the causes of the delay including documentation and facts explaining the delay.

**16.1.3.** Any request by Contractor for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

**16.1.4.** Any claim for delay must include the following information as support, without limitation:

**16.1.4.1.** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

**16.1.4.2.** Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

**16.1.4.3.** A recovery schedule must be submitted.

**16.1.5.** SCCOE shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the SCCOE's judgment, the findings of fact justify an extension.

**16.1.6.** Extension(s) of time shall apply only to that portion of Work affected by delay and shall not apply to other portions of Work not so affected.

**16.1.7.** An extension of time may only be granted if Contractor has timely submitted the Construction Schedule as required herein.

**16.1.8.** Following submission of a notice of delay, the SCCOE may determine whether the delay is to be considered:

**16.1.8.1.** Excusable and Compensable, Excusable, or Unexcused.

**16.1.8.2.** How long the delay continues; and

**16.1.8.3.** To what extent the prosecution and Completion of the Work might be delayed thereby.

**16.1.9.** Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of its right to assert a claim for a delay.

**16.2. Excusable and Compensable Delay(s)**

**16.2.1.** Contractor is **not** entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless **all** of the following conditions are met:

**16.2.1.1.** The SCCOE is responsible for the delay;

**16.2.1.2.** The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

**16.2.1.3.** The delay was not within the contemplation of SCCOE and Contractor; and

**16.2.1.4.** Contractor complies with the claims procedure of the Contract Documents.

**16.2.1.5.** The delay could **not** have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence.

**16.2.1.6.** The delay extends the most current Contract Completion date, and is not concurrent with a Contractor caused delay or other type of Excusable Delay.

**16.3. Excusable Delay(s)**

**16.3.1.** An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:

**16.3.1.1.** Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence, and

**16.3.1.2.** Actually extended the most current Project Completion date.

**16.3.2.** The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.

**16.3.3.** Excusable Delays are limited to interruptions that satisfy the above requirements and that are acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; and Adverse Weather that satisfies the requirements herein.

**16.3.4.** Contractor 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 SCCOEs, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water SCCOEs, and other agencies.

**16.3.5. Computation of Time / Adverse Weather**

**16.3.5.1.** The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor within five (5) calendar days of the Adverse Weather event, and only if all of the following conditions are met – thereby making the resulting delay an Excusable Delay.

**16.3.5.1.1.** The weather conditions constitute Adverse Weather, as defined herein and further specified in the Special Conditions;

**16.3.5.1.2.** Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

**16.3.5.1.3.** The Contractor’s crew is dismissed as a result of the Adverse Weather; and

**16.3.5.1.4.** The number of days of delay for the month exceed those indicated in the Special Conditions.

**16.3.5.2.** A day-for-day extension will only be allowed for those days in excess of those indicated in the Special Conditions.

**16.3.5.3.** The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the SCCOE.

**16.3.5.4.** 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.

#### **16.4. Unexcused Delay(s) – Liquidated Damages**

**16.4.1.** Contractor and SCCOE hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the SCCOE will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall forfeit to SCCOE as fixed and liquidated damages, and not as a penalty, the amount set forth in the Agreement for each calendar day of delay in Completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

**16.4.2.** Contractor shall not forfeit liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

### **17. CHANGES IN THE WORK**

#### **17.1. No Changes Without Authorization**

**17.1.1.** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, a written Construction Change Directive, or a written Force Account Directive authorized by the SCCOE as herein provided. SCCOE shall not be liable for the cost of any extra work, any changes to the Contract Time, or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the SCCOE has authorized the same and the cost thereof has been approved in writing by an executed Change Order, a written Construction Change Directive, or a written Force Account Directive.

**17.1.2.** The Surety, in executing and providing the Performance Bond and the Payment Bond, shall be deemed to have expressly agreed to any change to the Contract and to any extension of time made by reason thereof.

**17.1.3.** No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order, Construction Change Directive, or Force Account Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**17.1.4.** Contractor shall perform immediately all work that has been authorized by a fully executed Change Order, Construction Change Directive, or Force Account Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work.

**17.1.5.** Should any Change Order result in an increase in the Contract Price, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and SCCOE and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Contractor proceeds with any change in Work without a Change Order executed by the SCCOE, Construction Change Directive, or Force Account Directive, Contractor waives any claim of additional compensation or time for that additional work.

**17.1.6.** Contractor understands, acknowledges, and agrees that the reason for SCCOE authorization is so that SCCOE may have an opportunity to analyze the Work and decide whether the SCCOE shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

**17.1.7.** No payments will be made, nor will SCCOE accept proposed change orders until the Contractor has complied with all the requirements of the Escrow of Bid Documentation document.

## **17.2. Architect Authority**

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be affected by written Change Order, Construction Change Directive, or by Architect's response(s) to RFI(s).

## **17.3. Change Orders**

**17.3.1.** A Change Order is a written instrument prepared and issued by the SCCOE and/or the Architect and signed by the SCCOE, the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

- 17.3.1.1.** A description of a change in the Work;
- 17.3.1.2.** The amount of the adjustment in the Contract Price, if any; and
- 17.3.1.3.** The extent of the adjustment in the Contract Time, if any.

**17.3.2.** If a Change Order is required to be approved by DSA, the SCCOE may call it a Construction Change Document.

**17.3.3.** If the SCCOE approves of a Change, the SCCOE or the Architect shall provide a written Change Order to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of that Change. All Change Orders shall be full payment and final settlement of all rights for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any demand or request for an adjustment to the Contract Time or the Contract Price relating to any Change incorporated into a Change Order not presented by the

Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing. After the Change Order has been prepared and forwarded to the Contractor for execution, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof.

#### **17.4. Construction Change Directives / Unilateral Change Orders**

**17.4.1.** A Construction Change Directive (or Unilateral Change Order) is a written order prepared and issued by the SCCOE, the Construction Manager, and/or the Architect and signed by the SCCOE and the Architect, directing a change in the Work. The SCCOE may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public-School Construction (OPSC). Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein. **A Construction Change Directive is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**

**17.4.2.** The SCCOE may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

#### **17.5. Force Account Directives**

**17.5.1.** When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the SCCOE and compensation will be determined as set forth herein.

**17.5.2.** SCCOE will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by SCCOE.

**17.5.3.** All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, SCCOE will only pay for actual costs verified in the field by the SCCOE or its authorized representative(s) on a daily basis.

**17.5.4.** Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive.

**17.5.5.** Contractor shall notify SCCOE or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the Contractor shall notify the SCCOE when it has consumed eighty percent (80%) of the budget and shall not exceed the budget unless specifically authorized in writing by the SCCOE. Contractor will not be compensated for force account work in the event that Contractor fails to timely notify the SCCOE regarding the commencement of force account work or exceeding the force account budget.

**17.5.6.** Contractor shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the SCCOE no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. SCCOE will review the information contained in the reports, and sign the reports no later than the next workday, and return a

copy of the report to Contractor for its records. SCCOE will not sign, nor will Contractor receive compensation for work SCCOE cannot verify. Contractor will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.

**17.5.7.** In the event Contractor and SCCOE reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily force account reports shall be discontinued, and all previously signed reports shall be invalid.

#### **17.6. Price Request**

**17.6.1. Definition of Price Request.** A Price Request ("PR") is a written request prepared by the Architect requesting the Contractor to submit to the SCCOE and the Architect an estimate of the effect of a proposed change in the Work on the Contract Price and the Contract Time.

