

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board of Trustees Meeting Agenda

AGENDA **September 5, 2023** **School Campus - Room 7** **6:00 PM**

- 1.0 Call Public Session to Order
 - 1.1 Flag Salute
 - 1.2 Roll Call to Establish Quorum

- 2.0 Public Comment On Closed Session Topics

General public comment on any closed session item will be heard. Pursuant to Board Policy, the Board may limit individual comments to no more than 3 minutes and individual topics to 15 minutes. It is recommended you begin your comments by stating your name.

- 3.0 Adjourn to Closed Session
 - 3.1 Conference With Labor Negotiator (Government Code 54957.6)
 - 1. Agency Negotiator: Roberto Vaca, Superintendent
 - 2. Employee Organizations
 - a. MSAT
 - b. Classified Members

- 4.0 Convene Regular Session (Estimated start time 7:30 PM)
 - 4.1 Introduce Guests
 - 4.2 Report Action Taken in Closed Session (If any)

- 5.0 Opportunity for Members of the Public to Address the Board

At this time, members of the public may comment on any item not appearing on the agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Board consideration. Any person addressing the Board will be limited to a maximum of three (3) minutes so all interested parties have an opportunity to speak with a total of fifteen (15) minutes allotted for the Public Comment Period. Please state your name and address for the record.

- 6.0 Approval of Minutes – August 1, 2023 (A)

- 7.0 Correspondence
 - 7.1 GASB 45 TRUST
 - 7.2 LCAP Approval Letter

- 8.0 Superintendent's/Principal's Report
 - 8.1.1 Campus Update
 - 8.1.2 Construction Update

- 9.0 Consent Items / Review / Public Hearing/ Public Input / Board Discussion / **ACTION** (as applicable)
 - 9.1 Interdistrict Requests (A)
 - 9.2 Proposed Field Trips 2023-2024 (A)
 - 9.3 Budget Revision #10-23 (A)
 - 9.4 Budget Revision #10-23a (A)
 - 9.5 Public Hearing: Determination of Sufficiency of Textbooks and Instructional Materials
 - 9.6 Resolution 09-23-01 (A)
 - 9.7 Unaudited Actuals Report for Fiscal Year 2022-2023 (A)
 - 9.8 Resolution 09-23-02 For 2022-2023 SY GANN Limit Appropriations (A)

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board of Trustees Meeting Agenda

AGENDA **September 5, 2023** **School Campus - Room 7** **6:00 PM**

9.0 Consent Items / Review / Public Hearing/ Public Input / Board Discussion / ACTION (as applicable)
CONTINUED

- 9.9 Consolidated Application and Reporting System (CARS) - Spring Collection (A)
- 9.10 Child Evangelism Fellowship Good News Club (A)
- 9.11 Consideration and Approval of Agreement for Monson-Sultana School Gymnasium Building and
Related Addendum Documents; Authorize Superintendent or Designee to negotiate and finalize. (A)
- 9.12 New Marquee Bids (A)

10.0 Authorization of Vendor Payments dated 7/31/2023 through 8/15/2023 (A)

11.0 Personnel

- 11.1 Personnel Order(A)

12.0 Adjournment

*Persons who are in need of a disability-related modification or accommodation in order to participate in the board meeting may make a request to the Superintendent at P.O. Box 25, 10643 Avenue 416, Sultana, CA 93666, (559) 591-1634. Such a request should be in writing if possible, or may be made in person or by telephone (e-mail or text message requests will not be allowed). The request for accommodation should specify the nature of the modification or accommodation requested, including any necessary auxiliary aids or services required, and the name, address and telephone number of the person making the request. The request should be made as soon as possible and if possible no later than one day before the meeting.

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT

Regular Meeting

August 1, 2023

12:00 P.M.

1.0 CALL TO ORDER:

The meeting was called to order by Trustee Simmons at 12:00 P.M.

1.1 Flag Salute

Trustee Simmons led all those in attendance for the Flag Salute.

1.2 Roll Call

Trustees present: Worthley, Cepeda, Quintana, and Simmons

Trustees absent: Belknap

Secretary: Roberto Vaca, present

1.3 Guests/Staff Present

Benita Cortez, Cat Diaz, Katherine Arreguin, Denise Bese, Melissa Valdez, Stephen Miller, Joseph Rico, Melissa Mendoza, Samantha Huerta, and Joshua Barragan.

**2.0 OPPORTUNITY TO
ADDRESS THE BOARD:**

Mr. Joseph Rico and Mr. Stephen Miller invited the board of trustees to visit their classes on the first day of school. Mrs. Katherine Arreguin also addressed and introduced herself to the board of trustees as Monson-Sultana School's new, additional Learning Director, Samantha Huerta also introduced herself to the board of trustees as the new Kindergarten Instructional assistant, and Joshua Barragan introduced himself as the new Busdriver, Maintenance and Grounds employee.

3.0 APPROVAL OF MINUTES:

Trustee Quintana moved and Trustee Worthley seconded the motion to approve the minutes of the July 25, 2023 Special Meeting. PASSED

4.0 CORRESPONDENCE

None.

**5.0 SUPERINTENDENT'S/
PRINCIPAL'S REPORT:**

The Superintendent provided information to the Board on events and calendar dates that will be coming up on our campus for the first couple of weeks of school and specifically gave details on Back to School Night.

6.0 OLD BUSINESS:

None

7.0 CONSENT ITEMS:

7.1 Interdistrict Requests

Trustee Cepeda moved and Trustee Worthley seconded the motion to approve interdistrict attendance requests as presented. PASSED

7.2 Library Furniture Bids

Trustee Quintana moved and Trustee Worthley seconded the motion to approve the purchase for library furniture from South West School

- | | | |
|-----|--|--|
| 7.3 | TCOE - Educational Resource Services Work Plan | Trustee Worthley moved and Trustee Quintana seconded the motion to approve the TCOE Work Plan Quote. PASSED |
| 7.4 | TCOE/MSJUESD Theater Quote | Trustee Worthley moved and Trustee Cepeda seconded the motion to approve the quote and MOU with TCOE for the Onstage Program. PASSED |
| 7.5 | Budget Revision #008-23a | Trustee Worthley moved and Trustee Cepeda seconded the motion to approve Budget Revision 008-23a as presented. PASSED |
| 7.6 | Budget Revision #008-23b | Trustee Quintana moved and Trustee Cepeda seconded the motion to approve Budget Revision 008-23b as presented. PASSED |

8.0 PERSONNEL:

- | | | |
|-----|--|--|
| 8.1 | Personnel Order | Trustee Cepeda moved and Trustee Worthley seconded the motion to approve Personnel Orders 8.1.1, Resignation of Samantha Sandoval as teacher. PASSED |
| 8.2 | Behavior Instructional Assistant (BIA) Job Description | Trustee Quintana moved and Trustee Worthley seconded the motion to approve the hiring of a BIA and the Job Description as Presented. PASSED |
| 8.3 | Behavior Instructional Assistant (BIA) Salary Schedule | Trustee Worthley moved and Trustee Cepeda seconded the motion to approve the BIA Salary Schedule as Presented. PASSED |

9.0 ADJOURNMENT:

Meeting adjourned at 1:24 P.M.

Respectfully Submitted,

Lynn Simmons President

Roberto Vaca Secretary

Delbert Quintana Clerk

Jeff Belknap Trustee

Robert Cepeda Trustee

Vicki Worthley Trustee

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CORRESPONDENCE**

AGENDA ITEM: **7.1 GASB 45 TRUST**

ATTACHMENTS: **GASB 45 STATEMENT APRIL-JUNE 2023**

DISCUSSION:

GASB 45 statements attached for April through June 2023. Quarterly return is 2.71%.

RECOMMENDATION: **NO ACTION REQUIRED**

PROPOSED ACTION: **NO ACTION REQUIRED**



August 24, 2023

TO: SISC GASB 45 Trust Participating Employers

FROM: Kim A Sloan, CPA, Chief Financial Officer
Self-Insured Schools of California

SUBJ: SISC GASB 45
Statement for Quarter Ending June 30, 2023

Your statement for the quarter ending **June 30, 2023** is now available on the SISC website. The statements provide information about your district's transaction activity and investment performance. A summary of the quarterly return is provided below. The detailed asset allocation and investment report is also included.

April-June 2023 Quarter
SISC GASB 45 2.71%

Additional commentary provided by our investment manager, Fred Bayles, Graystone Consulting, is presented below:

The second quarter has closed and the first half has posted solid gains in the S&P 500 index as of this writing; the S&P is up +20% year-to-date. This charge was led mostly by 6 stocks: Apple, Amazon, Google, Microsoft, META, and Nvidia. This is a bit scary when you think about it since the S&P 500 is made up of the 500 largest companies in the US stretched across approximately 11 sectors of the market. We don't expect this to continue in the second half and anticipate a sector rotation into other parts of the market which did not participate in the first half rally.

My two basic rules of investing that have kept me in this business for the last 40 years are "Never fight the Fed" and "Beware of the crowd at extremes". If you tried to fight the Fed the first half of this year you didn't do very well as the Fed kept raising rates. If you invested in crowded trades you already missed the move. We are in the 9th inning of rate increases and we might see a pause from the Fed this coming September. Core inflation rose .02% which is the slowest back to back rise in the last two years. Core inflation is now down to 4.7% but still above the Fed's overall target of 2%. Policy makers are most likely to leave rates alone in September but there is more work to do to bring inflation down to the target rate.

We think the second half will be a bit quiet as compared to the first half. We will be adding fixed income investments in anticipation of the Fed ceasing rate increases at some point. As you may have seen local CD rates and Treasury Bill rates are in excess of 5%. However, beware of high short-term yields because although they are worthwhile right now, they may not be in the future. We are adding longer duration bonds to our portfolios to take advantage of the high yields in the event of an eventual Fed easing. We have also added many principal protected investment strategies to augment and provide income streams to our portfolio. These investments have worked very well for us so far.

Always remember that near term economic forecasts are worse than useless. Invest in companies that will achieve an acceptable result over time and that will preserve the company's unmatched staying power when financial panics or severe worldwide recessions occur. Always believe in the American Tailwind.

If you have any questions, please contact Nancy Russo at narusso@siscschools.org, or (661) 636-4654.

P.O. Box 1847, Bakersfield, CA 93303-1847
2000 K St. • Larry E. Reider Education Center, Bakersfield, CA 93301
ph: 661.636.4710 • fx: 661.636.4156 • sisc.kern.org

A Joint Powers Authority administered by the Kern County Superintendent of Schools Office, John G. Mendiburo, Ed.D., Superintendent

SISC OPEB Trust – Moderate Growth
2000 K Street – P.O. Box 1808
Bakersfield, CA 93303-1808

Statement for April 1, 2023 – June 30, 2023

Monson-Sultana Joint Union Elem School District
 Benita Cortez
 PO Box 25
 Sultana, CA 93666

Final

ACCOUNT SUMMARY

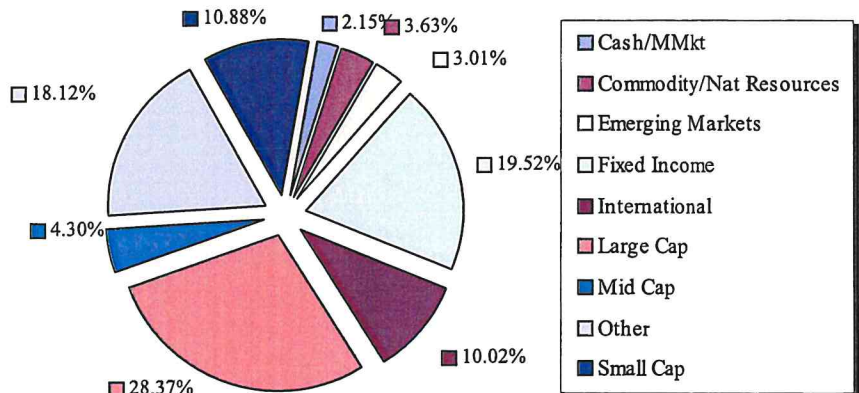
	Beginning Date	Ending Date	No. of Days Invested	No. of Days In Quarter	Amount Invested	Weighted Average
Beginning Account Value	4/01/2023	6/30/2023	91	91	\$1,558,546.14	\$1,558,546.14
SISC Admin Fee	5/18/2023	6/30/2023	44	91	(\$194.82)	(\$94.20)
Trustee Fees	5/18/2023	6/30/2023	44	91	(\$194.82)	(\$94.20)
					<u>\$1,558,156.50</u>	<u>\$1,558,357.74</u>
Ending Account Value at 06-30-23					\$1,600,425.59	
Amount Invested					<u>\$1,558,156.50</u>	
Return on Investment (\$)					\$42,269.09	
Weighted Average Balance					\$1,558,357.74	
Quarterly Return on Investment:					2.71%	

TOTAL POOL

Ending Account Market Value: **\$336,169,700.76**

Investment Allocation

Cash/MMkt	2.15%
Fixed Income	19.52%
Large Cap	28.37%
Mid Cap	4.30%
Small Cap	10.88%
International	10.02%
Commodity/Nat Resource	3.63%
Emerging Markets	3.01%
Other	18.12%
	<u>100.00%</u>



Your account performance was calculated using a weighted rate of return based on the level and timing of cash flows in and out of the Trust.

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CORRESPONDENCE**

AGENDA ITEM: **7.2 LCAP APPROVAL LETTER**

ATTACHMENTS: **LCAP APPROVAL LETTER**

DISCUSSION:

Attached letter from Tulare County Office of Education indicating approval of Monson-Sultana's Local Control and Accountability Plan (LCAP) for the 2022-2023 fiscal year.
Corrections to LCAP needs to be presented to Board on or before September 30, 2023

RECOMMENDATION: **NONE**

PROPOSED ACTION: **NONE**

Tulare County Office of Education

Committed to Students, Support & Service

Tim A. Hire
County
Superintendent
of Schools

P.O. Box 5091
Visalia, California
93278-5091

(559) 733-6300
tcoe.org

Administration
(559) 733-6301
fax (559) 627-5219

Business Services
(559) 733-6474
fax (559) 737-4378

Human Resources
(559) 733-6306
fax (559) 627-4670

Instructional Services
(559) 302-3633
fax (559) 739-0310

Special Services
(559) 730-2910
fax (559) 730-2511

Main Locations

**Administration
Building & Conference
Center**
6200 S. Mooney Blvd.
Visalia

Doe Avenue Complex
7000 Doe Ave.
Visalia

**Liberty Center/
Planetarium &
Science Center**
11535 Ave. 264
Visalia

Roberto C. Vaca
Superintendent
Monson-Sultana Joint Union School District
P.O. Box 25
Sultana, CA 93666

August 31, 2023

Dear Superintendent Vaca,

In accordance with Education Code sections 52070, the Tulare County Office of Education has reviewed the Local Control and Accountability Plan (LCAP) of Monson-Sultana Joint Union School District for fiscal year 2023-24.

Education Code requires the County Superintendent to approve the LCAP for each school district after determining all the following: Adherence to State Board of Education (SBE) template, Demonstration of sufficient expenditures in the budget to implement the adopted LCAP, Demonstration of adherence to SBE expenditure regulations, and Required calculations to determine whether there is a carryover requirement and if applicable, includes a description of planned use for these funds.

Based upon our review of the 2023-24 LCAP, Monson-Sultana Joint Union School District's LCAP has been approved.

Please be advised that a separate letter regarding the budget review will be forthcoming.

I appreciate the time and effort that you and your team committed to the successful completion of your plan. The Leadership Support Services Department looks forward to continued collaboration in the 2024-25 LCAP development process. Please contact our team for any assistance you may need.

Respectfully,



Martin Frolli, Ed.D.

Administrator II

Leadership Support Services
Tulare County Office of Education
559.739.0319 | fax 559.739.0310

[TCOE Home](#) | [TCOE Facebook](#) | [TCOE Twitter](#)
[Leadership Support Services](#)

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT

Board Meeting Agenda Item Summary

September 5, 2023

AGENDA SECTION: **8.0 SUPERINTENDENT'S REPORT**

AGENDA ITEM: **8.1.1 CAMPUS EVENTS AT MSJUESD**
8.1.2 CONSTRUCTION UPDATE

ATTACHMENTS: **NONE**

DISCUSSION:

The Superintendent will provide information to the Board on events and calendar dates that will be coming up on our campus. Additionally, an update will be provided on the status of the construction project.

RECOMMENDATION: **NONE**

PROPOSED ACTION: **NONE**

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **9.1 INTERDISTRICT REQUESTS**

ATTACHMENTS: **INTERDISTRICT REQUESTS**

DISCUSSION:

- 9.1.1 Gutierrez (2nd & 7th Grades) Renewal from Dinuba
- 9.1.2 Mora (4th & 7th Grades) New from Dinuba
- 9.1.3 Reynoso Renteria (6th Grade) New from Cutler-Orosi
- 9.1.4 Ruiz (2nd Grade) Renewal from Dinuba
- 9.1.5 Torres (1st & 5th Grades) Renewal from Dinuba
- 9.1.6 Hettenbach (Kindergarten) to Dinuba

RECOMMENDATION: The Superintendent recommends that the Board approve the interdistrict requests as presented.

PROPOSED ACTION: **APPROVE**

**INTERDISTRICT ATTENDANCE AGREEMENT REQUESTS
MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
SEPTEMBER 5, 2023**

Agenda Item #	Name	Grade	From	To	Year	Reason	Recommendation
9.1.1	Gutierrez, Devin	7th	Dinuba Unified ✓	Monson-Sultana	2023-2024	Renewal	Approval
9.1.1	Gutierrez, Damian	2nd	Dinuba Unified ✓	Monson-Sultana	2023-2024	Renewal	Approval
9.1.2	Mora, Kane	7th	Dinuba Unified ✓	Monson-Sultana	2023-2024	New	Approval
9.1.2	Mora, Aryanna	4th	Dinuba Unified ✓	Monson-Sultana	2023-2024	New	Approval
9.1.3	Reynoso Renteria, Julian	6th	Cutler-Orosi ✓	Monson-Sultana	2023-2024	New	Approval
9.1.4	Ruiz, Sebastian	2nd	Dinuba Unified ✓	Monson-Sultana	2023-2024	Renewal	Approval
9.1.5	Torres, Miley	5th	Dinuba Unified ✓	Monson-Sultana	2023-2024	Renewal	Approval
9.1.5	Torres, Sophia	1st	Dinuba Unified ✓	Monson-Sultana	2023-2024	Renewal	Approval
9.1.6	Hettenbach, Taylor	K	Monson-Sultana	Dinuba Unified	2023-2024	Child Care/New	Approval

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT ITEM**

AGENDA ITEM: **9.2 PROPOSED FIELD TRIPS 2023-2024**

ATTACHMENTS: **NONE**

DISCUSSION:

The superintendent recommends approval of the following field trips for the 2023-2024 school year:

TK:	ImagineU / Christmas Tree Farm
Kindergarten:	Fresno Zoo / Christmas Tree Farm - Zoo in April & Tree Farm in December
1st Grade:	Fresno Discovery Center - March
2nd Grade:	Pismo: Monarch Butterfly Grove - January
3rd Grade:	Planetarium / Cat Haven (March 21st)
4th Grade:	Fresno Fair - October 6, 2023
5th Grade:	SCICON Day Trip (January or February) & Monterey Bay Aquarium (March)
6th Grade:	SCICON (February)
7th Grade:	Los Angeles: Museum of Tolerance (May) / CSU Fresno campus visit TBA
8th Grade:	Disneyland (May)

RECOMMENDATION: The Superintendent recommends that the Board **APPROVE** the field trips proposal as presented.

PROPOSED ACTION: **APPROVE**

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT ITEM**

AGENDA ITEM: **9.3 BUDGET REVISION 009-23**

ATTACHMENTS: **BUDGET REVISION**

DISCUSSION:

Each month the District Business Office ensures that all expenditures are in line with the District's Adopted Budget. Revisions must be made to reflect the reality of a day-to-day living document, which must be updated as budget codes change to accommodate fluctuation in program resources.

The attached Budget Revision 009-23 is for August 2023.

RECOMMENDATION: The Superintendent recommends that the Board
APPROVE Budget Revision 009-23.

PROPOSED ACTION: **APPROVE**

Budget Revision Report #009-23

29 Monson-Sultana Jt. Union Elem. School District

8/21/2023

Fiscal Year: 2024

Control Number: 82161080

4:58:04PM

	Original Approved Budget	Revised Approved Budget	Change Amount	Proposed Revised Budget	Explanations
Fund: 010 General Fund					
LCFF Sources	6,310,816.00	6,310,816.00	3,153.00	6,313,969.00	
Federal Revenues	1,721,288.00	1,721,288.00	8,333.00	1,729,621.00	
Other State Revenues	1,280,291.00	1,333,661.00	-	1,333,661.00	
Other Local Revenues	40,014.00	40,014.00	-	40,014.00	
Revenues	9,352,409.00	9,405,779.00	11,486.00	9,417,265.00	
Expenditures					
Certificated Salaries	2,570,694.00	2,570,694.00	-	2,570,694.00	
Classified Salaries	1,119,177.00	1,119,177.00	-	1,119,177.00	
Employee Benefits	2,020,795.00	2,020,795.00	-	2,020,795.00	
Books and Supplies	626,401.00	626,401.00	6,333.00	632,734.00	
Services, Other Operating Expenses	1,805,722.00	1,815,722.00	2,000.00	1,817,722.00	
Capital Outlay	2,396,390.00	2,396,390.00	-	2,396,390.00	
Other Outgo	59,674.00	59,674.00	-	59,674.00	
Direct Support/Indirect Costs	(15,277.00)	(15,277.00)	-	(15,277.00)	
Total Expenditures	10,583,576.00	10,593,576.00	8,333.00	10,601,909.00	
Other Financing Sources/Uses					
Transfer In	-	-	-	-	
Transfer Out	-	-	-	-	
Contributions	(299,017.00)	(299,017.00)	-	(299,017.00)	
Fund: 080 Student Activity Special Revenue Fund					
Other Local Revenues	5,001.00	5,001.00	-	5,001.00	
Revenues	5,001.00	5,001.00	-	5,001.00	
Expenditures					
Books and Supplies	2,500.00	2,500.00	-	2,500.00	
Services, Other Operating Expenses	1,500.00	1,500.00	-	1,500.00	
Total Expenditures	4,000.00	4,000.00	-	4,000.00	
Fund: 130 Cafeteria Special Revenue Fund					
Federal Revenues	410,000.00	410,000.00	-	410,000.00	
Other State Revenues	146,000.00	146,000.00	-	146,000.00	
Other Local Revenues	6,000.00	6,000.00	-	6,000.00	
Revenues	562,000.00	562,000.00	-	562,000.00	
Expenditures					
Classified Salaries	152,669.00	152,669.00	-	152,669.00	
Employee Benefits	80,958.00	80,958.00	-	80,958.00	
Books and Supplies	232,021.00	232,021.00	-	232,021.00	
Services, Other Operating Expenses	35,679.00	35,679.00	-	35,679.00	
Capital Outlay	110,000.00	110,000.00	-	110,000.00	
Direct Support/Indirect Costs	15,277.00	15,277.00	-	15,277.00	
Total Expenditures	626,604.00	626,604.00	-	626,604.00	

-15-

Budget Revision Report #009-23						
29 Monson-Sultana Jt. Union Elem. School District						8/21/2023
Fiscal Year: 2024			Control Number: 82161080			4:58:04PM
	Original Approved Budget	Revised Approved Budget	Change Amount	Proposed Revised Budget	Explanations	
Fund: 251 Developer Fees Fund						
Other Local Revenues	-	500.00	-	500.00		
Revenues	-	500.00	-	500.00		
Expenditures						
Services, Other Operating Expenses	-	500.00	-	500.00		
Capital Outlay	-	-	-	-		
Total Expenditures	-	500.00	-	500.00		
Fund: 350 County School Facilities Fund - New Construction						
Other State Revenues	-	-	-	-		
Other Local Revenues	-	-	-	-		
Revenues	-	-	-	-		
Expenditures						
Capital Outlay	350,000.00	350,000.00	-	350,000.00		
Total Expenditures	350,000.00	350,000.00	-	350,000.00		
Fund: 351 County School Facilities Fund - Modernization						
Other State Revenues	-	-	-	-		
Other Local Revenues	-	-	-	-		
Revenues	-	-	-	-		
Expenditures						
Capital Outlay	-	-	-	-		
Total Expenditures	-	-	-	-		
#1 - LCFF Revenues increased due to LCFF cals posted by TCOE for 2023-2024 increase due to Property Taxes; Federal Revenues increased due to MS receiving Cal Hope Grant (SEL Grant) through TCOE for 2023-2024						
#2 - Books and supplies and services, other operating expenses were increased due to SEL Grant with TCOE						

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT ITEM**

AGENDA ITEM: **9.4 BUDGET REVISION 009-23a**

ATTACHMENTS: **BUDGET REVISION**

DISCUSSION:

Each month the District Business Office ensures that all expenditures are in line with the District's Adopted Budget. Revisions must be made to reflect the reality of a day-to-day living document, which must be updated as budget codes change to accommodate fluctuation in program resources.

The attached Budget Revision 009-23a is for August 2023.

RECOMMENDATION: The Superintendent recommends that the Board
APPROVE Budget Revision 009-23a.

PROPOSED ACTION: **APPROVE**

Budget Revision Report #009-23a

29 Monson-Sultana Jt. Union Elem. School District

8/20/2023

Fiscal Year: 2023

Control Number: 82076204

9:10:07 PM

	<u>Original</u> <u>Approved Budget</u>	<u>Revised</u> <u>Approved Budget</u>	<u>Change</u> <u>Amount</u>	<u>Proposed</u> <u>Revised Budget</u>	<u>Explanations</u>
Fund: 010 General Fund					
LCFF Sources	5,511,533.00	6,022,833.00	56,019.00	6,078,852.00	#1
Federal Revenues	3,076,454.00	2,619,253.14	204,296.40	2,823,549.54	#1
Other State Revenues	983,335.00	2,002,029.36	17,496.00	2,019,525.36	#1
Other Local Revenues	91,250.00	341,185.00	8,683.00	349,868.00	#1
Revenues	9,662,572.00	10,985,300.50	286,494.40	11,271,794.90	
Expenditures					
Certificated Salaries	2,398,688.00	2,431,274.41	-	2,431,274.41	
Classified Salaries	1,022,044.00	1,038,983.91	-	1,038,983.91	
Employee Benefits	1,919,400.00	1,907,957.13	-	1,907,957.13	
Books and Supplies	487,414.00	480,222.87	5,046.28	485,269.15	#2
Services, Other Operating Expenses	1,536,539.00	1,578,526.73	(26,063.32)	1,552,463.41	#2
Capital Outlay	2,829,345.00	2,523,986.51	(196,593.63)	2,327,392.88	#2
Other Outgo	70,427.00	55,564.00	(2,038.00)	53,526.00	#3
Direct Support/Indirect Costs	(12,119.00)	(13,732.38)	-	(13,732.38)	
Total Expenditures	10,251,738.00	10,002,783.18	(219,648.67)	9,783,134.51	
Other Financing Sources/Uses					
Transfer In	-	-	-	-	
Transfer Out	-	-	-	-	
Contributions	(237,434.00)	(305,437.40)	85,000.00	(220,437.40)	#4
Fund: 080 Student Activity Special Revenue Fund					
Other Local Revenues	-	14,031.00	-	14,031.00	
Revenues	-	14,031.00	-	14,031.00	
Expenditures					
Books and Supplies	-	3,909.00	-	3,909.00	
Services, Other Operating Expenses	-	3,289.00	-	3,289.00	
Total Expenditures	-	7,198.00	-	7,198.00	
Fund: 130 Cafeteria Special Revenue Fund					
Federal Revenues	400,000.00	423,847.12	-	423,847.12	
Other State Revenues	23,000.00	146,917.00	-	146,917.00	
Other Local Revenues	3,000.00	20,203.00	-	20,203.00	
Revenues	426,000.00	590,967.12	-	590,967.12	
Expenditures					
Classified Salaries	117,615.00	141,120.00	-	141,120.00	
Employee Benefits	64,404.00	71,572.00	-	71,572.00	
Books and Supplies	188,847.00	234,225.27	-	234,225.27	
Services, Other Operating Expenses	22,400.00	25,395.00	-	25,395.00	
Capital Outlay	40,000.00	35,000.00	-	35,000.00	
Direct Support/Indirect Costs	12,119.00	13,732.38	-	13,732.38	
Total Expenditures	445,385.00	521,044.65	-	521,044.65	

Budget Revision Report #009-23a						
29 Monson-Sultana Jt. Union Elem. School District						8/20/2023
Fiscal Year: 2023			Control Number: 82076204			9:10:07 PM
	Original Approved Budget	Revised Approved Budget	Change Amount	Proposed Revised Budget	Explanations	
Fund: 251 Developer Fees Fund						
Other Local Revenues	-	2,525.00	-	2,525.00		
Revenues	-	2,525.00	-	2,525.00		
Expenditures						
Services, Other Operating Expenses	-	-	-	-		
Capital Outlay	-	-	-	-		
Total Expenditures	-	-	-	-		
Fund: 350 County School Facilities Fund - New Construction						
Other State Revenues	2,625,930.00	2,649,033.00	-	2,649,033.00		
Other Local Revenues	-	-	-	-		
Revenues	2,625,930.00	2,649,033.00	-	2,625,930.00		
Expenditures						
Capital Outlay	2,625,930.00	2,400,260.17	-	2,400,260.17		
Total Expenditures	2,625,930.00	2,400,260.17	-	2,625,930.00		
Fund: 351 County School Facilities Fund - Modernization						
Other State Revenues	-	445.00	22,892.00	23,337.00		#5
Other Local Revenues	-	-	-	-		
Revenues	-	445.00	22,892.00	23,337.00		
Expenditures						
Capital Outlay	-	-	-	-		
Total Expenditures	-	-	-	-		
#1 - LCFF Revenue increased due YE LCFF calcs by TCOE due to Property Tax; Federal Revenues increased due to USDA Grant for Technology Grant; State Revenues increased due to Transportation add-on beginning 2022-23; Other Local Revenues increased due to Misc. Revenue received year to date						
#2 - Books and supplies increased due to technology project under USDA and materials for the Wellness Team; Services, other operating expenses decreased actuals costs within RRM for repairs; Capital Outlay decreased due to USDA project anticipated in 2023-24						
#3 - Other outgo increased due to TCOE County operated ADA transfer at year-end						
#4 - Contributions decreased due to RRM required contribution due to excluded programs within calculations in State Report						
#5 - Local Revenues increased due to transfer of Interest posted to Modernization Project for 2022/23						

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **9.5 PUBLIC HEARING TO DETERMINE SUFFICIENCY OF
TEXTBOOKS AND INSTRUCTIONAL MATERIALS**

ATTACHMENTS:

DISCUSSION:

Item 9.6 contains a Resolution certifying the District's compliance with the Williams Lawsuit with regard to the sufficiency of instructional materials and textbooks. The Governing Board of the District is required to hold a public hearing to make a determination as to whether or not each pupil has sufficient textbooks or instructional materials, or both, that are aligned to the content standards adopted by the State Board of Education.

Hearing Opened at _____

Hearing Closed at _____

RECOMMENDATION: **Conduct the public hearing.**

PROPOSED ACTION: **No action required.**

MONSON-SULTANA JOINT ELEMENTARY UNIFIED SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **9.6 RESOLUTION REGARDING SUFFICIENCY OF TEXTBOOKS
AND INSTRUCTIONAL MATERIALS**

ATTACHMENTS: **RESOLUTION 09-23-01**

DISCUSSION:

The attached Resolution certifies the District's compliance with the Williams Lawsuit.

Under the Williams class action lawsuit of 2000, and the subsequent settlement of 2004, California guarantees an equal education to every student - including the predominantly low-income students and students of color who attend schools that must be improved. This case has been about California's duty to provide these students with instructional materials, safe and decent school facilities, and quality teachers.

The settlement implements principles of education reform approved by Governor Schwarzenegger:

With respect to school facilities and instructional materials, all schools should be safe and clean. The defendants will prepare a statewide inventory of school facilities to determine the capacity, usage and present physical status of those facilities. Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities.