**17.6.2. Scope of Price Request.** A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

#### **17.7. Proposed Change Order**

**17.7.1. Definition of Proposed Change Order.** A Proposed Change Order ("PCO") is a written request prepared by the Contractor requesting that the SCCOE and the Architect issue a Change Order based upon a proposed change to the Work.

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

**17.7.3. Changes in 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 Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay.

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

**17.7.5. Time to Submit PCO.** Contractor shall submit its PCO within five (5) days of the date Contractor 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 SCCOE.

#### **17.8. Format for Proposed Change**

**17.8.1.** The following "Format for Proposed Change For Subcontractor Performed Work" and "Format For Proposed Change For Contractor Performed Work" shall be used as applicable by the SCCOE and the Contractor (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation

1.

**FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK**

	<b><u>SUBCONTRACTOR PERFORMED WORK</u></b>	<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
<b>(A)</b>	<b><u>Labor Charge</u></b> 1. <b>Hours.</b> Attach total itemized hours and rates fully encumbered. 2. • 3. <b>Rate.</b> This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations (“DIR”) for the applicable labor category.		
<b>(B)</b>	<b><u>Material Charge</u></b> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s). •		
<b>(C)</b>	<b><u>Equipment Charge</u></b> Attach invoice(s) from supplier(s). •		
<b>(D)</b>	• <b><u>Subtotal (A+B+C)</u></b>		
<b>(E)</b>	<b><u>Subcontractor’s Overhead and Profit Charge</u></b> 1. This shall be no more than ten percent (10%) of item (D). • 2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor’s Subcontractor(s) (i.e., all “lower-tier” Subcontractor(s)).		
<b>(F)</b>	• <b><u>Subtotal (D+E)</u></b>		
<b>(G)</b>	<b><u>Contractor’s Overhead, Profit, Bond and Insurance</u></b> 1. This shall be no more than fifteen percent (5%) of Item (F). • 2. This shall be the total mark-up permitted for Contractor.		
<b>(H)</b>	• <b><u>Subtotal (F+G)</u></b>		
<b>(I)</b>	<b><u>Time</u></b>	_____ Days	



**FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK**

	<u>CONTRACTOR PERFORMED WORK</u>	<u>ADD</u>	<u>DEDUCT</u>
(A)	<p><b><u>Labor Charge</u></b></p> <p>1. <b>Hours.</b> Attach total itemized hours and rates fully encumbered.</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>2. <b>Rate.</b> This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations (“DIR”) for the applicable labor category.</p>		
(B)	<p><b><u>Material Charge</u></b></p> <p>Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).</p> <ul style="list-style-type: none"> <li>•</li> </ul>		
(C)	<p><b><u>Equipment Charge</u></b></p> <p>Attach invoice(s) from supplier(s).</p> <ul style="list-style-type: none"> <li>•</li> </ul>		
(D)	<ul style="list-style-type: none"> <li>•</li> </ul> <p><b><u>Subtotal (A+B+C)</u></b></p>		
(E)	<p><b><u>Contractor’s Overhead, Profit, Bond and Insurance</u></b></p> <p>1. This shall be no more than fifteen percent (15%) of <b>Item (D)</b>.</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>2. This shall be the total mark-up permitted for Contractor.</p>		
(F)	<ul style="list-style-type: none"> <li>•</li> </ul> <p><b><u>Subtotal (D+E)</u></b></p>		
(G)	<p><b><u>Time</u></b></p>	<p>∴</p> <p>_____ Days</p>	
(H)	<p><b><u>Contractor’s Home Office Overhead</u></b></p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>This shall be no more than \$200 times the number of days of Item (I) (i.e., not to exceed \$200/day)</p>		
(I)	<p><b><u>TOTAL (F+H)</u></b></p>		

**17.8.2.** All proposed cost requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

**17.8.2.1. Labor.** Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

**17.8.2.1.1.** The Contractor's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Contractor include any other charges than as indicated herein without the prior written approval of the SCCOE.

**17.8.2.2. Material.** Material quantities, and types of products, and transportation costs, if applicable.

**17.8.2.3. Equipment.** Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

**17.8.2.3.1.** The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

**17.8.2.3.2.** The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.

**17.8.2.3.3.** Tools and equipment common to the trade having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

**17.8.2.3.4.** Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.

**17.8.2.3.5.** Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor shall immediately notify SCCOE of such and the price set for any such rental shall be agreed upon in advance by the Contractor and the SCCOE.

**17.8.2.3.6. Overhead and Profit.** Markup for overhead and profit, which shall be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

**17.8.2.3.6.1.** All field, field office and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

**17.8.2.3.6.2.** All field, field office and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment common to the trade with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

**17.8.2.3.6.3.** Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

**17.8.2.3.6.4.** All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

**17.8.2.3.6.5.** All costs for Contractor's bonds and insurance.

**17.8.2.3.6.6.** Taxes: Federal excise tax shall not be included. SCCOE will issue an exemption on request.

**17.8.2.3.7.** Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request.

#### **17.9. Change Order Certification**

**17.9.1.** All Change Orders and PCOs shall include the following certification by the Contractor. The Parties acknowledged that if a Change Order is approved that does not include this language, that Change Order shall be deemed to include this certification language:

***The Contractor approves the foregoing as to the changes, if any, and the price specified for each item and the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete all additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the SCCOE. It is expressly understood that the value of the extra Work or changes includes all of the Contractor's costs, expenses, field overhead, home office overhead, profit, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.***

#### **17.10. Determination of Change Order Cost**

**17.10.1.** The amount of the increase or decrease in the Contract Price from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the SCCOE's discretion:

- 17.10.1.1.** SCCOE acceptance of a PCO;
- 17.10.1.2.** By unit prices contained in Contractor's original bid;
- 17.10.1.3.** By agreement between SCCOE and Contractor.

**17.11. Deductive Change Orders**

If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total overhead and profit to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) overhead and profit to be deducted with the amount of its deducted work, for a total minimum of ten percent (10%) total overhead and profit to be deducted. Any deviation from this provision shall not be allowed.

**17.12. Discounts, Rebates and Refunds**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

**17.13. Accounting Records**

With respect to portions of the Work performed by Change Orders and Construction Change Directives, Contractor shall keep and maintain cost-accounting records satisfactory to the SCCOE, which shall be available to the SCCOE on the same terms as any other books and records Contractor is required to maintain pursuant to the Contract Documents.

**17.14. Notice Required**

If Contractor is seeking an adjustment in the Contract Price, or any extension in the Contract Time for Completion, it shall notify SCCOE pursuant to the provisions of the Contract Documents. No adjustment in the Contract Price or Contract Time shall be considered unless made in accordance with the Contract Documents. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such contract adjustment shall only be authorized by a Change Order.

**17.15. Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders or Construction Change Directives issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

**17.16. Alteration to Change Order Language**

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

**17.17. Failure of Contractor to Execute Change Order**

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

**18. REQUEST FOR INFORMATION**

**18.1.** Any Request for Information (“RFI”) shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. Contractor shall make suggestions and interpretations of the issue raised by each RFI. An RFI cannot modify the Contract Price, Contract Time, or the Contract Documents.