RECOMMENDATION: **The Superintendent recommends Approval of Resolution 09-23-01.**

PROPOSED ACTION: **Approval**

**BEFORE THE GOVERNING BOARD OF THE
MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
TULARE COUNTY, CALIFORNIA**

In the Matter of Determining that Pupils Have
Sufficient Textbooks or Instructional
Materials for the 2023-2024 School Year

RESOLUTION NO. 09-23-01

RECITALS:

1. Education Code section 60119 establishes requirements that this Board must meet in order for the District to be eligible to receive funds for instructional materials from any state source.
2. The Governing Board of the Monson-Sultana Joint Union Elementary School District, in order to comply with the requirements of Education Code 60119, held a public hearing on September 5, 2023, at 6:00 p.m. which is on or before the eighth week of school (between the first day that students attend school and the end of the eighth week from that day) and which did not take place during or immediately following school hours, and;
3. The Board provided at least 10 days' notice of the public hearing by posting it in at least three public places within the district stating the time, place, and purpose of the hearing, and;
4. The Board encouraged participation by parents/guardians, teachers, members of the community, and bargaining unit leaders in the public hearing, and;
5. Information provided at the public hearing detailed the extent to which sufficient textbooks or other instructional materials were provided to all students, including English learners, in the Monson-Sultana Joint Union Elementary School District, and;
6. The definition of "sufficient textbooks or instructional materials" means that each student, including each English learners, has a standards-aligned textbook or instructional materials to use in class and to take home, which may include materials in a digital format but shall not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage, and;
7. Textbooks or instructional materials in core curriculum subjects should be aligned with state academic content standards and/or Common Core State Standards adopted by the State Board of Education;

Findings of Sufficient Textbooks or Instructional Materials

1. Sufficient standards-aligned textbooks or other instructional materials, that are consistent with the cycles and content of the curriculum frameworks were provided to each student, including each English learner, in the following subjects:

- Mathematics: K-5 Engage New York/Zearn
6th-8th Illustrative Mathematics, Open Up Resources
- Science: K-5 Twig Science
6-8 Amplify Science
- History-social science: K-5 Studies Weekly
6-8 Holt, Rinehart & Winston 2006
- English language arts, including the English language development component of an adopted program: Reading & Writing Units of Study, Heineman 2015

THEREFORE, IT IS RESOLVED that for the 2023-2024 school year, the Monson-Sultana Joint Union Elementary School District has provided each student with sufficient standards-aligned textbooks or other instructional materials that are consistent with the cycles and content of the curriculum frameworks.

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THE FOREGOING RESOLUTION was adopted upon motion by Trustee _____,
seconded by Trustee _____, at a regular meeting held on September 5, 2023, by the
following vote:

List Board Members Names Below:

AYES:	
NOES:	
ABSENT:	
ABSTAIN:	

I, Roberto Vaca, secretary of the governing board of the Monson-Sultana Joint Union Elementary School District, do hereby certify that the foregoing Resolution was duly passed and adopted by said Board, at an official and public meeting thereof, this 5th day of September, 2023.

Date: September 5, 2023

Secretary, Board of Trustees

Distribute as follows:

Copy to: Vanessa Cantu, Business Services
Tulare County Office of Education
Vanessa.cantu@tcoe.org

Copy to: District File for Annual Audit

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **ADMINISTRATIVE/ORGANIZATIONAL**

AGENDA ITEM: **9.7 UNAUDITED ACTUALS FOR FISCAL YEAR 2022-2023**

ATTACHMENTS: **UNAUDITED ACTUALS REPORT SUMMARY**

DISCUSSION:

The Unaudited Actuals Report is presented to the Board for approval. This report represents the final balances for the 2022-2023 school year and allows the ending balances to be rolled into the new 2023-2024 Budget.

RECOMMENDATION: The Superintendent recommends that the Board approve the Unaudited Actuals report for fiscal year 2022-2023.

PROPOSED ACTION: APPROVE

Monson-Sultana Joint Union Elementary School District
2022-2023 Unaudited Actuals

	GENERAL FUND			CAFETERIA FUND	
	<u>Original Budget</u>	<u>Second Interim</u>	<u>Unaudited Actuals</u>	<u>Original Budget</u>	<u>Unaudited Actuals</u>
Beginning Fund Balance	\$ 2,910,224	\$ 4,273,762	\$ 4,273,762	\$ 263,199	\$ 310,300
Total Revenues	\$ 9,662,572	\$ 12,820,795	\$ 10,960,678	\$ 426,000	\$ 583,800
Total Expenditures	\$ 10,251,738	\$ 12,453,333	\$ 8,320,648	\$ 445,385	\$ 486,294
Excess (Deficiency) of Revenue over Expense:	\$ (589,166)	\$ 367,462	\$ 2,640,030	\$ (19,385)	\$ 97,506
Other Financing Uses	\$ -	\$ -	\$ -	\$ -	\$ -
Net Increase/(Decrease) to Fund Balance	\$ (589,166)	\$ 367,462	\$ 2,640,030	\$ (19,385)	\$ 97,506
Ending Fund Balance	\$ 2,321,058	\$ 4,641,224	\$ 6,913,792	\$ 243,814	\$ 407,806
	6/21/2022	3/7/2023	9/5/2023	6/21/2022	9/5/2023

Ending Balances of Other Funds	
Developer Fees Fund	\$ 4,122
County School Facilities Fund - Modernization & New Construction	\$ 526,873

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **ADMINISTRATIVE/ORGANIZATIONAL**

AGENDA ITEM: **9.8 RESOLUTION 09-23-02 FOR 2022-2023 GANN LIMIT APPROPRIATIONS**

ATTACHMENTS: **RESOLUTION 09-23-02**

DISCUSSION:

The GANN initiative establishes maximum appropriation limits for school districts, which allows the District to increase appropriations to an amount equals to its proceeds of taxes. For Monson-Sultana Union Elementary School District, this provision allows the District to adopt an estimated amount of \$3,993,852.69, as the estimated appropriations limit for 2023-2024. This is based on actual appropriations limits of \$3,977,599.58 of 2022-2023.

Calculation Information:

GANN actual and estimated year is determined by using all General Fund Revenue, but excludes homeowners' exemptions, secured and unsecured rolls, prior year taxes, and education revenue augmentation fund. In addition, the GANN calculates the preliminary state aid in two ways: one calculates minimum aid by \$120 times ADA and maximum state aid that calculates the revenue limit and all supplemental instruction for both current and prior year, and class size reduction K-3. Then the greater of the two is used for the preliminary State Aid in local limit. In the GANN formula the taxes that were excluded are now added back and the minimum state aid which was calculated with ADA and interest counting in local limit is then added together. Finally, Medicare amount determined by TCOE is excluded and the total GANN appropriations subject to the limit is determined on both estimated and actual GANN appropriations limit.

RECOMMENDATION: **The Superintendent recommends that the Board approve Resolution 09-23-02 for 2022-2023 GANN Limit Apportionments.**

PROPOSED ACTION: **APPROVE**

**BEFORE THE BOARD OF TRUSTEES
OF THE MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
TULARE COUNTY, CALIFORNIA**

In the Matter of Establishing an Estimated
Appropriations Limit for the 2023-2024 Fiscal
Year and an Actual Appropriations Limit for
the 2022-2023 Fiscal Year

RESOLUTION NO. 09-23-02

RECITALS

1. In November of 1979, the California electorate adopted Proposition 4, commonly called the "Gann Initiative," which added Article XIII B to the California Constitution.
2. The provisions of that Article establish maximum appropriation limits, commonly called "Gann Limits," for public agencies, including school districts.
3. Section 7900 et seq. of the Government Code require this board to establish annually, by resolution at a regular or special meeting, the appropriations limit for the District.
4. Education Code section 42132 requires that the governing board of each school district annually adopt such resolution by September 15th.
5. Government Code section 7902.1(a) states that if the proceeds of taxes of the school district exceeds its appropriations limit, this board shall increase the District's appropriations limit to an amount equal to its proceeds of taxes.
6. Governing Code section 7902.1(b) states that if the appropriations limit of the school district exceeds its proceeds of taxes, this board shall decrease the District's appropriations limit to an amount equal to its proceeds of taxes.
7. Education Code section 42132 requires that all documentation used in the identification of the appropriations limit shall be made available to the public at the meeting at which this resolution is adopted.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The above recitals are true and correct.
2. This board hereby establishes and adopts for the 2023-2024 fiscal year an estimated appropriations limit in the amount of \$ 3,993,852.69, and for the 2022-2023 fiscal year identifies the actual appropriations limit of \$ 3,977,599.58.

3. Said appropriations limits have been calculated and determined in accordance with all applicable statutes and constitutional provisions and do not exceed the limitations imposed by Proposition 4.
4. Effective July 9, 2021 (Stats. 2021, Ch. 44, Sec. 108 (AB 130)), it is no longer a requirement to notify the Director of Finance of a change in the appropriations limit.

THE FOREGOING RESOLUTION was adopted upon motion by Trustee _____, seconded by Trustee _____, at a regular meeting held on September 5, 2023, by the following vote:

List Board Members Names Below:

AYES:	
NOES:	
ABSENT:	
ABSTAIN:	

I, Roberto Vaca, secretary of the governing board of the Monson-Sultana Joint Union Elementary School District, do hereby certify that the foregoing Resolution was duly passed and adopted by said Board, at an official and public meeting thereof, this 5th day of September, 2023.

Dated September 5, 2023

Secretary, Board of Trustees

Distribute as follows:

Copy to: Vanessa Cantu, Business Services
Tulare County Office of Education
Vanessa.cantu@tcoe.org

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **9.9 APPROVE THE 2023-2024 THE CONSOLIDATED APPLICATION AND REPORTING SYSTEM (CARS) SPRING PHASE**

ATTACHMENTS: **CONSOLIDATED APPLICATION AND REPORTING SYSTEM (CARS) APPLICATION**

DISCUSSION:

The Consolidated Application and Reporting System (CARS), Spring Release is due August 31, 2023. District has submitted the report on August 31, 2023 to meet the required deadline. This application collects information related to the Monson-Sultana Joint Union Elementary School District's intention to participate in the 2023-2024 consolidated programs.

RECOMMENDATION: The Superintendent recommends that the Board approve the 2023-2024 Consolidated Application and Reporting System (CARS) Spring Phase.

PROPOSED ACTION: **APPROVE**

2023–24 Application for Funding**CDE Program Contact:**Consolidated Application Support Desk, Education Data Office, ConAppSupport@cde.ca.gov, 916-319-0297**Local Governing Board Approval**

The local educational agency (LEA) is required to review and receive approval of their Application for Funding selections with their local governing board.

By checking this box the LEA certifies that the Local Board has approved the Application for Funding for the listed fiscal year	Yes
---	-----

District English Learner Advisory Committee Review

Per Title 5 of the California Code of Regulations Section 11308, if your LEA has more than 50 English learners, then the LEA must establish a District English Learner Advisory Committee (DELAC) which shall review and advise on the development of the application for funding programs that serve English learners.

By checking this box the LEA certifies that parent input has been received from the District English Learner Committee (if applicable) regarding the spending of Title III funds for the listed fiscal year	Yes
---	-----

Application for Categorical Programs

To receive specific categorical funds for a school year, the LEA must apply for the funds by selecting Yes below. Only the categorical funds that the LEA is eligible to receive are displayed.

Title I, Part A (Basic Grant) ESSA Sec. 1111et seq. SACS 3010	Yes
Title II, Part A (Supporting Effective Instruction) ESEA Sec. 2104 SACS 4035	Yes
Title II, Part A funds used through the Alternative Fund Use Authority (AFUA) Section 5211 of ESEA	Yes
Title III English Learner ESEA Sec. 3102 SACS 4203	Yes
Title III Immigrant ESEA Sec. 3102 SACS 4201	Yes
Title IV, Part A (Student and School Support) ESSA Sec. 4101 SACS 4127	Yes
Title IV, Part A funds used through the Alternative Fund Use Authority (AFUA)	Yes

*****Warning*****

The data in this report may be protected by the Family Educational Rights and Privacy Act (FERPA) and other applicable data privacy laws. Unauthorized access or sharing of this data may constitute a violation of both state and federal law.

2023–24 Application for Funding**CDE Program Contact:**Consolidated Application Support Desk, Education Data Office, ConAppSupport@cde.ca.gov, 916-319-0297

Section 5211 of ESEA	
Title V, Part B Subpart 1 Small, Rural School Achievement Grant ESSA Sec. 5211 SACS 5810	Yes
Title V, Part B Subpart 2 Rural and Low-Income Grant ESSA Sec. 5221 SACS 4126	No

*****Warning*****

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2023–24 LCAP Federal Addendum Certification**CDE Program Contact:**Local Agency Systems Support Office, LCAPAddendum@cde.ca.gov, 916-323-5233**Initial Application**

To receive initial funding under the Every Student Succeeds Act (ESSA), a local educational agency (LEA) must have a plan approved by the State Educational Agency on file with the State. Within California, LEAs that apply for ESSA funds for the first time are required to complete the Local Control and Accountability Plan (LCAP), the LCAP Federal Addendum Template (Addendum), and the Consolidated Application (ConApp). The LCAP, in conjunction with the Addendum and the ConApp, serve to meet the requirements of the ESSA LEA Plan.

In order to initially apply for funds, the LEA must certify that the current LCAP has been approved by the local governing board or governing body of the LEA. As part of this certification, the LEA agrees to submit the LCAP Federal Addendum, that has been approved by the local governing board or governing body of the LEA, to the California Department of Education (CDE) and acknowledges that the LEA agrees to work with the CDE to ensure that the Addendum addresses all required provisions of the ESSA programs for which they are applying for federal education funds.

Returning Application

If the LEA certified a prior year LCAP Federal Addendum Certification data collection form in the Consolidated Application and Reporting System, then the LEA may use in this form the same original approval or adoption date used in the prior year form.

County Office of Education (COE) or District For a COE, enter the original approval date as the day the CDE approved the current LCAP. For a district, enter the original approval date as the day the COE approved the current LCAP	08/30/2022
Direct Funded Charter Enter the adoption date of the current LCAP	
Authorized Representative's Full Name	Roberto Vaca
Authorized Representative's Title	Superintendent

*****Warning*****

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2023–24 Certification of Assurances

Submission of Certification of Assurances is required every fiscal year. A complete list of legal and program assurances for the fiscal year can be found at <https://www.cde.ca.gov/fg/aa/co/ca21assurance.asp>.

CDE Program Contact:

Consolidated Application Support Desk, Education Data Office, ConAppSupport@cde.ca.gov, 916-319-0297

Consolidated Application Certification Statement

I hereby certify that all of the applicable state and federal rules and regulations will be observed by this applicant; that to the best of my knowledge the information contained in this application is correct and complete; and I agree to participate in the monitoring process regarding the use of these funds according to the standards and criteria set forth by the California Department of Education Federal Program Monitoring (FPM) Office. Legal assurances for all programs are accepted as the basic legal condition for the operation of selected projects and programs and copies of assurances are retained on site. I certify that we accept all assurances except for those for which a waiver has been obtained or requested. A copy of all waivers or requests is on file. I certify that actual ink signatures for this form are on file.

Authorized Representative's Full Name	Roberto Vaca
Authorized Representative's Signature	
Authorized Representative's Title	Superintendent
Authorized Representative's Signature Date	08/16/2023

*****Warning*****

The data in this report may be protected by the Family Educational Rights and Privacy Act (FERPA) and other applicable data privacy laws. Unauthorized access or sharing of this data may constitute a violation of both state and federal law.

2023–24 Protected Prayer Certification

Every Student Succeeds Act (ESSA) Section 8524 specifies federal requirements regarding constitutionally protected prayer in public elementary and secondary schools. This form meets the annual requirement and provides written certification.

CDE Program Contact:

Miguel Cordova, Title I Policy, Program, and Support Office, MCordova@cde.ca.gov, 916-319-0381

Protected Prayer Certification Statement

The local educational agency (LEA) hereby assures and certifies to the California State Board of Education that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in the "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools."

The LEA hereby assures that this page has been printed and contains an ink signature. The ink signature copy shall be made available to the California Department of Education upon request or as part of an audit, a compliance review, or a complaint investigation.

The authorized representative agrees to the above statement	Yes
Authorized Representative's Full Name	Roberto Vaca
Authorized Representative's Title	Superintendent
Authorized Representative's Signature Date	08/16/2023
Comment If the LEA is not able to certify at this time, then an explanation must be provided in the comment field. (Maximum 500 characters)	

*****Warning*****

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California Department of Education

Monson-Sultana Joint Union Elementary (54 72009 0000000)

Consolidated ApplicationStatus: Certified
Saved by: Benita Cortez
Date: 8/30/2023 7:26 AM**2021–22 Title II, Part A Fiscal Year Expenditure Report, 24 Months**

A report of year-to-date expenditures by activity. Activity period covered is July 1, 2021 through June 30, 2023.

CDE Program Contact:Alice Ng (Fiscal), Division Support Office, ANg@cde.ca.gov, 916-323-4636Lisa Fassett (Program), Professional Learning Support & Monitoring Office, LFassett@cde.ca.gov, 916-323-4963

2021–22 Title II, Part A allocation	\$22,092
Transferred–in amount	\$0
Transferred–out amount	\$0
2021–22 Total allocation	\$22,092

Professional Development Expenditures

Professional development for teachers	\$12,859
Professional development for administrators	\$0
Consulting/Professional services	\$0
Induction programs	\$0
Books and other supplies	\$0
Dues and membership	\$0
Travel and conferences	\$0

Personnel and Other Authorized Activities

Certificated personnel salaries	\$0
Classified personnel salaries	\$0
Employee benefits	\$0
Developing or improving an evaluation system	\$0
Recruitment activities	\$0
Retention activities	\$0
Class size reduction	\$0

Program Expenditures

Direct administrative costs	\$0
Indirect costs	\$621
Title V, Part B Subpart 1 Alternative Uses of Funds Authority Participation	\$0
Equitable services for nonprofit private schools	\$0
Total expenditures	\$13,480
2021–22 Unspent funds	\$8,612

*****Warning*****

The data in this report may be protected by the Family Educational Rights and Privacy Act (FERPA) and other applicable data privacy laws. Unauthorized access or sharing of this data may constitute a violation of both state and federal law.

Report Date:8/30/2023

Page 1 of 3

2021–22 Title III English Learner YTD Expenditure Report, 24 Months

A report of year-to-date (YTD) expenditures by activity. Activity period covered is July 1, 2021 through June 30, 2023.

CDE Program Contact:

Annie Abreu Park, Language Policy and Leadership Office, AAbreuPark@cde.ca.gov, 916-319-9620

Geoffrey Ndirangu, Language Policy and Leadership Office, GNdirang@cde.ca.gov, 916-323-5831

Required and authorized Title III English Learner (EL) student program activities

An eligible entity receiving funds under the Every Student Succeeds Act section 3115 (c)-(d) shall use the funds for the supplementary services as part of the language instruction program for EL students.

2021–22 Title III EL student program allocation	\$18,014
Transferred-in amount	\$0
2021–22 Total allocation	\$18,014
Object Code - Activity	
1000–1999 Certificated personnel salaries	\$3,841
2000–2999 Classified personnel salaries	\$6,988
3000–3999 Employee benefits	\$6,545
4000–4999 Books and supplies	\$155
5000–5999 Services and other operating expenditures	\$166
Direct administrative costs (amount cannot exceed 2% of the student program allocation plus transferred-in amount)	\$0
Indirect costs (LEA can apply its approved indirect rate to the portion of the subgrant that is not reserved for direct administrative costs)	\$319
Total year-to-date expenditures	\$18,014
2021–22 Unspent funds	\$0

*****Warning*****

The data in this report may be protected by the Family Educational Rights and Privacy Act (FERPA) and other applicable data privacy laws. Unauthorized access or sharing of this data may constitute a violation of both state and federal law.

2021–22 Title III Immigrant YTD Expenditure Report, 24 Months

A report of year-to-date (YTD) expenditures by activity. Activity period covered is July 1, 2021 through June 30, 2023.

CDE Program Contact:

Annie Abreu Park, Language Policy and Leadership Office, AAbreuPark@cde.ca.gov, 916-319-9620
Geoffrey Ndirangu, Language Policy and Leadership Office, GNdirang@cde.ca.gov, 916-323-5831

Authorized Title III Immigrant student program activities

An eligible entity receiving funds under the Every Student Succeeds Act section 3114(d)(1) shall use the funds to pay for supplemental activities that provide enhanced instructional opportunities for immigrant children and youth.

2021–22 Title III immigrant student program allocation	\$1,100
Transferred-in amount	\$0
2021–22 Total allocation	\$1,100
Object Code - Activity	
1000–1999 Certificated personnel salaries	\$0
2000–2999 Classified personnel salaries	\$0
3000–3999 Employee benefits	\$0
4000–4999 Books and supplies	\$12
5000–5999 Services and other operating expenditures	\$0
Direct administrative costs (amount should not exceed 2% of the student program allocation plus transferred-in amount)	\$0
Indirect costs (LEA can apply its approved indirect rate to the portion of the subgrant that is not reserved for direct administrative costs)	\$0
Total year-to-date expenditures	\$12
2021–22 Unspent funds	\$1,088

*****Warning*****

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California Department of Education

Monson-Sultana Joint Union Elementary (54 72009 0000000)

Consolidated ApplicationStatus: Certified
Saved by: Benita Cortez
Date: 8/30/2023 7:27 AM**2022–23 Title II, Part A Fiscal Year Expenditure Report, 12 Months**

A report of year-to-date expenditures by activity. Activity period covered is July 1, 2022 through June 30, 2023.

CDE Program Contact:Alice Ng (Fiscal), Division Support Office, ANg@cde.ca.gov, 916-323-4636Lisa Fassett (Program), Professional Learning Support & Monitoring Office, LFassett@cde.ca.gov, 916-323-4963

2022–23 Title II, Part A allocation	\$20,228
Transferred–in amount	\$0
Transferred–out amount	\$0
2022–23 Total allocation	\$20,228

Professional Development Expenditures

Professional development for teachers	\$0
Professional development for administrators	\$0
Consulting/Professional services	\$0
Induction programs	\$0
Books and other supplies	\$27
Dues and membership	\$0
Travel and conferences	\$0

Personnel and Other Authorized Activities

Certificated personnel salaries	\$0
Classified personnel salaries	\$0
Employee benefits	\$0
Developing or improving an evaluation system	\$0
Recruitment activities	\$0
Retention activities	\$0
Class size reduction	\$0

Program Expenditures

Direct administrative costs	\$0
Indirect costs	\$0
Title V, Part B Subpart 1 Alternative Fund Use Authority (AFUA)	\$0
Equitable services for nonprofit private schools	\$0
Total expenditures	\$27
2022–23 Unspent funds	\$20,201

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Report Date:8/30/2023

Page 1 of 6

2022–23 Title III English Learner YTD Expenditure Report, 12 Months

A report of year-to-date (YTD) expenditures by activity. Activity period covered is July 1, 2022 through June 30, 2023.

CDE Program Contact:

Annie Abreu Park, Language Policy and Leadership Office, AAbreuPark@cde.ca.gov, 916-319-9620

Geoffrey Ndirangu, Language Policy and Leadership Office, GNdirang@cde.ca.gov, 916-323-5831

Required and authorized Title III English Learner (EL) student program activities

An eligible entity receiving funds under the Every Student Succeeds Act section 3115 (c)-(d) shall use the funds for the supplementary services as part of the language instruction program for EL students.

2022–23 Title III EL student program allocation	\$21,950
Transferred-in amount	\$0
2022–23 Total allocation	\$21,950
Object Code - Activity	
1000–1999 Certificated personnel salaries	\$3,430
2000–2999 Classified personnel salaries	\$956
3000–3999 Employee benefits	\$1,347
4000–4999 Books and supplies	\$2,281
5000–5999 Services and other operating expenditures	\$121
Direct administrative costs (amount cannot exceed 2% of the student program allocation plus transferred-in amount)	\$0
Indirect costs (LEA can apply its approved indirect rate to the portion of the subgrant that is not reserved for direct administrative costs)	\$182
Total year-to-date expenditures	\$8,317
2022–23 Unspent funds	\$13,633

*****Warning*****

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2022–23 Title III Immigrant YTD Expenditure Report, 12 Months

A report of year-to-date (YTD) expenditures by activity. Activity period covered is July 1, 2022 through June 30, 2023.

CDE Program Contact:

Annie Abreu Park, Language Policy and Leadership Office, AAbreuPark@cde.ca.gov, 916-319-9620
Geoffrey Ndirangu, Language Policy and Leadership Office, GNdirang@cde.ca.gov, 916-323-5831

Authorized Title III Immigrant student program activities

An eligible entity receiving funds under the Every Student Succeeds Act section 3114(d)(1) shall use the funds to pay for supplemental activities that provide enhanced instructional opportunities for immigrant children and youth.

2022–23 Title III immigrant student program allocation	\$1,509
Transferred-in amount	\$0
2022–23 Total allocation	\$1,509
Object Code - Activity	
1000–1999 Certificated personnel salaries	\$0
2000–2999 Classified personnel salaries	\$0
3000–3999 Employee benefits	\$0
4000–4999 Books and supplies	\$9
5000–5999 Services and other operating expenditures	\$0
Direct administrative costs (amount should not exceed 2% of the student program allocation plus transferred-in amount)	\$0
Indirect costs (LEA can apply its approved indirect rate to the portion of the subgrant that is not reserved for direct administrative costs)	\$0
Total year-to-date expenditures	\$9
2022–23 Unspent funds	\$1,500

*****Warning*****

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2022–23 Homeless Education Policy, Requirements, and Implementation

The purpose of this data collection is to meet federal requirements specified in 42 United States Code 11431 et seq. (Education for Homeless Children and Youths Act) and some federal requirements in Title I, Part A of the Elementary and Secondary Education Act (ESEA). This collection includes monitoring local educational agencies (LEAs) and their compliance with key provisions of the Education for Homeless Children and Youths Act including the collection of contact information for each required designated LEA's homeless liaison.

CDE Program Contact:

Leanne Wheeler, Integrated Student Support and Programs Office, LWheeler@cde.ca.gov, 916-319-0383
Karmina Barrales, Integrated Student Support and Programs Office, KBarrales@cde.ca.gov, 916-327-9692

Homeless Education Certification

The LEA hereby assures that the LEA has met the following requirements:

1. Designated a staff person as the liaison for homeless children and youths;
2. Developed a written policy that supports the enrollment and retention of homeless children and youths in schools of the LEA which:
 - a) Includes policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless;
 - b) Includes a dispute resolution process;
 - c) Ensures that transportation is provided for a homeless child or youth to and from the school of origin if requested by the parent, guardian or homeless liaison;
3. Disseminated public notice of the educational rights of homeless children and youths where such children and youths receive services under the provisions of the Education for Homeless Children and Youths Act.

Homeless Liaison Contact Information

Homeless liaison first name	Roberto
Homeless liaison last name	Vaca
Homeless liaison title	Superintendent
Homeless liaison email address (Format: abc@xyz.zyx)	rvaca@msschool.org
Homeless liaison telephone number (Format: 999-999-9999)	559-591-1634
Homeless liaison telephone extension	115
Enter the full-time equivalent (FTE) for all personnel directly responsible for the implementation of homeless education (Format: 0.00)	1.00

Homeless Liaison Training Information*****Warning*****

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2022–23 Homeless Education Policy, Requirements, and Implementation

The purpose of this data collection is to meet federal requirements specified in 42 United States Code 11431 et seq. (Education for Homeless Children and Youths Act) and some federal requirements in Title I, Part A of the Elementary and Secondary Education Act (ESEA). This collection includes monitoring local educational agencies (LEAs) and their compliance with key provisions of the Education for Homeless Children and Youths Act including the collection of contact information for each required designated LEA's homeless liaison.

CDE Program Contact:

Leanne Wheeler, Integrated Student Support and Programs Office, LWheeler@cde.ca.gov, 916-319-0383
Karmina Barrales, Integrated Student Support and Programs Office, KBarrales@cde.ca.gov, 916-327-9692

Has the homeless liaison attended and/or participated in a homeless education liaison training within the last two years	No
Has the homeless liaison provided training to the following personnel:	
Principals and other school leaders	No
Attendance officers and registrars	No
Teachers and instructional assistants	No
School counselors	No

Homeless Education Policy and Requirements

Does the LEA have a written homeless education policy	Yes
No policy comment	
Provide an explanation why the LEA does not have a homeless education policy. (Maximum 500 characters)	
Date LEA's board approved the homeless education policy	11/17/2017
Does the LEA meet the above federal requirements	Yes
Compliance comment	
Provide an explanation why the LEA does not comply with federal requirements. (Maximum 500 characters)	

Housing Questionnaire Identifying Homeless Children

Does your LEA use a housing questionnaire to assist with the identification of homeless children and youth	Yes
Does the housing questionnaire include best practices, rights, and protections afforded to homeless children and youth	Yes
Is the housing questionnaire made available in paper form	Yes
Did your LEA administer the housing questionnaire to all student body during the school year	No

Title I, Part A Homeless Expenditures

2022–23 Title I, Part A LEA allocation	\$222,506
2022–23 Title I, Part A direct or indirect services to homeless children reservation	\$2,225

*****Warning*****

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2022–23 Homeless Education Policy, Requirements, and Implementation

The purpose of this data collection is to meet federal requirements specified in 42 United States Code 11431 et seq. (Education for Homeless Children and Youths Act) and some federal requirements in Title I, Part A of the Elementary and Secondary Education Act (ESEA). This collection includes monitoring local educational agencies (LEAs) and their compliance with key provisions of the Education for Homeless Children and Youths Act including the collection of contact information for each required designated LEA's homeless liaison.

CDE Program Contact:

Leanne Wheeler, Integrated Student Support and Programs Office, LWheeler@cde.ca.gov, 916-319-0383
Karmina Barrales, Integrated Student Support and Programs Office, KBarrales@cde.ca.gov, 916-327-9692

Amount of 2022–23 Title I, Part A funds expended or encumbered for direct or indirect services for homeless children	\$0
Homeless services provided (Maximum 500 characters)	
No expenditures or encumbrances comment Provide an explanation why there are no Title I, Part A expenditures or encumbrances for homeless services. (Maximum 500 characters)	Monson-Sultana JUESD did have two (2) homeless students for 2022-2023. District provided additional health services for these students.

*****Warning*****

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2023–24 Title III English Learner Student Program Subgrant Budget

The purpose of this data collection form is to provide a proposed budget for English learner (EL) Student Program Subgrant funds only per the Title III English Learner Students Program requirements (ESSA, Sections 3114, 3115, & 3116).

CDE Program Contact:

Annie Abreu Park, Language Policy and Leadership Office, AAbreuPark@cde.ca.gov, 916-319-9620
Geoffrey Ndirangu, Language Policy and Leadership Office, GNdirang@cde.ca.gov, 916-323-5831

Estimated Allocation Calculation

Estimated English learner per student allocation	\$125.15
Estimated English learner student count	155
Estimated English learner student program allocation	\$19,398

Note: \$10,000 minimum program eligibility criteria

If the local educational agency's estimated English learner student program allocation is less than \$10,000, then it does not meet the minimum program eligibility criteria for direct funding status and requires further action. To receive instructions regarding the consortium application process, please go to the California Department of Education Title III EL Consortium Details web page at <https://www.cde.ca.gov/sp/el/t3/elconsortium.asp>.

Budget

Professional development activities	\$12,863
Program and other authorized activities	\$4,155
English Proficiency and Academic Achievement	\$1,500
Parent, family, and community engagement	\$500
Direct administrative costs (Amount cannot exceed 2% of the estimated English learner student program allocation)	\$0
Indirect costs (LEA can apply its approved indirect rate to the portion of the subgrant that is not reserved for direct administrative costs)	\$380
Total budget	\$19,398

*****Warning*****

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2023–24 Title III Immigrant Student Program Subgrant Budget

The purpose of this data collection form is to provide a proposed budget for Immigrant Student Program Subgrant funds only per the Title III Immigrant Student Program requirements (ESSA, Sections 3114, 3115, & 3116).

CDE Program Contact:

Annie Abreu Park, Language Policy and Leadership Office, AAbreuPark@cde.ca.gov, 916-319-9620
Geoffrey Ndirangu, Language Policy and Leadership Office, GNdirang@cde.ca.gov, 916-323-5831

Estimated Allocation Calculation

Estimated immigrant per student allocation	\$120.05
Estimated immigrant student count	11
Estimated immigrant student program allocation	\$1,321

Note: Eligibility criteria

A local educational agency which has 5 or more eligible immigrant students and has experienced a significant increase of one half of 1 percent or more in eligible immigrant students enrollment in the current year, compared with the average of the two preceding fiscal years, is eligible to apply.