**18.2.** Contractor shall be liable to the SCCOE for all costs incurred by the SCCOE associated with the processing, reviewing, evaluating and responding to any RFI, including without limitation, fees of the Architect and any other design consultant to the Architect or the SCCOE, that SCCOE reasonably determines:

**18.2.1.** Does not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; or

**18.2.2.** Does not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract; or

**18.2.3.** Requests an interpretation or decision of a matter where the information sought is equally available to the Contractor; or

**18.2.4.** Is not justified for any other reason.

**18.3.** Prior to submitting the RFI, Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

**18.4.** Contractor shall be responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to the Contractor’s labor productivity. An RFI may be considered untimely if not submitted within **Forty-Eight (48) hours** of receipt from a Contractor’s subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or for labor impact against the SCCOE.

**19. PAYMENTS**

**19.1. Contract Price**

**19.1.1.** The Contract Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by the SCCOE to the Contractor for performance of the Work pursuant to the Contract Documents.

**19.2. Applications for Progress Payments**

**19.2.1. Procedure for Applications for Progress Payments**

**19.2.1.1. Application for Progress Payment**

**19.2.1.1.1.** Not before the fifth (5<sup>th</sup>) day of each calendar month during the progress of the Work, Contractor shall submit to the SCCOE and the Architect an itemized Application for Payment for Work completed in accordance with the Schedule of Values. The Application for Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the SCCOE in writing:

- 19.2.1.1.1.1.** The amount paid to the date of the Application for Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- 19.2.1.1.1.2.** The amount being requested by the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- 19.2.1.1.1.3.** The balance that will be due to each of the entities after payment is made;
- 19.2.1.1.1.4.** A certification that the As-Built Drawings and annotated Specifications are current;
- 19.2.1.1.1.5.** An Itemized breakdown of Work performed;
- 19.2.1.1.1.6.** An updated and acceptable construction schedule in conformance with the provisions herein;
- 19.2.1.1.1.7.** The additions to and subtractions from the Contract Price and Contract Time;
- 19.2.1.1.1.8.** A total of the retentions held;
- 19.2.1.1.1.9.** The material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the SCCOE may require from time to time;
- 19.2.1.1.1.10.** The percentage of completion of the Contractor's Work by line item;
- 19.2.1.1.1.11.** The Schedule of Values updated from the preceding Application for Payment;
- 19.2.1.1.1.12.** A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current progress payment;
- 19.2.1.1.1.13.** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the previous progress payment; and
- 19.2.1.1.1.14.** A certification by the Contractor of the following:
- 19.2.1.1.1.15.** *The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or*

**entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the SCCOE has been informed.** If requested by the SCCOE, a third party, or as required by the California Department of Industrial Relations all requested or required certified payroll record (“CPR(s)”) for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.

**19.2.1.1.2.** Contractor shall be subject to the False Claims Act set forth under Government Code section 12650 et seq., for information provided with any Application for Progress Payment.

**19.2.2. Prerequisites for Progress Payments**

**19.2.2.1. First Payment Request:** The following items, if applicable, must be completed before SCCOE will accept and/or process Contractor's first payment request:

- 19.2.2.1.1.** Installation of the Project sign;
- 19.2.2.1.2.** Installation of field office;
- 19.2.2.1.3.** Installation of temporary facilities and fencing;
- 19.2.2.1.4.** Schedule of Values;
- 19.2.2.1.5.** Contractor’s Construction Schedule;
- 19.2.2.1.6.** Schedule of unit prices, if applicable;
- 19.2.2.1.7.** Submittal Schedule;
- 19.2.2.1.8.** Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.2.1.9.** Copies of necessary permits;
- 19.2.2.1.10.** Copies of authorizations and licenses from governing authorities;
- 19.2.2.1.11.** Initial progress report;
- 19.2.2.1.12.** Surveyor qualifications;
- 19.2.2.1.13.** Written acceptance of SCCOE's survey of rough grading, if applicable;
- 19.2.2.1.14.** List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.2.1.15.** All bonds and insurance endorsements; and
- 19.2.2.1.16.** Resumes of Contractor’s project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

**19.2.2.2. Second Payment Request:** SCCOE will not process the second payment request until and unless all submittals and Shop Drawings have been accepted for review by the Architect.

**19.2.2.3. No Waiver of Criteria:** Any payment made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by SCCOE. Instead, such payment shall be construed as a good faith effort by SCCOE to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a material breach of the Contract by Contractor and may subject Contractor to termination.

### **19.3. Progress Payments**

#### **19.3.1. SCCOE's Approval of Application for Payment**

**19.3.1.1.** Upon receipt of an Application for Payment, SCCOE shall act in accordance with the following:

**19.3.1.1.1.** Each Application for Payment shall be reviewed by the SCCOE as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

**19.3.1.1.2.** Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the SCCOE to make a payment without being subject to any applicable statute regarding prompt payment or interest accrual, shall be reduced by the number of days by which the SCCOE exceeds this seven-day return requirement.

**19.3.1.1.3.** An approved Application for Payment shall be considered payable if funds are available for payment after the deduction of amounts allowed by law and/or pursuant to the section herein entitled "Decisions to Withhold Payment,"

**19.3.1.2.** The SCCOE's review of the Contractor's Application for Payment will be based on the SCCOE's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the SCCOE's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

**19.3.1.2.1.** Observation of the Work for general conformance with the Contract Documents,

**19.3.1.2.2.** Results of subsequent tests and inspections,

**19.3.1.2.3.** Minor deviations from the Contract Documents correctable prior to Completion, and

**19.3.1.2.4.** Specific qualifications expressed by the Architect.

**19.3.1.3.** SCCOE's approval of each Application for Payment shall be based on Contractor complying with all requirements for a fully complete and valid Application for Payment.

#### **19.3.2. Payments to Contractor**

**19.3.2.1.** Within thirty (30) days after approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the



aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in Contractor's estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the SCCOE's right to enforce each and every provision of this Contract, and the SCCOE shall have the right subsequently to correct any error made in any estimate for payment.

**19.3.2.2.** SCCOE shall withhold five percent (5%) retention from all Progress Payments.

**19.3.2.3.** SCCOE may withhold ten percent (10%) retention from all Progress Payments pursuant to Public Contract Code section 7201, if the Project is determined to be "substantially complex."

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

**19.3.3. No Waiver**

No payment by SCCOE hereunder shall be interpreted so as to imply that SCCOE has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the SCCOE may enforce each and every provision of this Contract. The SCCOE may correct or require correction of any error subsequent to any payment.

**19.3.4. Warranty of Title**

**19.3.4.1.** If a lien or a claim based on a stop notice or stop payment notice of any nature should at any time be filed against the Work or any SCCOE property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by SCCOE and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop notice or stop payment notice to be released or discharged immediately therefrom.