Budget

Authorized activities	\$1,321
Direct administrative costs (Amount should not exceed 2% of the estimated immigrant student program allocation)	\$0
Indirect costs (LEA can apply its approved indirect rate to the portion of the subgrant that is not reserved for direct administrative costs)	\$0
Total budget	\$1,321

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2023–24 Substitute System for Time Accounting

This certification may be used by auditors and by California Department of Education oversight personnel when conducting audits and sub-recipient monitoring of the substitute time-and-effort system. Approval is automatically granted when the local educational agency (LEA) submits and certifies this data collection.

CDE Program Contact:

Hilary Thomson, Fiscal Oversight and Support Office, HThomson@cde.ca.gov, 916-323-0765

The LEA certifies that only eligible employees will participate in the substitute system and that the system used to document employee work schedules includes sufficient controls to ensure that the schedules are accurate.

Detailed information on documenting salaries and wages, including both substitute systems of time accounting, are described in Procedure 905 of the California School Accounting Manual posted on the web at <https://www.cde.ca.gov/fg/ac/sa/>.

2022–23 Request for authorization	No
LEA certifies that the following is a full disclosure of any known deficiencies with the substitute system or known challenges with implementing the system (Maximum 500 characters)	

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MONSON-SULTANA JOINT ELEMENTARY UNIFIED SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **9.10 CHILD EVANGELISM FELLOWSHIP (CEF)**
GOOD NEWS CLUB

ATTACHMENTS: **STATEMENT OF INFORMATION & AGREEMENT**

DISCUSSION:

The attached documents are provided by Child Evangelism Fellowship-Good News Club, which will provide extra-curricular, optional, after school activity for the children at the school one day per week. Activities will include Songs, Bible Lessons, and games conducted by the trained and screened volunteers of CEF.

RECOMMENDATION: **The Superintendent recommends Approval of the Child Evangelism Fellowship (CEF) - Good News Club Agreement.**

PROPOSED ACTION: **Approval**

MONSON-SULTANA JT. UNION ELEMENTARY SCHOOL DISTRICT

AGREEMENT AND APPLICATION FOR USE OF SCHOOL FACILITIES

Date of Application: 7-10-23 Facility Requested: Classroom 21

Requesting Organization: CEF Nor Cal, Central Valley South
(Hereinafter the "Client")

Authorized Representative: Lynnese Castle

Address: 1322 E. Shaw Ave, Suite 110
Fresno, CA 93710

Telephone & FAX: (559) 226-5539

Purpose: After school, free Good News Club -
there will be songs, a bible lesson, games conducted by
trained and screened volunteers.

Date(s) Requested: Sept. 14 - Oct. 19, 2023

Start Time/End Time: 3:15 - 4:15 pm

Approximate Size of Group: 25 Charging Admission? no Amount: N/A

District Use Only Below This Line

Insurance Required (circle one): (YES) NO

Ed Code §38134(d) or (e) Category A _____

Ed Code §38134(a) Category B _____

*Certificate of Insurance must be delivered prior to approval (attach copy to this document).

Base Fee: \$ 0 Personnel Fee: 0 Total Fees Charged: \$ 0

Deposit Required: \$ 0

Approved ✓ or Denied _____ Date: 7/13/2023

Approved/Denied By: Roberto Valle

CONDITIONS OF USE

1. Set-up and Post-use Procedures: Standard set-up includes normal heating, lights, air conditioning, usual cleaning, room set-up, and routine maintenance by DISTRICT. The facility will be set up as requested by CLIENT and CLIENT will discuss set-up with the DISTRICT at the time this agreement is approved by DISTRICT. Approval of final set-up will be accomplished at least one (1) day prior to the event date. Unless expressly requested and funded by the CLIENT, once the event is concluded all facilities will be restored to the same condition as they were in prior to the start of the event. All litter, trash, and debris is the responsibility of CLIENT and will be removed by CLIENT unless previously arranged with DISTRICT.
2. Signs: CLIENT will not cause to be affixed by any means to any portions of the building, grounds, or fences any banners, signs, posters, or any other materials without specific prior to authorization by the DISTRICT.
3. Permitted Use: The CLIENT may use the facilities for public, recreational, educational, and related activities as authorized by the California Civic Center Act, Education Code §38130 et seq. CLIENT shall not put the grounds to any other use without the prior written consent of the DISTRICT.

Use of athletic fields does not include access to restroom facilities or the main campus area. All gates which enclose the main campus will remain locked during non-school hours unless school personnel have been requested and all applicable fees for their salary are paid at least 5 days prior to the event. Portable toilet facilities are not authorized on school grounds unless prior agreement has been reached with school officials. The use of playgrounds or athletic fields for restroom purposes is a violation of civil code which will result in the immediate termination of this agreement (see paragraph 8 below).

4. Payment Due Date: Complete payment of fees (if any) shall be made on or before five (5) days from the billing date. CLIENT further agrees to pay a twenty-five (\$25.00) fee for each returned check.
5. Deposits: The deposit charged shall become non-refundable within three (3) days prior to the event date. Should CLIENT's event be cancelled, or if reservation is not cancelled and group fails to appear, any expenditures that have been incurred by the DISTRICT beyond deposit, including, but not limited to custodial overtime, will be invoiced to you and payable within thirty (30) days. Any cancellation by CLIENT must be in writing and is not effective until and unless received by the DISTRICT. Should the CLIENT fail to comply with or default in the performance of any of the terms and conditions of this Agreement,

the DISTRICT reserves the right to cancel the Agreement. Any deposit, or portion thereof, made by CLIENT to DISTRICT in such case may be retained by DISTRICT at its option.

6. Hold Harmless: CLIENT agrees to indemnify, hold harmless, and defend the DISTRICT, its Board of Trustees, officers, agents, employees, and representatives from all claims, lawsuits or actions of every name, kind and description, brought for or on account of injuries to or death of any person, including CLIENT or any employee, agent, or invitee of CLIENT, or damage to property including intangible property and to whosoever belonging, where such injuries, death or damages occurred in, upon, or due to CLIENT's use of the DISTRICT's premises or property.
7. Insurance: Prior to approval of this Agreement by DISTRICT, CLIENT shall file with the DISTRICT evidence of the required insurance as set forth in the Exhibits.
8. Occupancy Interruption: Should the facilities be destroyed, damaged, or left in an unsanitary condition to such an extent that such damage will interfere with the use of the facility by the CLIENT or the DISTRICT, or should a strike, public emergency or other unforeseen occurrence beyond the control of the DISTRICT prevent CLIENT from using said facilities, then District shall have the right to terminate this Agreement and CLIENT shall only be liable for charges due at the time of such occurrence. Should the Agreement be terminated for any such cause, the DISTRICT waives any claim for damages or compensation. Further, DISTRICT retains the right to cause the interruption of any event in the interest of public safety, and to likewise cause the termination of the event when, in the sole judgment of DISTRICT, to do so is necessary in the interest of public safety. CLIENT waives any and all claims for damages or compensation from DISTRICT in the event of said interruptions or termination.
9. Tobacco, Liquor, Unlawful Drugs Prohibited: No tobacco, alcoholic beverages, or unlawful drugs shall be allowed in the facilities, to include playgrounds and athletic fields.
10. Consistent Use: As required by Education Code §38133, CLIENT's use of the facilities shall at all times be consistent with the use of facilities by DISTRICT for school purposes and shall not interfere with the regular conduct of schoolwork.
11. Damage: CLIENT shall be solely responsible for and shall reimburse DISTRICT for any and all necessary repairs and replacements resulting from damage to the facilities arising from CLIENT's use and occupancy of the facilities, or that of its officers, employees, agents, licensees or invitees, pursuant to this agreement.

12. Regulations: CLIENT shall, at all times during its use and occupancy of the facilities, comply with all applicable ordinances, laws, rules and regulations pertaining to said use and occupation.
13. Entry: The District, its officers, employees or agents, shall have the right to enter into and upon the facilities at all times and to protect any and all rights of the DISTRICT.
14. Assignment: CLIENT shall not assign, mortgage, sublet or otherwise transfer any interest in the Agreement to any person, firm, corporation or private or public agency with the prior written consent of DISTRICT.
15. Amendment: This Agreement may not be amended, modified or altered without the express written consent of both parties hereto.
16. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
17. Further Assurances: Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.
18. Entire Agreement Represented: This Agreement represents the entire agreement between CLIENT and DISTRICT as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived or repealed without the consent of both parties.

STATEMENT OF INFORMATION

The undersigned, as duly authorized representative for CEF Nor Cal, Central Valley South, states that, to the best of his/her knowledge, the school property for use of which application is hereby made will not be used for the commission of any crime or any act which is prohibited by law.

The undersigned further declares that CEF Nor Cal, Central Valley South, the organization on whose behalf he/she is applying for the use of school property upholds and defends the Constitutions of the United States and the State of California.

Japanese Castle
(Signed)

7-10-23
(Date)

CEF Nor Cal, Central Valley South
(Name of Organization)

The undersigned agrees to defend, indemnify and hold harmless the Monson-Sultana Jt. Union Elementary School District, its Board of Trustees, Officers, agents, and employees individually and collectively, from and against all costs, losses, claims, demands, suits, actions, payments and judgments arising from personal or bodily injuries, property damage or otherwise, brought or recovered against any of the above that may arise from or be alleged to be caused by this undersigned:

(check one)

- ☒ Use occupancy of District facilities, furniture, or equipment
☐ Participation in the voluntary activity

Japanese Castle
Signature

MONSON-SULTANA JT. UNION ELEMENTARY SCHOOL DISTRICT
SCHEDULE OF FEES FOR USE OF SCHOOL FACILITIES

	Category A	Category B
	Youth Organizations Including athletic leagues, Conduct of Religious Services, Non-profit organizations, governmental agencies. Costs include utilities, supplies, employee costs for non-overtime janitorial services.	Admission fees are charged or donations are solicited for entry, products or concessions are sold and net receipts are not expended directly for the welfare of District pupils.
	CATEGORY A PER HOUR OR PER USE	CATEGORY B PER HOUR OR PER USE
Administrative Fee/Application Fee	No Charge	\$10.00 (One time fee)
Standard Classroom (per room)*	\$3.00 per hour	\$5.00 per hour
Specialty Classroom *	\$5.00 per hour	\$8.00 per hour
Athletic Field (per field)*	\$10.00 per use, per field used	\$15.00 per use, per field used
Kitchen/Cafeteria w/o appliances *	\$10.00 per use	\$25.00 per use
Kitchen/Cafeteria with appliances**	\$50.00 per use	\$75.00 per use
Board Room *	\$5.00 per hour	\$10.00 per hour

* Restroom facilities will not be available outside of regular school hours unless janitorial services are contracted at the rate of \$30.00 per hour, 2 hour minimum.

** School food service personnel are required to be on hand if appliances are used. Services are contracted at the rate of \$30.00 per hour, 2 hour minimum.

Custodial fees *may* be waived on school days at the discretion of the Superintendent if assurances are made that all facilities used will be thoroughly cleaned prior to departure.

Any adjustments or waiver of these fees, except as previously noted, must be approved by the Governing Board.

USE OF SCHOOL FACILITIES

Application for Use of Facilities

Any persons applying for the use of any school facility or grounds on behalf of any society, group, or organization shall present written authorization from the group or organization to make the application.

Persons or organizations applying for the use of school facilities or grounds shall submit a statement of information indicating that the organization upholds the state and federal constitutions and does not intend to use school premises to commit unlawful acts.

Civic Center Use

Subject to district policies and regulations, school facilities and grounds shall be available to citizens and community groups as a civic center for the following purposes: (Education Code 32282, 38131)

1. Public, literary, scientific, recreational, educational, or public agency meetings
2. The discussion of matters of general or public interest
3. The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization
4. Child care programs to provide supervision and activities for children of preschool and elementary school age

(cf. 5148 - Child Care and Development)

(cf. 5148.2 - Before/After School Programs)

(cf. 6300 - Preschool/Early Childhood Education)

5. The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies
6. Supervised recreational activities including, but not limited to, sports league activities that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination
7. A community youth center

(cf. 1020 - Youth Services)

8. Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare

USE OF SCHOOL FACILITIES (continued)

(cf. 0450 - Comprehensive Safety Plan)
(cf. 3516 - Emergencies and Disaster Preparedness Plan)

9. A ceremony, patriotic celebration, or related educational assembly conducted by a veterans' organization

A *veterans' organization* means the American Legion, Veterans of Foreign Wars, Disabled American Veterans, United Spanish War Veterans, Grand Army of the Republic, or other duly recognized organization of honorably discharged soldiers, sailors, or marines of the United States, or any of their territories. (Military and Veterans Code 1800)

10. Other purposes deemed appropriate by the Governing Board

The district may grant the use of school facilities on those days on which the public school is closed. (Education Code 37220)

(cf. 6115 - Ceremonies and Observances)

Restrictions

School facilities or grounds shall not be used for any of the following activities:

1. Any use by an individual or group for the commission of any crime or any act prohibited by law
2. Any use which is inconsistent with the use of the school facility for school purposes or which interferes with the regular conduct of school or school work
3. Any use which involves the possession, consumption, or sale of alcoholic beverages or any restricted substances, including tobacco use

(cf. 3513.3 - Tobacco-Free Schools)

The district may exclude certain school facilities from non-school use for safety or security reasons.

Damage and Liability

Groups, organizations, or persons using school facilities or grounds shall be liable for any property damages caused by the activity. The Board may charge the amount necessary to repair the damages and may deny the group further use of school facilities or grounds.

USE OF SCHOOL FACILITIES (continued)

Any group or organization using school facilities or grounds shall be liable for any injuries resulting from its negligence during the use of district facilities or grounds. The group shall bear the cost of insuring against this risk and defending itself against claims arising from this risk. (Education Code 38134)

Groups or organizations shall provide the district with evidence of insurance against claims arising out of the group's own negligence. Groups or organizations shall also be required to include the district as an additional insured on their liability policies for claims arising out of the negligence of the group.

As permitted, the Superintendent/Principal or designee may require a hold harmless agreement and indemnification when warranted by the type of activity or the specific facility being used.

STATEMENT OF INFORMATION

The undersigned, as duly authorized representative for CEF NorCal, Central Valley South, states that, to the best of his/her knowledge, the school property for use of which application is hereby made will not be used for the commission of any crime or any act which is prohibited by law.

The undersigned further declares that CEF NorCal, Central Valley South the organization on whose behalf he/she is applying for the use of school property, upholds and defends the Constitutions of the United States and the State of California.

Japanese Castle
(Signed)

7-10-23
(Date)

CEF NorCal, Central Valley South
(organization if applicable)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/01/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CF&P Insurance Brokers 101 Ygnacio Valley Road Ste. 200 Walnut Creek, CA 94596	CONTACT NAME: Cherrie Lazaro	PHONE (A/C No. Ext): (925) 956-7711	FAX (A/C No.): (925) 956-7777
	E-MAIL ADDRESS: cherrie@cfpinsurance.com		
INSURED CEF NorCal Inc 800 San Antonio Rd, Suite 5 Palo Alto, CA 94303	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Philadelphia Insurance Comp.		PHI
	INSURER B: Hartford Casualty Insurance Company		HRT
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PROJECT LOC OTHER:	Y		PHPK2455690	08/15/2023	06/15/2024	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK2455690	08/15/2023	06/15/2024	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB829528	08/15/2023	06/15/2024	EACH OCCURRENCE	\$ 2,000,000
							AGGREGATE	\$ 2,000,000
								\$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	57WECAX0US0	06/15/2023	06/15/2024	<input checked="" type="checkbox"/> PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Abuse & Molestation			PHPK2455690	08/15/2023	06/15/2024	Occurrence Aggregate	100,000 300,000


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: All Good News Club Held in the District

Additional Insured per the attached endorsement form.

CERTIFICATE HOLDER

CANCELLATION

Monson-Sultana Joint Union Elementary School PO Box 25 Sultana, CA 93666	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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CHILD EVANGELISM FELLOWSHIP
NORCAL
CENTRAL VALLEY SOUTH

Memorandum of Understanding
CEF NorCal, Central Valley South and
Monson-Sultana Joint Union Elementary School District

I. Memorandum of Understanding

This Memorandum of Understanding sets out the guidelines for a *Good News Club (GNC)* at Monson-Sultana Elementary School (School). The purpose is to provide an extra-curricular, optional, after-school activity for the children at the School.

II. CEF NorCal, Central Valley South

CEF NorCal, Central Valley South (CEF) will use a classroom immediately after regular school hours to provide a FREE Good News Club for children who are registered to attend by parents / guardians. No child may attend the Good News Club without a signed and fully completed Parent Registration form.

CEF will provide a Certificate of Insurance meeting the requirements of the Monson-Sultana Joint Union Elementary School District (District)

CEF will provide a team of volunteers who have applied, background screened, fingerprinted with the California Department of Justice in compliance with AB506 and fully trained in the 8-hour Good News Club Training as required for all volunteers.

CEF will provide all needed supplies for the *GNC* at each session and remove them from the school at the end of each session, leaving the environment as it was found on arrival.

III. Monson-Sultana Joint Union Elementary School District

The *District* will provide a classroom in orderly condition, with chairs and a table for the volunteers to use while teaching.

The *District* will provide an appropriately controlled climate as scheduled during school hours for the comfort of the children.

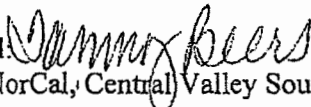
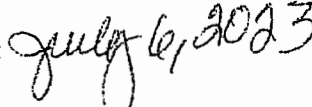
Access to the classroom and secure the classroom at the conclusion of the *GNC*.

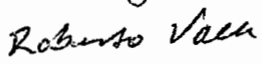
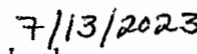
IV. Term

The term of this MOU will be specified in the Facility Use Agreement for the 2023 – 2024 school year.

VII. Amendments to this Memorandum of Understanding

Amendments must be approved and specified below by both parties and signed by the original representatives to update this agreement. This MOU will be effective from date of signature through the end of the school year, 2024.

Signed:  Date: 
CEF NorCal, Central Valley South

Signed:  Date: 
Monson-Sultana Joint Union Elementary School

(Signatures of individuals representing parties)

MONSON-SULTANA JOINT ELEMENTARY UNIFIED SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **9.11 AGREEMENT FOR GYMNASIUM PROJECT**

ATTACHMENTS: **ATTACHMENT A - KYA PROPOSED AGREEMENT**
ATTACHMENT B - MSJUESD ADDENDUM + GENERAL
CONDITIONS

DISCUSSION:

Consideration and Approval of Agreement for Monson-Sultana School Gymnasium Building and Related Addendum Documents; Authorize Superintendent or Designee to negotiate and finalize.

RECOMMENDATION: **The Superintendent recommends Approval of Agreement for the Monson-Sultana School Gymnasium Building and authorization to negotiate and finalize.**

PROPOSED ACTION: **Approval**

ATTACHMENT A

AGREEMENT

MONSON-SULTANA SCHOOL

GYMNASIUM BUILDING

This Agreement ("Agreement") dated as of June 6, 2023 ("Effective Date") is made by and between:

MONSON-SULTANA SCHOOL

and

**KYA Services, Inc.
1800 E. McFadden Ave.
Santa Ana, CA**

Monson-Sultana School ("District") and KYA Services, Inc. ("CONTRACTOR") agree as follows:

WHEREAS, the Governing Board of the Monson-Sultana School ("District") has determined that Monson-Sultana School will require a new gymnasium building ("Project"); and

WHEREAS, the District has investigated and determined that the Project requires specialized materials and installation and that, therefore, procurement through the California Multiple Award Schedule ("CMAS") is the economical and expeditious delivery method under the circumstances. Therefore, the parties enter into this Agreement as to the following.

1. **SCOPE OF WORK.** CONTRACTOR shall provide District with the provision of all equipment, materials, supplies, and installation services applicable to the Project Scope of Work to include, a new gymnasium building, and all infrastructure work associated with each element, as set forth.

CONTRACTOR. is responsible, as applicable, for the design, engineering, approvals, project management, installation, startup, training, warranty, and insurance specifically associated with the Work to be performed. CONTRACTOR will provide submittals and engineered drawings (if required), for District's technical review and written approval, prior to initiating construction. All construction and associated cleanup shall be performed and scheduled so as to minimize any disruption with any ongoing District and School activities. CONTRACTOR agrees to keep the jobsite clean of debris arising out of its own operations.

2. **PROJECT PRICE.** CONTRACTOR shall perform all work contemplated herein to full completion for a total fixed price of FIVE MILLION, SIX HUNDRED FIFTY-NINE THOUSAND, EIGHT HUNDRED NINETY FIVE DOLLARS AND FIFTY EIGHT CENTS (\$5,659,895.58) ("Contract Amount").
3. **INVOICING & PAYMENTS.** Upon the issuance of an invoice from CONTRACTOR for completed work the District agrees to process the payment of all undisputed invoice amounts in accordance with law. If CONTRACTOR'S invoice is not paid within thirty (30) days of issuance, CONTRACTOR may add 1% per month interest onto delinquent amounts.
4. **INDEPENDENT CONTRACT.** It is agreed between the parties that CONTRACTOR shall perform the Work as an independent contractor. In the event CONTRACTOR uses one or more subcontractors to perform work hereunder, CONTRACTOR shall remain fully responsible for (a) payment to the subcontractor(s), (b) the proper completion of this agreement and (c) supervising such subcontractor's work and for the quality of the work they produce.

5. **MATERIALS.** All materials shall be new, in compliance with all applicable laws and codes, and shall be covered by a manufacturer's warranty, if appropriate. If the materials or equipment included in this agreement become temporarily or permanently unavailable, the time for performance of the work may be extended to the extent thereof, as mutually agreed by the parties in writing.
6. **COMPLETION.** The work specified in Section 1 shall be considered completed upon approval by the District, provided that the District's approval shall not be unreasonably withheld.
7. **WARRANTY.** CONTRACTOR warrants that the equipment and items installed shall be free from defects in material and workmanship arising from usage for a period of one (1) years from the installation date. Within the warranty period, if District provides written notice to CONTRACTOR of any defects within thirty (30) days after the appearance or discovery of such defect, CONTRACTOR shall repair or replace the defect. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained.
8. **TAXES.** The price of this agreement does include duties, sale, use, excise or other similar taxes required by federal, state or local laws in effect at the time of agreement execution.
9. **DELAYS.** Neither party shall be liable for any delay in the performance of the work resulting from or attributed to acts of circumstance beyond the parties' control, including but not limited to acts of God, riots, labor disputes, conditions of the premises, government ordered lockdown, or other delays caused by suppliers. If the District delays completion for greater than sixty (60) days, CONTRACTOR may recover any documented cost inflation on un-billed materials that were either stored or yet to be purchased.
10. **PROJECT COMPLETION DATE.** CONTRACTOR shall complete all work contemplated herein by May 31, 2024.
11. **COMPLIANCE WITH LAWS.** CONTRACTOR shall comply with all applicable federal, state, and local laws and regulations. All licenses and permits required for the prosecution of the work shall be obtained and paid for by CONTRACTOR. Any provision not included but required by law shall hereby be incorporated into this Agreement by this reference.
12. **DISPUTES.** Written notice of any Dispute must be provided to the other party, describing specific details of the dispute relating to changes in Work or claim for additional compensation, within seven (7) days of the occurrence of the condition. This notice must be provided via certified mail. For a reasonable period commencing on the day written notice of Dispute was provided, but not to exceed ten (10) days, the parties shall in good faith attempt to resolve the Dispute. If the parties are unable to resolve the Dispute during this period, the parties shall proceed to advisory arbitration. The arbitrator shall be neutral and mutually acceptable, but said arbitration shall not exceed one (1) day. In the event arbitration is unable to resolve the dispute, the parties may initiate a court action. All venues shall be in the County where the project is located.
13. **CHANGE ORDER (Mid-Performance Amendments).** If events beyond the control of the parties reasonably require adjustments to this agreement, the parties shall make a good faith attempt to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties and added to this agreement. Failure to reach agreement shall be deemed a dispute to be resolved as agreed in section 12 of this agreement.
14. **INSURANCE.** CONTRACTOR will maintain comprehensive liability and other insurance in amounts not less than those set forth below. Such insurance shall protect CONTRACTOR and the District against any claims, losses, liabilities and expenses arising from the Work, whether performed by CONTRACTOR or any its subcontractors. The coverage shall include:

- a. Workmen's Compensation and Employers Liability Insurance - \$500,000 each accident; \$500,000 each employee/disease; and \$1,000,000 policy limit.
 - b. Comprehensive or Commercial General Liability - Bodily injury liability of \$2,000,000 per occurrence and general aggregate liability of \$4,000,000 per occurrence.
 - c. Comprehensive Automobile Insurance - Combined single limit of \$1,000,000 per occurrence.
15. **INDEMNITY.** CONTRACTOR ("Indemnifying Party") shall indemnify the District, its Governing Board, officers, employees, and agents from and against any and all liabilities, claims, expenses, losses or damages, including attorney's fees, which may arise in connection with the execution of the Work herein specified and which are caused, in whole or in part by the intentional or negligent act or omission of the Indemnifying Party.
16. **OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of any alleged violation of, the Occupational Safety and Health Act (OSHA) relating in any way to the project or project site.
17. **FINGERPRINTING.** The services provided hereunder shall occur on an active school site. As such, CONTRACTOR shall ensure that its services on and around the school site comply with all applicable laws, regulations and standards including but not limited to, the fingerprinting requirements of the Education Code and any other legal requirements which may be applicable to CONTRACTOR'S activities on or about the school site. While the Monson-Sultana School shall reasonably assist CONTRACTOR in determining the applicable requirements, it shall be CONTRACTOR'S sole responsibility for determining and complying with all applicable laws, regulations, and standards.
18. **PREVAILING WAGES.** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the Purchaser and are also available from the Director of the Department of Industrial Relations. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).
19. The following are hereby referenced and made a part of this Agreement and CONTRACTOR stipulates to the provisions contained therein.
 1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 *et seq.*)
 2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 *et seq.*)
20. **CORRECTION OF WORK.** CONTRACTOR shall promptly correct work rejected by District for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one year from the date of Substantial Completion of the contract or by terms as an applicable special warranty required by the Contract Documents. The provisions of this Section 20 apply to Work done by Subcontractors as well as to Work done by direct employees of CONTRACTOR.

Nothing contained in this Section 20 shall be construed to establish a period of limitation with respect to other obligations, which CONTRACTOR might have under the Contract Documents. Establishment of the time period of one year as described in Section 20 relates only to the specific

obligation of CONTRACTOR to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to its obligations hereunder other than specifically to correct the Work.


21. **FAILURE TO CARRY OUT WORK.** If CONTRACTOR defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, District, after seven (7) days' written notice to it and without prejudice to any other remedy District may have, may make good such deficiencies, and may deduct the cost thereof from the payment then or thereafter due to CONTRACTOR.
22. **ENTIRE AGREEMENT.** This Agreement, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
23. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding unless stated in a written instrument and signed by an authorized representative of each party.
24. **SEVERABILITY.** If one or more of the provisions of this Agreement are held to be unenforceable under laws, such provision(s) shall be excluded from these terms and conditions and the remaining terms and conditions shall be interpreted as if such provision were so excluded and shall be enforced in accordance to their terms and conditions.
25. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this agreement received by either party by facsimile or portable document format (PDF) is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.
26. **ASSIGNMENT.** CONTRACTOR may assign its rights and obligations of this agreement only with written consent of the District.
27. **ACKNOWLEDGMENT.** Both CONTRACTOR and the District acknowledge having read this Agreement and all contract documents incorporated herein and have executed this Agreement on the date written above.
28. **APPROVAL.** Each party represents that the person that has executed this Agreement on its behalf is authorized to do so.
29. **CONTRACT.** This Agreement in addition to all of the Bid Documents (Instructions to Bidders et al.) constitute the Contract for purposes of the Project.
30. **EXHIBIT A.** CMAS Agreement dated 01/05/2023
31. **EXHIBIT B.** Purchase Order Number 2223 BC 023 Revised dated 04/15/2023

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement effective as of the date first above written.

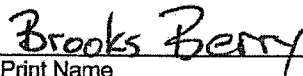
Signature

Print Name

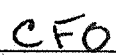
Title



Signature



Print Name



Title



PREPARED FOR

Roberto Vaca

MONSON-SULTANA School

rvaca@msschool.org

01/05/2023

Monson-Sultana CUUBE Gym

Project Number 1-4-23015

CMAS: 4-20-78-0089C

Contact

Justin Bryant
1800 E. McFadden Ave.
Santa Ana, CA

(661) 857-5431

Justin.Bryant@theKYAgroup.com

Pages 6

CA LICENSE #984827 B + C15

DIR #1000003379



Proposal: 1-4-23015
To: MONSON-SULTANA School
10643 Avenue 416
Dinuba
California
93618

Date: January 5, 2023
Terms: Net 30
CMAS: 4-20-78-0089C
Base Contract: February 10, 2025
Contract Terms: Feb 26, 2020 - Feb 10, 2025

c/o: MONSON-SULTANA School
RA: Justin Bryant
RA Phone: (661) 857-5431
RA Email: Justin.Bryant@theKYAGroup.com
Site: Monson-Sultana Elementary
Address: 10643 Avenue 416,
93618

Site Qualifications and General Scope of Work

DIR # 1000003379

A large, empty rectangular box with a black border, intended for site qualifications and general scope of work.

Notes: Sales tax rate will be based upon the shipping address. Price is good for 30 days from date of quote.

Initials _____



SCOPE OF WORK - PRICING

	Quantity	U/M	Price	Value
Monson-Sultana CUUBE Gym Revision				
<u>CUUBE100 CUUBE 100 SERIES</u>	10,000.00	SF	\$429.96	\$4,299,600.00
<u>RMIXCON READY MIX CONCRETE</u>	753.00	CY	\$217.61	\$163,860.33
<u>BAR4 BAR #4</u>	17,294.00	EA	\$6.79	\$117,426.26
<u>PVC PIPE SCHEDULE 40</u>	497.00	LF	\$3.80	\$1,888.60
<u>Specialty Equipment Service</u>	32.00	EA	\$1,973.13	\$63,140.16
<u>Plumber/HVAC/Electrician</u>	2,787.00	HRS	\$152.79	\$425,825.73
<u>Cement Mason Journeyman</u>	771.00	HRS	\$128.25	\$98,880.75
<u>General Laborer Journeyman</u>	3,465.00	HRS	\$128.25	\$444,386.25
<u>Project Design Consultant</u>	350.00	HRS	\$128.25	\$44,887.50
			Total Price	\$5,659,895.58

Initials _____



CONDITIONS AND WARRANTY

1) Proposal:

The above proposal is valid for 30 days from the date first set forth above. After 30 days, we reserve the right to increase prices due to the rise in cost of raw materials, fuel or other cost increases. When applicable, KYA Services LLC reserves the right to implement a surcharge for significant increases in raw materials, including, but not limited to; fuel, and materials. Due to the duration of time between proposals, contracts and final furnishing, KYA Services LLC reserves the right to implement this surcharge when applicable.

Any job that is accepted prior to December 31st of the current year and scheduled to install after December 31st of the current year is subject to price increase

2) Purchase:

By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by KYA Services LLC. (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase the materials and the services to be provided by the "Company", as detailed in the Pricing and "General Scope of Work" sections in this agreement, above.

3) Standard Exclusions:

Unless specifically included, this agreement does not include, and Company will not provide services, labor or materials for any of the following work: (a) removal or disposal of any material containing asbestos or any hazardous materials as defined by the EPA; neither we nor our installers are responsible for the handling, removal or abatement of asbestos contained floor material or adhesive. Further, our policy is to request an Asbestos Hazard Emergency Response Act (AHERA) report prior to proceeding with any floor material or floor adhesive removal. We and our installers consider it the owners responsibility to produce this report prior to executing this contract. (b) moving Owner's property around the installation site. (c) repair or replacement of any Purchaser or Owner- supplied materials. (d) repair of concealed underground utilities not located on prints, supplied to Company by Owner during the bidding process, or physically staked out of by the Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.

4) Insurance Requirements:

Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.

5) Payment:

Terms of payment are defined in the "Pricing" details section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the materials have been furnished. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when the Completion was scheduled, had the delay not occurred. All payments must be made to KYA Services LLC 1800 E McFadden Ave, Santa Ana, CA 92705. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.

6) Lien Releases:

Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner, Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.

7) Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:

Site plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in additional cost to Purchaser.

8) Manufacturing and Delivery:

Manufacturing lead-time and delivery varies depending on the product purchased.

Initials _____



9) Returned Product, Deposits and/ or Cancelled Order:

From date of shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns are available following this date. All deposits are non-refundable.