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

**19.4. Decisions to Withhold Payment**

**19.4.1. Reasons to Withhold Payment**

SCCOE may withhold payment in whole, or in part, to the extent reasonably necessary to protect the SCCOE if, in the SCCOE's opinion, the representations to the SCCOE required herein cannot be made. SCCOE may withhold payment, in whole, or in part, to such extent as may be necessary to protect the SCCOE from loss because of, but not limited to:

**19.4.1.1.** Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;

**19.4.1.2.** Stop notices, stop payment notices or other liens served upon the SCCOE as a result of the Contract;

**19.4.1.3.** Liquidated damages assessed against the Contractor;

- 19.4.1.4.** The cost to complete the Work if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the Completion Date;
- 19.4.1.5.** Damage to the SCCOE or other contractor(s);
- 19.4.1.6.** Unsatisfactory performance of the Work by Contractor;
- 19.4.1.7.** Failure to store and properly secure materials;
- 19.4.1.8.** Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 19.4.1.9.** Failure of the Contractor to maintain As-Built Drawings;
- 19.4.1.10.** Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 19.4.1.11.** Unauthorized deviations from the Contract Documents;
- 19.4.1.12.** Failure of the Contractor to perform the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- 19.4.1.13.** If requested by the SCCOE, or the failure to provide to the DIR, certified payroll records acceptable to the SCCOE and the DIR for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- 19.4.1.14.** Failure to properly pay prevailing wages as defined in Labor Code sections 1720 et seq. and/or failure to comply with any other Labor Code requirements;
- 19.4.1.15.** Failure to properly maintain or clean up the Site;
- 19.4.1.16.** Failure to timely indemnify, defend or hold harmless the SCCOE;
- 19.4.1.17.** Any payments due to the SCCOE, including but not limited to payments for failed tests, utilities changes, or permits;
- 19.4.1.18.** Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;
- 19.4.1.19.** Failure to pay any royalty, license or similar fees;
- 19.4.1.20.** Failure of the Contractor to submit on a timely basis all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to the SCCOE, and to not cause a delay in the Completion or approval of the Project; or
- 19.4.1.21.** Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines imposed therefore against Contractor or SCCOE.
- 19.4.1.22.** Payment is delayed due to an audit inquiry by the State, the County Office of Education, the County, or any entity with jurisdiction related to the Project.

**19.4.1.23.** Contractor is otherwise in breach, default or in substantial violation of any provision of the Contract;

**19.4.2. Reallocation of Withheld Amounts**

**19.4.2.1.** SCCOE may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, SCCOE shall make such payments on behalf of Contractor. If any payment is so made by SCCOE, then that amount shall be considered a payment made pursuant to the Contract and SCCOE shall not be liable to Contractor for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. SCCOE will render Contractor an accounting of funds disbursed on behalf of Contractor.

**19.4.2.2.** If Contractor defaults or neglects to perform the Work in accordance with the Contract Documents or fails to perform any provision thereof, SCCOE may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. SCCOE shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If SCCOE deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

**19.4.3. Payment After Cure**

When Contractor cures the grounds for declining approval, payment shall be made for amounts so withheld. No interest shall be paid on any retention or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

**19.5. Subcontractor Payments**

**19.5.1. Payments to Subcontractors.** No later than seven (7) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

**19.5.2. No Obligation of SCCOE for Subcontractor Payment.** SCCOE shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

**19.5.3. Joint Checks.** SCCOE shall have the right in its sole discretion, if necessary for the protection of the SCCOE, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the SCCOE and a Subcontractor of any tier, any obligation from the SCCOE to such Subcontractor, or rights in such Subcontractor against the SCCOE.

**20. COMPLETION OF THE WORK**

**20.1. Completion**

**20.1.1.** The Project may only be accepted by action of the SCCOE.

**20.1.2.** SCCOE shall accept the Project and may have a Notice of Completion recorded when Project Completion has been achieved in accordance with the Contract Documents and to the satisfaction of

SCCOE. For purposes of the payment of Retention, Completion is defined in Public Contract Code section 7107. For purposes of the timely filing of Stop Payment Notices, Completion is defined in California Civil Code section 9200, et seq.

**20.1.3.** Although there is no “substantial completion” for this Project, the SCCOE, at its sole option, may accept the Project and record a Notice of Completion when Project Completion has been completed to the satisfaction of SCCOE, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within thirty-five (35) days after the date of the SCCOE's acceptance of the Project, SCCOE shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by SCCOE, until the item(s) are completed.

**20.1.4.** At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, SCCOE may elect to proceed as provided herein related to adjustments to Contract Price, and/or SCCOE's right to perform the Work of the Contractor.

## **20.2. Closeout Procedures**

### **20.2.1. Punch List**

Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected (“Punch List”). Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

### **20.2.2. Closeout Requirements**

#### **20.2.2.1. Utility Connections**

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

#### **20.2.2.2. As-Built Drawings**

**20.2.2.2.1.** In addition to its requirement to provide monthly As-Built Drawings to the SCCOE, the Contractor shall provide a final set of As-Built Drawings, sometimes referred to as “Record Drawings,” showing all of the Work as actually constructed upon Completion of the Project as indicated in the Specifications.

**20.2.2.2.2.** Contractor is liable and responsible for any and all inaccuracies in the As-Built Drawings, even if inaccuracies become evident at a future date.

**20.2.2.2.3.** Upon Completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector's approval of the final set of As-Built Drawings.

**20.2.2.3. Operations & Maintenance Manuals:** Contractor shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

**20.2.2.4. Closeout Documentation:** Contractor shall provide all Closeout Documentation, which shall include the following, without limitation:

**20.2.2.4.1.** A full set of final As-Built Drawings, as further defined herein.

**20.2.2.4.2.** All Operations & Maintenance Manuals and information, as further defined herein.

**20.2.2.4.3.** All Warranties, as further defined herein.

**20.2.2.4.4.** Verified report(s) for all scope(s) of work (DSA 6-C, Rev 03/22/13, or more recent revision if available).

### **20.3. Final Inspection**

**20.3.1.** Contractor shall comply with Punch List procedures as provided herein, and maintain the presence of a Project Superintendent and Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and SCCOE a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

**20.3.2.** Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the SCCOE and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the SCCOE its final Application for Payment.

### **20.3.3. Final Inspection Requirements**

**20.3.3.1.** Before calling for final inspection, Contractor shall determine that the following have been performed:

**20.3.3.1.1.** The Work has been completed.

**20.3.3.1.2.** All life safety items are completed and in working order.

**20.3.3.1.3.** Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.

**20.3.3.1.4.** Electrical circuits scheduled in panels and disconnect switches labeled.

**20.3.3.1.5.** Painting and special finishes complete.

**20.3.3.1.6.** Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.

**20.3.3.1.7.** Tops and bottoms of doors sealed.

**20.3.3.1.8.** Floors waxed and polished as specified.

**20.3.3.1.9.** Broken glass replaced and glass cleaned.

**20.3.3.1.10.** Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.

**20.3.3.1.11.** Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.

**20.3.3.1.12.** Finished and decorative work shall have marks, dirt, and superfluous labels removed.

**20.3.3.1.13.** Final cleanup, as provided herein.

#### **20.4. Costs of Multiple Inspections**

More than two (2) requests of the SCCOE to make a final inspection shall be considered an additional service of SCCOE, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

#### **20.5. Partial Occupancy or Use Prior to Completion**

**20.5.1. SCCOE's Rights to Occupancy.** The SCCOE may occupy or use any completed or partially completed portion of the Work at any stage. Neither the SCCOE's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by SCCOE shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The SCCOE and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the SCCOE shall have the right to occupy or use any portion of the Work that it needs or desires to use.

**20.5.2. Inspection Prior to Occupancy or Use.** Immediately prior to partial occupancy or use, the SCCOE, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**20.5.3. No Waiver.** Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

### **21. FINAL PAYMENT AND RETENTION**

#### **21.1. Final Payment**

**21.1.1.** Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment or similar document indicating Architect's agreement that the Project has reached Completion. The SCCOE shall thereupon jointly inspect the Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work has not reached Completion to the satisfaction of the SCCOE.

**21.1.2.** Upon acceptance of the Work of the Contractor as having reached Completion to the satisfaction of the SCCOE (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the SCCOE may record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final payment from the SCCOE, pay all the amount(s) due to its Subcontractors.

#### **21.2. Prerequisites for Final Payment**

The following conditions must be fulfilled prior to Final Payment:

**21.2.1.** A full and final waiver or release of all stop notices and stop payment notices in connection with the Work shall be submitted by Contractor, including a release of stop notice or stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all stop notice or stop payment notice rights.

**21.2.2.** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the current progress payment;

**21.2.3.** A duly completed and executed unconditional waiver and release upon final payment compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the previous progress payment; and

**21.2.4.** Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of SCCOE required under the Contract Documents.

**21.2.5.** Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

**21.2.6.** Contractor must have completed all requirements set forth under "Closeout Procedures," including, without limitation, submission of an approved set of complete Record Drawings.

**21.2.7.** Architect shall have issued its written approval that final payment can be made.

**21.2.8.** Contractor shall have delivered to the SCCOE all manuals and materials required by the Contract Documents.

**21.2.9.** Contractor shall have completed final clean up as provided herein.

### **21.3. Retention**

**21.3.1.** The retention, less any amounts disputed by the SCCOE or that the SCCOE has the right to withhold pursuant to provisions herein, shall be paid:

**21.3.1.1.** After approval of the SCCOE by the Architect's Certificate of Payment;

**21.3.1.2.** After the satisfaction of the conditions set forth herein;

**21.3.1.3.** Within sixty (60) days after Completion;

**21.3.1.4.** No earlier than thirty-five (35) days of the recording of the Notice of Completion by SCCOE, if a Notice of Completion is recorded by the SCCOE.

**21.3.2.** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the SCCOE and the Contractor pursuant to Public Contract Code section 22300.

### **21.4. Substitution of Securities**

The SCCOE will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

**22. UNCOVERING OF WORK**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the SCCOE, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Price or Contract Time.

**23. NONCONFORMING WORK AND CORRECTION OF WORK**

**23.1. Nonconforming Work**

**23.1.1.** Contractor shall promptly remove from Premises all Work identified by SCCOE as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the SCCOE and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the SCCOE or other Contractors caused thereby.

**23.1.2.** If Contractor does not remove Work that SCCOE has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed **FORTY-EIGHT (48)** hours, SCCOE may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, SCCOE may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the SCCOE and/or SCCOE may withhold those amounts from payment(s) to Contractor.

**23.2. Correction of Work**

**23.2.1. Correction of Rejected Work.** Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the SCCOE, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

**23.2.2. One-Year Warranty Corrections.** If, within one (1) year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the SCCOE to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The SCCOE shall give such notice promptly after discovery of the condition.

**23.3. SCCOE's Right to Perform Work**

**23.3.1.** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, the SCCOE, after **FORTY-EIGHT (48)** hours written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**23.3.2.** If it is found at any time, before or after Completion of the Work, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, SCCOE may require at its option:



**23.3.2.1.** That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the SCCOE;

**23.3.2.2.** That the SCCOE deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

**23.3.2.3.** That the SCCOE exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the SCCOE hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the SCCOE shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or SCCOE may withhold those amounts from payment(s) to Contractor.

## **24. TERMINATION AND SUSPENSION**

### **24.1. SCCOE's Right to Terminate Contractor for Cause**

**24.1.1. Grounds for Termination.** The SCCOE, in its sole discretion, may terminate the Contract and/or terminate the Contractor's right to perform the work of the Contract based upon the following:

**24.1.1.1.** Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

**24.1.1.2.** Contractor fails to complete said Work within the time specified or any extension thereof, or

**24.1.1.3.** Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

**24.1.1.4.** Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days; or

**24.1.1.5.** Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

**24.1.1.6.** Contractor persistently or repeatedly refuses fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

**24.1.1.7.** Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or

**24.1.1.8.** Contractor persistently disregards laws, or ordinances, or instructions of SCCOE; or

**24.1.1.9.** Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

**24.1.1.10.** Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

### **24.1.2. Notification of Termination**

**24.1.2.1.** Upon the occurrence at SCCOE's sole determination of any of the above conditions, SCCOE may, without prejudice to any other right or remedy, serve written notice upon Contractor

and its Surety of SCCOE's termination of this Contract and/or the Contractor's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to SCCOE for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the Contractor's right to perform the Work shall cease and terminate. Upon termination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.

**24.1.2.2.** Upon termination, SCCOE may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:

**24.1.2.2.1.** Within three (3) days after service upon it of the notice of tender, gives SCCOE written notice of Surety's intention to take over and perform this Contract; and

**24.1.2.2.2.** Commences performance of the Contract within three (3) days from date of serving of its notice to SCCOE.

**24.1.2.3.** If Surety fails to notify SCCOE or begin performance as indicated herein, SCCOE may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to SCCOE for any excess cost or other damages the SCCOE incurs thereby. Time is of the essence in the Contract. If the SCCOE takes over the Work as herein provided, SCCOE may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.

### **24.1.3. Effect of Termination**

**24.1.3.1.** Contractor shall, only if ordered to do so by the SCCOE, immediately remove from the Site all or any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. SCCOE retains the right, but not the obligation, to keep and use any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. Contractor and its Surety shall be liable upon the performance bond for all damages caused the SCCOE by reason of the Contractor's failure to complete the Contract.

**24.1.3.2.** In the event that the SCCOE shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the SCCOE shall not be liable nor account to the Contractor in any way for the time within which, or the manner in which, the Work is performed by the SCCOE or for any changes the SCCOE may make in the Work or for the money expended by the SCCOE in satisfying claims and/or suits and/or other obligations in connection with the Work.

**24.1.3.3.** In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor or any impact or impairment of Contractor's bonding capacity.

**24.1.3.4.** If the expense to the SCCOE to finish the Work exceeds the unpaid Contract Price, Contractor and Surety shall pay difference to SCCOE within twenty-one (21) days of SCCOE's request.

**24.1.3.5.** SCCOE shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the SCCOE, no Subcontractor shall have any claim against the SCCOE or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The SCCOE or any third party, as the case may

be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the SCCOE so elect, the Contractor shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the SCCOE may require, for the purpose of fully vesting in the SCCOE the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the SCCOE for expenses and damages suffered by the SCCOE as a result of any default, acts, or omissions of the Contractor. Contractor must include this assignment provision in all of its contracts with its Subcontractors.

**24.1.3.6.** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to SCCOE.

## **24.2. Emergency Termination of Public Contracts Act of 1949**

**24.2.1.** The Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

**24.2.1.1.** Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

**24.2.1.2.** Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

**24.2.2.** Compensation to the Contractor shall be determined at the sole discretion of SCCOE on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the SCCOE's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted Schedule of Values, that price shall control. SCCOE, in its sole discretion, may adopt the Contract Price as the reasonable value of the Work performed or any portion thereof.

## **24.3. Termination of Contractor for Convenience**

**24.3.1.** SCCOE in its sole discretion may terminate the Contract upon three (3) days written notice to the Contractor. Under a termination for convenience, the SCCOE retains the right to all the options available to the SCCOE if there is a termination for cause. In case of a termination for convenience, Contractor shall have no claims against the SCCOE except:

**24.3.1.1.** The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

**24.3.1.2.** Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all Contractor's and its Subcontractor(s)' mobilization

and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience.

#### **24.4. Suspension of Work**

**24.4.1.** SCCOE may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as SCCOE may determine. When the SCCOE resumes the Project, the Parties will attempt to negotiate an adjustment in the Contract Price for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted Contract Price, the SCCOE may terminate the Contract as permitted herein.