10) Concealed Conditions:

"Concealed conditions" include, without limitation to, water, gas, sprinkler, electrical and sewage lines, post tension cables, and steel rebar. Observations that were able to be made either by visual inspection or by drawings and/or plans submitted by Owner at the time this agreement was approved. If additional Concealed Conditions are discovered once work has commenced which were not visible at the time this proposal was approved, Company will stop work and indicate these unforeseen Concealed Conditions to Purchaser or Owner so that Purchaser and Company can execute a change order for any additional work. In any event, any damage caused by or to unforeseen Concealed Conditions is the sole responsibility of the Purchaser and Company shall not be held liable for any such damage. Soil conditions are assumed to be soil that does not contain any water, hard rock (such as limestone, caliche, etc.), rocks bigger than 4 inches in diameter or any other condition that will require additional labor, equipment and/or materials not specified by the purchaser or Owner in the bidding process.

Any condition requiring additional labor, equipment, and/or materials to complete the drilling or concrete operations will require a change order before Company will complete the process. Any variation will incur additional charges.

11) Changes in the Work:

During the course of this project, Purchaser may order changes in the work (both additions and deletions). The cost of these changes will be determined by the Company, and a change order must be completed and signed by both the Purchaser and the Company, which will detail the "General Scope of the Change Order". Should any change be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Company will be deemed to have performed its part of the project, and the project and Services will be terminated. Upon such termination, Company will submit a final billing to Purchaser for payment, less labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of the Purchaser.

12) Warranty; Limitations of Liability:

Company warrants that all Company-supplied labor and Services will be performed in a good and workmanlike manner. Purchaser shall notify the Company in writing detailing any defects in Service for which a warranty claim is being made.

COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR LIQUIDATED DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL COMPANY'S LIABILITY FOR MONETARY DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID OR DUE AND PAYABLE FOR THE SERVICE UNDER THIS AGREEMENT (OR RELEVANT PURCHASE ORDER).

The warranties or the materials are contained in a separate document between Company and the ultimate Owner of the materials, which will be provided to Owner at the time of completion of work.

13) Indemnification:

To the fullest extent permitted by law. Purchaser shall indemnify, defend and hold harmless the Company and its consultants, agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, relating to furnishing of the materials or performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person, or injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in Section 13.

14) Delegation: Subcontractors:

The Services and furnishing of materials may be performed by subcontractors under appropriate agreements with the Company

Initials _____

**15) Force Majeure: Impracticability:**

The Company shall not be charged with any loss or damage for failure or delay in delivering or furnishing of materials when such failure or delay is due to any cause beyond the control of the Company, due to compliance with governmental regulations, or orders, or due to any acts of God, lockouts, slowdowns, wars or shortages in transportation, materials or labor.

16) Dispute Resolution:

Any controversy or claim arising out of or related to this agreement must be settled by binding arbitration administered in Tulare, CA by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgement upon the award may be entered in any court having jurisdiction thereof.

17) Entire Agreement; No Reliance:

This agreement represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this agreement are not part of this agreement. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Company or its agents which are not expressly stipulated herein, including without limitation any statements as to the materials, warranties or services provided hereunder.

18) No Third-Party Beneficiaries:

This agreement creates no third party rights or obligations between Company and any other person, including any Owner who is not also a Purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this agreement.

19) Governing Law:

This agreement will be constructed and enforced in accordance with the laws of the State of California.

20) Assignment:

Purchaser may not assign this agreement, by operation of law or otherwise, without the prior written consent of the Company. The agreements shall be binding upon and ensure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.

Executed to be effective as of the
date executed by the Company:

KYA Services LLC

Accepted by:

Signature:

Signature:

Justin Bryant

By: (Print)

By: (Print)

Justin Bryant

Title:

Title:

Regional Advisor

Date:

Date:

January 05, 2023

Initials _____

Monson-Sultana School

10643 Ave 416, P O Box 25

Sultana, CA 93666

Phone 559/591-1634 Fax 559/591-0717

PURCHASE ORDER**NUMBER: 2223 BC 023 REVISED**

The following number must appear on all related correspondence,
shipping papers, and invoices.

To:**KYA SERVICES**

1800 E McFadden Ave

Santa Ana, CA

909-322-043

SHIP To:

MONSON-SULTANA SCHOOL

10643 Ave 416, P O Box 25

Sultana, CA 93666

559/591-1634

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
April 15, 2023	Vaca			Net 30 days

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1		Original - Proposal Number 1-4-23015 CMAS: 4-20-78-0089C Dated 6/17/2021 CUUBE Gymnasium 100x100		5,166,122.00
1		Revision - Proposal Number 1-4-23689 CMAS: 4-20-78-0089C Revised dated 9/26/2022 (HVAC and two fans)		353,815.38
1		Revision - Proposal Number 1-4-23806 CMAS 4-20-78-0089C Revised dated 1/5/2023 (Stub ups - Future RR & Concession add-ons)		139,958.20
		Office Use Only: 010-07200-0-00000-85000-62000-0-0303 \$ 5,659,895.58		
		Office Use Only - Payments applied: Check #62037282 Materials 7/1/2021 (Redeemed) Check #62148937 App#2 1/6/2023 (Redeemed) Check #62160092 App#3 2/24/2023 (District Holding) Check #62160093 App#7 2/24/2023 (District Holding) Check #62166959 App#4 3/17/2023 (Redeemed) Check #62169150 App#5 3/31/2023 (District Holding)		(\$1,250,000.00) (\$849,987.91) (\$196,027.56) (\$66,426.97) (\$3,521.37) (\$6,016.30)
SUBTOTAL (BALANCE)				3,287,915.47
SALES TAX (8%)				0.00
SHIPPING CHARGES				0.00
TOTAL				3,287,915.47

- Please send two copies of your invoice.
- Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
- Please notify us immediately if you are unable to ship as specified.

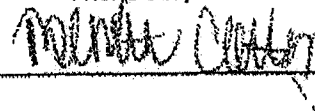
Send all correspondence to:

Benita Cortez, Business Manager

P O Box 25

Sultana, CA 93666

Phone 559/591-1634 Fax 559/591-0717



4/10/2023

ATTACHMENT B

ADDENDUM ONE TO THE AGREEMENT BETWEEN MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT AND KYA SERVICES, INC. MONSON-SULTANA SCHOOL GYMNASIUM BUILDING

This Addendum Number One (“Addendum”) to the Agreement by and between Monson-Sultana Joint Union Elementary School District (“Owner”) and KYA Services, Inc. (“Contractor”) (collectively the “Parties”), dated June 6, 2023, for the for Monson-Sultana School Gymnasium Building (the “Project”) is entered into as of the date last signed below (“Effective Date”).

AGREEMENT

1. The General Conditions attached hereto as **Exhibit 1** (“General Conditions”) are incorporated herein by reference and together with the Agreement, this Addendum, and any and all of the documents listed in Article 1.1.1. of the General Conditions, comprise the Contract Documents which form the Contract, as defined in Article 1.1.2 of the General Conditions.
2. Section 3 of the Agreement is replaced in its entirety with the following:
 3. **Payment.** Owner agrees to pay Contractor for work satisfactorily performed in accordance with the Scope of Work—Pricing attached to the Agreement as page 3 of Exhibit A, and after receipt of properly documented and submitted Applications for Payment, and to make payments on account thereof, as provided in the General Conditions.
2. Section 6 of the Agreement is replaced in its entirety by the following:
 6. **Completion.** Completion of the Work (as that term is defined in the General Conditions) shall be determined in accordance with the General Conditions.
3. Section 9 of the Agreement is replaced in its entirety by the following:
 9. **Delays.** Delays in performance of the work under this Agreement shall be governed in accordance with the General Conditions.
4. Section 10 of the Agreement is replaced in its entirety by the following:
 10. **Time to Complete and Liquidated Damages.** Time is of the essence in this Agreement. The time for completion of the Project shall be not later than May 31, 2024, which. The date of occupancy of the Project and the Date for Completion (as that term is defined in the General Conditions) shall also be no later than May 31, 2024.

Failure to complete the Project within the date(s) and in the manner provided for by the Contract Documents (as that term is defined in the General Conditions), shall subject the Contractor to liquidated damages for each calendar day by which such completion is

delayed beyond the Date for Completion. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed by the Date for Completion are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer if completion is delayed include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the Parties agree that the following dollar figure shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: \$1,500 for each calendar day by which completion of the Project is delayed beyond the Date for Completion, which may be adjusted in accordance with the Contract Documents.

If the Contractor becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the withheld payments are not sufficient to discharge all liabilities of the Contractor incurred under this Section, then the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

5. Section 13 of the Agreement is replaced in its entirety by the following:

13. Changes. Changes in this Agreement or the Work to be done under this Agreement, shall be made as provided in the General Conditions and shall be in the form of a written amendment or change order to this Agreement approved by the Owner's governing board.

6. Section 14 of the Agreement is replaced in its entirety with the following:

14. Insurance. Contractor shall obtain and maintain insurance for the work performed under the Agreement in accordance with the requirements set forth in the General Conditions. The amount of general liability insurance shall be \$2,000,000 per occurrence for bodily injury, personal injury and property damage and general aggregate liability of \$4,000,000. The amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit.

By this statement, Contractor represents that it has secured Workers' Compensation insurance in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code.

Contractor shall supply Owner with certificates of insurance evidencing that all required insurance is in effect prior to commencing work and will provide Owner will thirty (30) days' advance notice of cancellation.

7. Section 15 of the Agreement is replaced in its entirety with the following:

15. Indemnity. Contractor will defend, indemnify, and hold harmless Owner, its governing board, members of its governing board, officers, agents, employees and others as provided in the General Conditions.

8. Exhibit A: Conditions and Warranty. Sections 4, 5, 11, 13, 14, 16, and 17 of the Conditions and Warranty attached as pages 4 and 5 of **Exhibit A** are removed in their entirety.
9. Use of Federal Funds. Federal funds are being used either in whole or in part for this Project; therefore, the Project is subject to, and Contractor must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Contractor agrees to comply with all such federal requirements, as set forth in additional detail in Section 3.20 of the General Conditions.
10. Prevailing Wage. The Project is a public work, and all on-site Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Contract or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Contract.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such

work or craft in which such worker is employed. The difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each subcontractor shall keep or cause to be kept an accurate record for Work on this Contract showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner at least monthly.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

11. Working Hours. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner Forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

12. Apprentices. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprentice able occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprentice able occupations. The responsibility for compliance with these provisions is fixed with the Design-Builder for all apprentice able occupations.
13. DSA Oversight Process. The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process").
14. Termination. The Owner or Contractor may terminate the Agreement as provided in the General Conditions.
15. Agreement to Remain in Effect. All other provisions of the Agreement shall remain in full force and effect, unless specifically modified by this Addendum.

IN WITNESS WHEREOF, this Addendum One has been executed by the authorized representatives of the Parties.

CONTRACTOR:

KYA SERVICES, INC.

By: _____

Name: _____

Title: _____

Date: _____

OWNER:

MONSON-SULTANA UNION
ELEMENTARY SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

**GENERAL CONDITIONS
(TO BE ATTACHED)**

GENERAL CONDITIONS
for
CONTRACT OF CONSTRUCTION

FOR MONSON-SULTANA SCHOOL GYMNASIUM BUILDING
MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT [OWNER]

_____, 2023

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The "Contract Documents" consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, Instructions to Bidders, Notice to Bidders, the Bid Form, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810) and the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The "Contract" represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, any Construction Manager and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

1.1.3 THE WORK

The "Work" shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including but not limited to punch list items and submission of documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner's representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings,

Specifications, and associated bid documents. The “Site” refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work. The Work shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

1.1.4 THE PROJECT

The “Project” is the total construction of the Work performed in accordance with the Contract Documents. However, where applicable, the Project may also include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The “Drawings” are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 THE SPECIFICATIONS

The “Specifications” are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL

The “Project Manual” is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

1.1.8 OR

“Or” shall include “and/or.”

1.1.9 COMPLETION

Statutory definitions of “Completion” and “Complete” shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims and warranties, “Completion” and “Complete” mean the point in the Work where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list work, and (2) Owner’s representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute “Completion” or “Complete” under the Contract Documents, except to the extent that substantial completion is required for a milestone deadline.

1.1.10 COMPLETION OF THE PROJECT

For purposes of accrual of liquidated damages for delays to the Project, *completion* shall mean the point in the Project where (1) all contractors and Owner have fully and correctly performed all work of the entire Project in all parts and requirements, including corrective and punch list work, and (2) Owner's representatives have conducted a final inspection of the entire Project that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance of the entire Project shall not constitute *completion* or *complete*.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 *Documents Complementary and Inclusive.* The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

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

1.2.1.3 *Conflicts.* Without limiting Contractor's obligation to identify conflicts for resolution by the Owner, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

1.2.1.4 *Conformance With Laws.* Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities

affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall promptly notify Architect and Owner in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

If, as and to the extent that Public Contract Code section 1104 is deemed to apply after the award of the Contract, Contractor shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Contract Documents, except to the extent that Contractor discovered or should have discovered and reported any errors and omissions to the Architect and Owner, including but not limited to as the result of any review of the plans and specifications by Contractor required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Contractor.

1.2.1.5 Ambiguity. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Sum or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Sum or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

1.2.1.6 Execution. Execution of the Agreement Between Owner and Contractor by the Contractor is a representation that the Contractor has visited the Site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 *Addenda.* Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect (“DSA”).

1.2.2.2 *Deferred Approvals.* The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 *Titles.* The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3.2 *As Shown, Etc.* Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where “as directed,” “as required,” “as permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 *Provide.* “Provide” means “provided complete in place,” that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 *General Conditions.* The General Conditions and any supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.5 *Abbreviations.* In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Contractor shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a “note” occurs on the Drawings.

1.2.3.6 *Plural.* Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 *Metric.* The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.8 *Standard Specifications.* Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Owner and Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 *Absence of Modifiers.* In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Contract. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other contracts or projects or for additions to this Contract or Project outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect.

ARTICLE 2

OWNER

2.1 DEFINITION

The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner and/or the Owner's authorized representatives, including but not limited to architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or any construction manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 INTENTIONALLY LEFT BLANK

2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and Site work shall be provided by the Contractor.

2.2.3 SOILS

2.2.3.1 Owner Furnished Services. When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

2.2.3.2 Contractor Reliance. Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that

unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Work and Project, and prior experience with similar projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

2.2.6.1 *Removal, Relocation.* Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

2.2.6.2 *Assessment.* These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

2.2.6.3 *Notification.* If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, Contractor shall immediately notify the Owner and the utility in writing.

2.2.6.4 *Underground Utility Clearance.* It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to the Owner.

2.2.7 EASEMENTS

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any delays caused by factors beyond the Owner's control including but not limited to DSA's or any other local, State or federal agency's review of bids, change order requests, RFI's or any other documents.

2.2.9 COPIES FURNISHED

The Contractor will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies. Contractor shall not be entitled to a time extension for any delays caused by such order. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the

Contract with Contractor. Owner may exercise this right at any time during the Contractor's Work.

Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the retention, or progress payments due the Contractor, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

If part of the Project is performed by other contractors that Owner directly retains, Owner shall schedule and coordinate the activities of Contractor with the other contractors. Contractor agrees to accept the Owner's construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Contractor realizes that work by other contractors or Owner may occur simultaneously with Contractor's Work in any given area. Contractor is responsible for its own sequences that may occur within a given activity or set of activities. Contractor shall not commit or permit any act which will adversely affect the work of any other contractor or Owner. Contractor shall provide

layout of its Work at the request of any other contractor or Owner.

Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.2 CONTRACTOR RESPONSIBILITY

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 OBLIGATIONS NOT CHANGED BY OTHERS' ACTIONS

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.2.4 CONTRACTOR RESPONSIBILITY FOR READINESS FOR WORK

The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.2.5 PROJECT MEETINGS

During its Work, Contractor shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and Project and the future progress of the Work and the Project. Contractor shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

3.3.2 STAFF

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as

necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

3.3.3 RIGHT TO REMOVE

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Owner shall have no responsibility for security of, or repair or replacement costs of, any and all material, equipment, tools, construction equipment, and machinery provided by Contractor pursuant to this Subsection.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these standards may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Contractor at no cost to the Owner.