**24.4.2.** In the event that the SCCOE exercises this option, the SCCOE shall pay for any and all Work and materials completed or delivered onto the Site for which value is received, and the value of any and all Work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of six percent (6%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the SCCOE.

#### **24.5. Scope Reduction**

In cases of suspension, partial or complete termination, or at the discretion of the SCCOE, the SCCOE reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

### **25. DISPUTES AND CLAIMS**

#### **25.1. Performance during Dispute and Claim Resolution Process.**

The Contractor shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of SCCOE to resolve Disputes with the Contractor as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the SCCOE's instructions or the Contract terms will be considered a material breach of this Agreement and a waiver of Contractor's rights under this Agreement.

#### **25.2. Waiver.**

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Disputes and Claims section, Contractor waives and releases its rights regarding further review of its Dispute or Claim, unless Contractor and SCCOE mutually agree in writing to other time limits.

#### **25.3. Intention.**

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

#### **25.4. Exclusive Remedy.**

Compliance with the notice provisions of the Contract as well as the claim submission procedures described in this Disputes and Claims section is an express condition precedent to Contractor's right to commence litigation, file a claim under the California Government Code, or commence any other legal action. The Contractor cannot bring assert or bring any Claim in any Government Code claim or

subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process herein. The SCCOE hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.

#### **25.5. Other Provisions.**

If portions of the Contract, other than this Disputes and Claims section 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 Disputes and Claims section shall control the resolution of all Disputes and Claims.

#### **25.6. Subcontractors.**

Contractor is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. Contractor shall indemnify, keep and hold harmless the SCCOE 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 Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

#### **25.7. Dispute and Claim Resolution Process**

**25.7.1. Dispute:** A Dispute is a written demand by Contractor or by Subcontractor(s) or others who make a demand or request by and through Contractor during performance of the Work for an adjustment of the Contract Time, Contract Price, interpretation of the Contract Documents, or other relief with respect to the Contract Documents for which Contractor has previously provided written notice to the SCCOE pursuant to the terms of the Contract which remain unresolved. A PCO may be a Dispute, but the Parties agree that a PCO shall only be a Dispute if:

**25.7.1.1.** The SCCOE states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Dispute Resolution Process, or

**25.7.1.2.** The SCCOE rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Dispute Resolution Process for the portion of the PCO that the SCCOE rejected.

**25.7.2. Claim:** A Claim is a Dispute that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).

#### **25.7.3. Dispute Resolution Process (Not for Claims)**

##### **25.7.3.1. Identifying, Presenting and Documenting a Dispute**

**25.7.3.1.1.** Every Dispute shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the SCCOE within ten (10) calendar days from the date Contractor discovers or reasonably should discover, that an act, error or omission of SCCOE, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to an adjustment of the Contract Price and/or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Dispute. The writing shall:

**25.7.3.1.1.1.** Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute;

**25.7.3.1.1.2.** 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

**25.7.3.1.1.3.** Identify in detail line-item costs if the Dispute seeks money.

**25.7.3.1.1.4.** If the Dispute involves extra work, a detailed cost breakdown of the amounts the Contractor 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 Dispute 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 SCCOE, 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).

**25.7.3.1.1.5.** If the Dispute involves an error or omission in the Contract Documents:

**25.7.3.1.1.5.1.** An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

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

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

**25.7.3.1.2.** The writing shall be accompanied by all documents substantiating Contractor's position regarding the Dispute. A Dispute 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.

**25.7.3.1.3.** Contractor acknowledges that its failure, for any reason, to give written notice (with supporting documentation to permit the SCCOE's review and evaluation) within the time frame required by the provisions in this Disputes and Claims section, or its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Price or Contract Time shall be deemed Contractor'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 such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Contractor further acknowledged that strict compliance with the requirements of the provisions in this Disputes and Claims section is an express condition precedent to Contractor's right to arbitrate or litigate a

claim. Contractor specifically agrees to assert no demands or claims in arbitration or litigation unless there has been strict compliance with the provisions in this Disputes and Claims section.

**25.7.3.1.4. Architect's and/or Construction Manager's ("AE/CM") Initial Decision.** The SCCOE's AE/CM shall issue a written decision regarding the Dispute to the Contractor within ten (10) calendar days of receipt of the written Dispute from the Contractor.

#### **25.7.3.2. Meet and Confer**

**25.7.3.2.1. Where There Is No Agreement:** If there is no agreement between Contractor and the AE/CM on a Contractor's Dispute, then within ten (10) calendar days of the date of the SCCOE's written decision in response to Contractor's Dispute or PCO, Contractor shall give written notice of its demand for a meet and confer meeting with SCCOE staff. A meet and confer meeting with SCCOE staff shall be a condition precedent to Contractor seeking any further relief, including a demand for review as indicated below, in connection with the SCCOE's rejection.

**25.7.3.2.2. Where There Is Partial Agreement:** If Contractor and the AE/CM partially agree on a Contractor's Dispute but do not reach complete agreement, then the AE/CM shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, Contractor shall give written notice of its demand for a meet and confer meeting with SCCOE staff. A meet and confer meeting with SCCOE staff shall be a condition precedent to Contractor seeking any further relief, including a demand for review as indicated below, in connection with the SCCOE's rejection.

**25.7.3.2.3.** SCCOE and Contractor shall schedule the meet and confer meeting as soon as reasonably possible after Contractor's written notice of its demand for a meet and confer meeting.

#### **25.7.3.3. Contractor's Demand for Review of Dispute**

**25.7.3.3.1.** Contractor shall submit a written demand for review to the SCCOE with copy to the AE/CM, within ten (10) calendar days of the meet and confer meeting. The written demand for review shall include copies of all documentation the Contractor intends to rely upon in substantiating Contractor's position regarding the Dispute, including any supplementary documentation the Contractor deems appropriate for the SCCOE's consideration.

**25.7.3.3.1.1. SCCOE's Written Decision.** The SCCOE will review the Dispute and issue a written decision to Contractor within thirty (30) calendar days from the date the demand for review and supporting documentation are received by the SCCOE. The SCCOE has the option to meet with Contractor, or with Contractor and any other party, before issuing a decision.

**25.7.3.3.1.2.** If no decision is issued within thirty (30) days after the demand for review, the SCCOE will be deemed to have rejected Contractor's Dispute in its entirety, and Contractor shall proceed with the Claim Resolution Process below.

**25.7.3.3.1.3.** If the SCCOE's decision completely resolves the Dispute, the SCCOE will prepare and process a Change Order, if applicable, or proceed accordingly.

**25.7.3.3.1.4.** If the SCCOE rejects the Contractor's Dispute in whole or in part or does not issue a timely written response, and if Contractor ever intends to seek relief regarding the unresolved issues of the Dispute, then Contractor shall proceed with the Claim Resolution Process below.

**25.7.3.3.1.5.** Contractor's costs incurred in seeking relief for Disputes and Claims are not recoverable from SCCOE.

**25.7.4. Claim Resolution Process.**

**25.7.4.1.** If Contractor's Dispute has not been resolved during the Dispute Resolution Process, the Contractor shall submit within thirty (30) days of the SCCOE's written decision, a Claim with the required documentation set forth below for SCCOE's consideration.

**25.7.4.2.** Contractor shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of Contractor's Claim will be based on SCCOE records, and the Claim document furnished by Contractor.

**25.7.4.3.** Contractor's Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

**25.7.4.3.1.** General Introduction

**25.7.4.3.2.** General Background Discussion

**25.7.4.3.3.** Index of Issues (listed numerically)

**25.7.4.3.4.** For each issue, provide the following information and begin each issue on a new page:

**25.7.4.3.4.1.** Background

**25.7.4.3.4.2.** Chronology

**25.7.4.3.4.3.** Contractor's position including all reason(s) for SCCOE's potential liability

**25.7.4.3.4.4.** Supporting documentation of merit or entitlement

**25.7.4.3.4.5.** Supporting documentation of damages

**25.7.4.3.5.** All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

**25.7.4.3.6.** Productivity exhibits (if appropriate)

**25.7.4.3.7.** Summary of Damages for each issue

**25.7.4.4.** Supporting documentation of merit or entitlement for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Contractor's Claim.

**25.7.4.5.** Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost



records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the Contractor's Claim.

**25.7.4.6.** Contractor shall include in its Claim documents all issue items and information that Contractor contends are part of its Claim. Issues not included in the Claim documents shall not be considered.

**25.7.4.7.** Each copy of the Claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents.

**25.7.4.8.** The SCCOE may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The SCCOE may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

**25.7.4.9. SCCOE's Written Decision.** The SCCOE will render a written decision to the Contractor relative to the Claim. The SCCOE's written decision shall be final and binding on the party(ies), unless Contractor requests mediation pursuant to this subsection.

**25.7.4.10. Mediation.** Within thirty (30) days after the SCCOE renders its written decision, the Contractor may request that the parties submit the Claim to mediation. Absent a request for mediation, the SCCOE's written decision is final and binding on the parties.

**25.7.4.11. Litigation.** If, after a mediation as indicated above, the parties have not resolved the Claim, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later.

**25.7.5.** The SCCOE shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the SCCOE by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the SCCOE for three times the amount of damages that the SCCOE sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the SCCOE 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.

#### **25.8. Documentation of Resolution.**

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

#### **25.9. Dispute and Claim Resolution Process – Non-Applicability.**

The procedures and provisions in this Disputes and Claims section shall not apply to:

**25.9.1.** SCCOE'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;

**25.9.2.** SCCOE's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from SCCOE 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 Disputes and Claims section and the Contract;

- 25.9.3. Personal injury, wrongful death or property damage claims;
- 25.9.4. Latent defect or breach of warranty or guarantee to repair;
- 25.9.5. Stop notices or stop payment notices; or
- 25.9.6. Any other SCCOE rights as set forth herein.

## **26. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS**

### **26.1. Contractor & Subcontractor Registration**

**26.1.1.** Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs 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.”

**26.1.2.** Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all Contractor’s Subcontractors 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. Contractor represents that all of its Subcontractors are registered pursuant to Labor Code section 1725.5.

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

### **26.2. Wage Rates, Travel and Subsistence**

**26.2.1.** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the SCCOE’s principal office and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of these wage rates at the job site.

**26.2.2.** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the SCCOE but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

**26.2.3.** Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations (“DIR”) (“Director”), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

**26.2.4.** If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

**26.2.5.** Pursuant to Labor Code section 1775, Contractor shall, as a penalty to SCCOE, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the SCCOE and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it.

**26.2.5.1.** The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.

**26.2.5.2.** The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor’s prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

**26.2.5.3.** The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.

**26.2.5.4.** The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

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

**26.2.7.** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

**26.2.8.** Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

### **26.3. Hours of Work**

**26.3.1.** As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by

Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**26.3.2.** Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of SCCOE and to the Division of Labor Standards Enforcement of the DIR.

**26.3.3.** Pursuant to Labor Code section 1813, Contractor shall as a penalty to the SCCOE forfeit the statutory amount (believed by the SCCOE to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

**26.3.4.** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the SCCOE.

#### **26.4. Payroll Records**

**26.4.1.** If requested by the SCCOE, Contractor shall provide to the SCCOE and shall cause each Subcontractor performing any portion of the Work to provide the SCCOE and an accurate and certified payroll record ("CPR(s)"), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

**26.4.1.1.** In addition to any other requirements pursuant to Labor Code sections 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the SCCOE on a weekly basis. The CPRs from the Contractor and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. SCCOE shall not make any payment to Contractor until:

**26.4.1.1.1.** Contractor and/or its Subcontractor(s) provide CPRs acceptable to the SCCOE, and

**26.4.1.1.2.** The SCCOE is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the SCCOE in a timely manner will directly delay the SCCOE's review and/or audit of the CPRs and Contractor's payment.

**26.4.2.** All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

**26.4.2.1.** A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

**26.4.2.2.** CPRs shall be made available for inspection or furnished upon request to a representative of SCCOE, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

**26.4.2.3.** CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the SCCOE, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

**26.4.3.** The form of certification for the CPRs shall be as follows:

I, \_\_\_\_\_ (Name-Print), the undersigned, am the \_\_\_\_\_  
\_\_\_\_\_ (Position in business) with the authority to act for and on behalf of \_\_\_\_\_  
\_\_\_\_\_ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_  
(Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Section 16401 of Title 8 of the California Code of Regulations)

**26.4.4.** Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

**26.4.5.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by SCCOE, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

**26.4.6.** Contractor shall inform SCCOE of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

**26.4.7.** In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to SCCOE, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

**26.4.8.** It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

## **26.5. Apprentices**

**26.5.1.** Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

**26.5.2.** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

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

**26.5.4.** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

**26.5.5.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

**26.5.6.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

**26.5.7.** If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

**26.5.7.1.** Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

**26.5.7.2.** Forfeit as a penalty to SCCOE the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

**26.5.8.** Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

**26.5.9.** Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

**26.5.10.** Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108, et seq.

## **26.6. Non-Discrimination**

**26.6.1.** Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and

all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

**26.6.2.** Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

**26.7. Labor First Aid**

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation section 330 et seq. of Title 8 of the California Code of Regulations.

**27. MISCELLANEOUS**

**27.1. Assignment of Antitrust Actions**

**27.1.1.** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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, made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

**27.1.2.** Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

**27.1.3.** Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

**27.1.4.** Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**27.1.5.** Under this Article, “public purchasing body” is SCCOE and “bidder” is Contractor.

**27.2. Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, SCCOE, upon request, will execute documents necessary to show (1) that SCCOE is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of SCCOE. No Federal Excise Tax for such materials shall be included in any Contract Price.

**27.3. Taxes**

Contract Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

**27.4. Shipments**

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Contract Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

**27.5. Compliance with Government Reporting Requirements**

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project which it is part, or for any other reason, Contactor shall comply with those reporting requirements at the request of the SCCOE at no additional cost.

END OF DOCUMENT



**DOCUMENT 00 71 00**

**SPECIAL CONDITIONS**

**[THIS DOCUMENT MUST BE MODIFIED AND ADAPTED FOR EACH SPECIFIC PROJECT]**

**25. Prequalification [IF PREQUALIFICATION IS REQUIRED PURSUANT PUBLIC CONTRACT CODE 20111.6]**

All bidders are required to have been prequalified by the SCCOE. In addition, all subcontractors with the following license classifications must also have been prequalified by the SCCOE: Subcontractors with an A, B, C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 license(s) that intend to bid as a first-tier Subcontractor to a general contractor (prime contractor) that is bidding directly to the SCCOE. The following Subcontractors have been prequalified by the SCCOE:

- Mechanical Subcontractors

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

- Electrical Subcontractors

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

- Plumbing Subcontractors

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, CA; CSLB No. \_\_\_\_\_

26. **Mitigation Measures**

Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.)

27. **Modernization Projects**

- a. **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 SCCOE and onsite SCCOE personnel before Contractor commences Work. Unless agreed to otherwise in writing, only a school custodian 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 Contractor’s Work, the overtime wages for the custodian will be paid by Contractor, unless, at the discretion of SCCOE, other arrangements are made in advance.
- b. **Master Key.** Upon request, SCCOE may, at is own discretion, provide a master key to the school site for the convenience of Contractor. Contractor agrees to pay all expenses to re-key the entire school site and all other affected SCCOE buildings if the master key is lost or stolen or if any unauthorized party obtains a copy of the key or access to the school.
- c. **Maintaining Services.** Contractor 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 shall be only as arranged in advance with SCCOE. Contractor shall provide temporary services to all facilities interrupted by Contractor’s Work.
- d. **Maintaining Utilities.** Contractor shall maintain in operation during term of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
- e. **Confidentiality.** Contractor shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Contractor encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of the Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.
- f. **Work During Instructional Time.** By submitting its bid, Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor 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 SCCOE.

- g. **No Work During Student Testing.** Contractor shall, at no additional cost to SCCOE and at SCCOE's request, coordinate its Work to not disturb SCCOE students including, without limitation, not performing any Work when students at the Site are taking State-required tests.

28. **Badge Policy For Contractors**

Contractor shall provide their workers and all of Subcontractors' workers with identification badges. These badges shall be worn by all members of the Contractor's staff and all of Subcontractors' staff who are working in a SCCOE facility.

- a. Badges must be filled out in full and contain the following information:
  - (1) Name of Contractor
  - (2) Name of Employee
  - (3) Contractor's address and phone number
- b. Badges must be worn when Contractor or his/her employees are on site and must be visible at all times. Contractors must inform their employees that they are required to allow SCCOE employees, the Architect, the Construction Manager, the Program Manager, or the Project Inspector to review the information on the badges upon request.
- c. Failure to display identification badges as required by this policy may result in the assessment of fines against the Contractor.

29. **Substitution for Specified Items**

- a. Requests for substitutions prior to award of the Contract shall be done within the time period indicated in the Instructions to Bidders.
- b. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35)** days of the date of the Notice of Award. This time period can be extended by the SCCOE only, in its sole discretion.
- c. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
  - (1) If the material, process, or article offered by Contractor is not, in the opinion of the SCCOE, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.
  - (2) This provision shall not be applicable with respect to any material, product, thing or service for which SCCOE made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- d. A request for a substitution shall be in writing and shall include:
  - (1) All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

- (2) Available maintenance, repair or replacement services;
  - (3) Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;
  - (4) Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the SCCOE or others under Contract with the SCCOE); and
  - (5) The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- e. No substitutions shall be made until approved, in writing, by the SCCOE. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:
- (1) The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;
  - (2) The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
  - (3) The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
  - (4) The Contractor shall be responsible for any re-design costs occasioned by SCCOE's acceptance and/or approval of any substitute; and
  - (5) The Contractor shall, in the event that a substitute is less costly than that specified, credit the SCCOE with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- f. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.
- g. In no event shall the SCCOE be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
- h. If the SCCOE approves a substitution after the award of the Contract, the SCCOE shall memorialize that approval in a Change Order or other applicable Contract modification process.

30. **Fingerprinting**

Contractor shall comply with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Contractor shall not permit any employee to have any contact with SCCOE pupils until such time as Contractor has verified in writing to the SCCOE, that such employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

31. **Weather Days**

Delays due to Adverse Weather conditions will only be permitted in compliance with the provisions in the General Conditions and only if the number of days of Adverse Weather exceeds the following parameters:

**[MODIFY DAYS FOR AREA OF PROJECT] Remove [ ] when done.**

January	<b>[11]</b>	July	<b>[0]</b>
February	<b>[10]</b>	August	<b>[0]</b>
March	<b>[10]</b>	September	<b>[1]</b>
April	<b>[6]</b>	October	<b>[4]</b>
May	<b>[3]</b>	November	<b>[7]</b>
June	<b>[1]</b>	December	<b>[10]</b>

32. **Insurance Policy Limits.** Contractor’s insurance shall be with insurance companies with an A.M. Best rating of no less than **A+**. The limits of insurance shall not be less than:

<b>Commercial General Liability</b>	Combined Single Limit	<b>[\$2,000,000]</b> per occurrence; <b>[\$4,000,000]</b> aggregate
	Product Liability and Completed Operations	<b>[\$2,000,000]</b> per occurrence; <b>[\$4,000,000]</b> aggregate
<b>Automobile Liability – Any Auto</b>	Combined Single Limit	<b>[\$1,000,000]</b> per occurrence
<b>Workers Compensation</b>		Workers’ Compensation with Employer’s liability, of no less than \$1,000,000 per accident
<b>Employers’ Liability</b>		<b>[\$2,000,000]</b>
<b>Builders Risk (Course of Construction)</b>		Issued for the value and scope of Work indicated herein.
<b>Property of Others Insurance</b>		Coverage for all claims for Stored Materials that are lost, stolen, or damaged. Please indicate if included in Builder’s Risk.
<b>Excess Liability</b>		<b>[\$4,000,000]</b>

33. **Permits, Certificates, Licenses, Fees, Approval**

a. **Approvals, Certificates, Fees, Inspections, Licenses, Permits, Etc.**

(1) **Permits in Bid Price.** Contractor shall include in its Bid the cost of any approvals, certificates, fees, inspections, licenses, permits or similar requirements necessary for the performance of the Work ("Permits"). SCCOE will reimburse Contractor at the direct cost of such Permits with no mark-ups.

(1) "Permits" includes, without limitation, any of the following if required: temporary or permanent building, mechanical, electrical or plumbing permits; certificates of occupancy; curb-breaking permits, highway entrance permits; water permits; local inspector fees; etc.

(2) "Permits" does not include Project Inspector fees (which will be paid by the SCCOE unless otherwise indicated herein), professional licensing, or contractors' licensing.

(3) The Contractor shall be required to obtain all Permits. The Contractor shall ensure sufficient time in its Construction Schedule to secure and obtain all permits and shall not be permitted to claim a delay in the Project due to a delay in obtaining a Permit.

b. **Project Inspection**

(1) In addition to the requirements in the Contract Documents related to cooperation with and authority of the DSA Project Inspector(s) for the Project, Contractor acknowledges that the DSA inspection, approval and certification process for projects was revised in 2012-2013 and that Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from 2012-2013: PR 13-01 (Procedure: Construction Oversight Process) - Duties of Contractor related to the use of "Project Inspection Card" (Form DSA 152).

(1) The Contractor shall carefully study the DSA approved documents and shall plan a schedule of operations well ahead of time.

(2) If at any time it is discovered that work is being done which is not in accordance with the DSA approved construction documents, the Contractor shall correct the work immediately.

(3) Verify that forms DSA 152 are issued for the project prior to the commencement of construction.

(4) Meet with the design team, the Laboratory of Record and the Project Inspector to mutually communicate and understand the testing and inspection program and the methods of communication appropriate for the project.

(5) Notify the Project Inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

(6) Notify the Project Inspector of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

(7) Consider the relationship of the signed off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the Project Inspector has signed off applicable blocks and sections of the form DSA 152, the Contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction activities, that cover up the unapproved work, will be subject to a "Stop Work Order" from the DSA or

the SCCOE and are subject to removal and remediation if found to be in non-compliance with the DSA approved construction documents.

END OF DOCUMENT