3.4.4 DISCIPLINE

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

3.5 WARRANTY

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5 and 12.2.6), the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

3.7.2 COMPLIANCE

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.7.3 CONTRACT DOCUMENTS

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be accomplished

by appropriate modification.

3.7.4 RESPONSIBILITY

If the Contractor performs any work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such work, and shall bear the attributable cost of correction and delays to the Work, other contractors' work, and the Project.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Contractor shall include in the Contract Sum all allowances, including any general contingency allowance, stated in the Contract Documents. Items covered by specific allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.8.2 SCOPE

3.8.2.1 *Prompt Selection.* Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 *Cost.* Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 *Cost Included in Contract Sum.* Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.4 *Contract Sum Adjustment.* Whenever Contractor seeks payment from an allowance and the requested costs are approved by Owner as compliant with the Contract Documents (including Sections 3.8.2.2 and 3.8.2.3, above), Owner may elect to pay the approved costs from the allowance, or pay the costs via Change Order. Any such allowance payment shall conform to the requirements of the Agreement and other Contract Documents.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

Before the Contractor's commencement of Work or within two (2) weeks of award of the Contract, whichever is earlier, Contractor shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work, which

shall conform to the Contract Documents' requirements.

Contractor shall submit an updated schedule by the first day of every month, and whenever else requested by the Owner. Each schedule update must include an accurate as-built schedule and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. Contractor shall submit its daily logs for the prior month with the updated schedule.

The original schedule and all updates shall conform, at a minimum, to industry standards for (a) critical path scheduling and (b) facilitation of Owner's Project management and evaluation of Contractor Claims for additional money or time.

The original schedule and all updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Contractor at the beginning of the Work. The original schedule and all updates shall accurately reflect Work performed to date, reasonable dates for future Work; all construction activities (including procurement); the critical path schedule for Completion of the remainder of the Work; the logic, sequencing, and relationship between the construction activities, including each activity's predecessor and successor activities; and the percentage of the Work completed. The original schedule and all updates shall include a reasonable number of days for weather that is usual or common for each month, as time extensions are not available for such days (see Sections 4.5.5.3.2 and 8.4.1, below); and any failure by Contractor to include a reasonable number of such days, or by Owner to require Contractor to include a reasonable number of such days, shall not affect the reasonable number of such days to be used when determining time extensions under Sections 4.5.5.3.2 and 8.4.1, below.

The construction schedule shall be in the form of either a tabulation, chart, or graph, unless otherwise stated in Division 1 of the Specifications, and shall be in sufficient detail to show the chronological relationship of all activities of the Work including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Work. Whenever in the Contract Documents Contractor is required to provide a schedule and/or schedule updates, the Contractor shall provide the schedule and updates in electronic format as well as hard copy. Contractor shall be solely responsible for the accuracy, utility and reasonableness of all of its schedules. Owner's acceptance, approval or non-rejection of Contractor's schedules shall not affect Contractor's responsibility for its schedules.

The Contractor and Owner shall use any float on a "first come, first served" basis. The original schedule and updates shall reflect Contractor's and Owner's use of float. Float is not for the exclusive use or benefit of either Owner or Contractor, but it is a jointly owned expiring Work resource available to both parties as needed to meet schedule milestones. For the original schedule and updates, Contractor shall use a critical path network format with the critical paths clearly indicated. Contractor shall use an MS Project, Primavera, or an equivalent or better

program. Contractor shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Contractor shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Contractor shall use calendar days.

If any change in Contractor's method of operations will cause a change in the construction schedule, Contractor shall submit to Owner, Architect, and any construction manager, a revised construction schedule within seven (7) days of the change.

If, in the Owner's opinion, the Contractor is not prosecuting the Work at a rate sufficient to meet the Work schedule or a contractual milestone, or to Complete the Work within the Contract Time as adjusted by change orders or if the Contractor's actual progress falls behind the Work schedule or it is apparent to Owner that Contractor will not meet contractual milestones or Complete the Work within the Contract Time (as adjusted by change orders), the Owner may require that the Contractor prepare and submit a recovery plan. Contractor must submit a recovery plan within seven (7) days of a demand for the plan. At a minimum, the recovery plan must include a proposed schedule that shows Completion of the Work by the contractual milestones and within the Contract Time, as adjusted by change orders, or Completion by other dates Owner specifies in the demand for a recovery plan. The recovery plan shall state the corrective actions Contractor will undertake to implement it. The recovery plan shall also list any additional money that Contractor believes it should receive if Owner orders Contractor to fully or partially implement the recovery plan. If the Owner orders Contractor to implement the recovery plan, Contractor shall do so, but the order shall not constitute an admission by Owner that Contractor is entitled to additional money. To recover additional money, Contractor must comply with General Conditions Articles 4.5, 7 and 8.

All schedules Contractor submits shall be certified as true and correct, as follows:

I, _____ [*name of declarant*], declare the following:

_____ [*Contractor company name*] has contracted with _____ [*public entity name*] for the _____ Contract ("Contract").
_____ [*Contractor company name*] authorized me to prepare schedules for _____ [*public entity name*] for this Project, and I prepared the attached schedule. I am the most knowledgeable person at _____ [*Contractor company name*] regarding the scheduling of the Work for this Contract.

The attached schedule does not breach the Contract between _____ [*Contractor company name*] and _____ [*public entity name*] for this Project, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of schedules, only contains truthful and accurate as-built and as-planned dates of the Work (including supporting data), and is not a false claim.

The attached schedule is submitted in compliance with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72 (Fraudulent Claims), Government Code sections 12650 et seq. (False Claims Act; for example, Government Code section 12651(a)(7)), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself and/or _____ [*Contractor company name*].

While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for _____ [*Contractor company name*]) when necessary to ensure that the statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20__, at _____, California.

[signature]

[name of declarant]

3.9.2 DSA OVERSIGHT PROCESS

In connection with the DSA Construction Oversight Process which includes inspection cards and review of changes to the DSA-approved construction documents, the Contractor must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures.

3.9.3 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings,

Product Data, Samples, and similar required submittals. These documents shall be available to the Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner, upon Completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 *Shop Drawings.* The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term “manufactured” applies to standard units usually mass-produced, and “fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Owner to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 *Contractor’s Responsibility.* Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor’s “Schedule for Submission of Shop Drawings and Samples” provisions in Division 1 of the Specifications and in accordance with the Contractor’s original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Contractor may be assessed \$100 a day for each day it is late in submitting a shop drawing or sample. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer’s descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other

than Contractor) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, "Substitutions." Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner's or Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor will be returned unreviewed for resubmission by the Contractor.

3.11.1.4 *Extent of Review.* In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect's review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 DRAWING SUBMISSION PROCEDURE

3.11.2.1 *Transmittal Letter and Other Requirements.* All shop drawings must be properly identified with the name of the Project and Contractor's name and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and Contractor and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 *Copies Required.* Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and

setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 Corrections. The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

3.11.2.4 Approval Prior to Commencement of Work. No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 Samples Required. In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.11.3.2 Labels and Instructions. Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 Architect's Review. The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 Record Drawings and Annotated Specifications. The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Contractor. In the event of a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Contractor's Work and prior to Application for Final Progress Payment, the Contractor will provide one complete set of Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 Equipment Manuals. Contractor shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Progress Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 Owner's Property. All shop drawings and samples submitted shall become the Owner's property.

3.11.4 SUBSTITUTIONS

3.11.4.1 One Product Specified. Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 *Two or More Products Specified.* When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an “or equal” substitution is requested, the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, the Contractor will be responsible for the professional fees incurred by the Architect or Architect’s consultants in reviewing the proposed substitution which fees may be withheld from progress payments and/or retention.

3.11.4.3 *Substitution Request Form.* Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner prior to the date of the bid opening. Any Requests submitted less than fourteen (14) days prior to the date of the bid opening will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including but not limited to all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner’s. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. If Contractor requests substitutions that require approval by the Division of the State Architect (“DSA”) or another governmental entity with jurisdiction, Contractor shall bear all risks of delay.

3.11.4.4 *List of Manufacturers and Products Required.* The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor’s or Architect’s preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer’s descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

3.11.5 DEFERRED APPROVALS

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect’s, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the

requesting party.

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The Contractor shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

3.12.2 CONSENT

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or a separate contractor by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 CONTRACTOR'S RESPONSIBILITY

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall continuously remove from and about the Site the waste materials, rubbish, tools,

construction equipment, machinery, and materials no longer required for the Work.

3.13.2 FAILURE TO CLEANUP

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Contractor must do so.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Contractor shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Contractor shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

3.15.2 REVIEW

The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 SCOPE: CONTRACTOR

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, any construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor's, its Subcontractors', or its suppliers' performance of the Work, including but not limited to the Contractor's or its Subcontractors' use of the Site; the Contractor's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 Indemnity. The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or

their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 *Joint and Several Liability.* In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnatee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnatee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnatee has by law or equity.

3.16.3 NO LIMITATION

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.17 OWNER AS INTENDED BENEFICIARY

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Contractor to fulfill its obligations under the Contract. Contractor shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE

If Contractor believes that acts or omissions of Owner (including but not limited to Owner caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things,

Contractor's requests for time extensions under section 4.5, below, Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

3.19 RECOVERY OF COSTS, DAMAGES, OR TIME EXTENSIONS FROM OWNER

Notwithstanding any other provisions of the Contract Documents, Contractor expressly waives its right to recover any special, consequential, or indirect damages from Owner in relation to this Contract or the Project. Contractor may only recover general (also known as direct) damages from Owner to the extent allowed by the Contract Documents.

A Notice of Potential Change, Change Order Request and, if necessary, a Claim (see Sections 4.5, 7.2, and 7.6, below) are the exclusive means for Contractor to preserve its rights to recover any costs, damages, or time extensions related to the Contract or the Project from Owner, including but not limited to alleged breaches of contract based on extra work, delay, wrongful withholding, or wrongful termination. Contractor's failure to comply with the Contract Documents' procedures for a COR, CO, and Claim (including but not limited to Sections 4.5, 7.2, 7.6, and 7.7, below) may completely waive Contractor's rights to recovery any such costs or damages.

3.20 USE OF FEDERAL FUNDS

If federal funds are being used either in whole or in part for this Project, then the Project is subject to, and Contractor must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Contractor agrees to comply with all such federal requirements, including but not limited to the following:

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Contractor agrees to comply with and be bound by Title 14, CFR, Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," the terms of which are incorporated by reference as though set forth in full herein.

B. **DAVIS-BACON ACT.** If the Contract Price exceeds \$2,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Davis-Bacon Act, as applicable. (40 U.S.C. §§ 3141-3144; 3146-3148 as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").) Contractor is required to pay wages to laborers

and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, Contractor is required to pay wages not less than once a week. Furthermore, pursuant to the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the Contract Price exceeds \$100,000 that involve the employment of mechanics or laborers, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Contract Work Hours and Safety Standards Act, as applicable. (40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).) Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT AGREEMENT.** For all contracts that meet the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," the provisions of which are incorporated herein by this reference, and any implementing regulations issued by the awarding agency, as applicable.

E. **CLEAN AIR AND FEDERAL WATER POLLUTION ACT CONTROL.** If the Contract Price exceeds \$150,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Any violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. **DEBARMENT AND SUSPENSION.** Contractor represents and warrants that it is not listed on the government-wide exclusions in the System for Award Management (SAM), and Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM

Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

G. BYRD ANTI-LOBBYING AMENDMENT. If the Contract Price exceeds \$100,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractor shall file the declaration and certification required by 31 U.S.C. § 1352(b).

H. PROCUREMENT OF RECOVERED MATERIALS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.323, as applicable.

I. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.216, as applicable.

J. DOMESTIC PREFERENCES FOR PROCUREMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.322, as applicable. 2 CFR Section 200.322 requires Contractor to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), to the greatest extent practicable.

K. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.321, as applicable. 2 CFR Section 200.321 requires Contractor to take the affirmative steps listed in 2 CFR Section 200.321 paragraphs (b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

L. SAFETY AND HEALTH STANDARDS. As required by 34 CFR 75.609, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the standards under the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Section 651 et seq.) and State and local codes to the extent that they are more stringent.

M. ENERGY CONSERVATION. As required by 34 CFR 75.616, Contractor agrees to construct facilities to maximize the efficient use of energy and to comply with and be bound by, and assist OWNER in ensuring compliance with, the following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) set forth in 34 CFR 75.616. Contractor shall also comply with and be bound by, and assist Owner in ensuring compliance with, the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

N. If any provision is required by federal law, or by the federal grant program funding such

project, to be included in the Contract Documents, such provisions shall be deemed by the parties to have been included.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

4.1.2 MODIFICATION

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect will provide administration of the Contract and may be one of several Owner's representatives during construction, through release of all retention, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement. The Architect will have all responsibilities and power established by law, including California Code of Regulations, Title 24, to the extent set forth in the Owner/Architect agreement.

4.2.2 SITE VISITS

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with

the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when Completed, will be in accordance with the Contract Documents.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

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

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and the Contractor shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Contractor.

4.2.5 PAYMENT APPLICATIONS

The Contractor shall submit payment applications to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise.

4.2.6 REJECTION OF WORK

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 CHANGE ORDERS

The Architect may prepare change orders and construction change directives and may authorize minor changes in the Work.

4.2.8 WARRANTIES UPON COMPLETION

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of

the Contractor or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Contractor's comprehensive list of items to be completed or corrected for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and withheld from payment and/or retention.

4.2.9 INTERPRETATION

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 *Architect's Interpretations and Decisions.* Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Contractor and will not show partiality to either. The Work shall be executed in conformity with, and the Contractor shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 *Typical Parts and Sections.* Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 *Dimensions.* Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

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

4.3.2 INSPECTOR OF RECORD'S DUTIES

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

4.3.3 INSPECTOR OF RECORD'S AUTHORITY TO REJECT OR STOP WORK

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

4.3.4 INSPECTOR OF RECORD'S FACILITIES

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector of Record with temporary facilities, including any requirements stated in Division 1 of the Specifications.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Contractor.

- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing Claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time for Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS

If the Contractor identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Contractor requests additional money or time on any grounds (including but not limited to an alleged breach of an implied warranty of the correctness of the plans and specifications [*Souza & McCue Construction Co. v. Superior Court* (1962) 57 Cal.2d 508]), or if the Contractor believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Contractor shall follow the procedures in this Section 4.5 and Article 7, otherwise Contractor shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Contractor specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Contractor's obligation to know and comply with the requirements of the Contract Documents, including but not limited to Section 4.5 and Articles 7 and 8, and Owner has no obligation to notify Contractor of any failure to comply with those requirements.

4.5.1 NOTICE OF POTENTIAL CHANGE

Contractor shall submit a written Notice of Potential Change for extra work, critical path delay, or additional money or time. Contractor shall submit written Notices of Potential Change to Owner within five (5) days of the earlier of (a) Contractor becoming aware of the issue creating a potential change, or (b) the date by which Contractor should have become aware of the issue creating a potential change; unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Contractor must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change so the Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work, Contractor shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Contractor shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Contractor intends to rely on Owner's acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in section 3.18, above.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Contractor of any right to later submit a change order request or pursue a Claim on that issue, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

4.5.2 CHANGE ORDERS REQUESTS

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Contractor continues to believe that it is entitled to additional money or time (including but not limited to grant of a time extension; payment of money or damages arising from work done by, or on behalf of, the Contractor, payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or an amount the payment of which is disputed by the Owner) based on an issue, then Contractor shall submit a Change Order Request ("COR"; see Section 7.6.1) to Owner within twenty (20) days of the earlier of (i) Contractor becoming aware of the issue creating a potential change, or (ii) the date by which Contractor should have become aware of the issue creating a potential change. A rejection at any time or a lack of a rejection by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to comply with any of the COR requirements in the Contract shall constitute a complete waiver by Contractor of any right to later submit a COR or Claim on that issue, or to later pursue any additional money (or time) in any manner related to that issue, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Contractor shall include all information and documentation supporting the COR, including but not limited to calculations and analysis that demonstrate that the requested money or time is allowed by the applicable contract provisions and law. For any money or time other than the money and time specifically requested in the COR, Contractor will have completely waived its rights to recover such additional money or time (Contractor will not have satisfied a condition precedent or exhausted administrative remedies). If the COR requests time, then the COR must identify the number of days of time being requested and must include some critical path schedule analysis to support the number of days requested. Contractor may not reserve its rights, whether in a COR or other document, to submit a COR at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a COR shall be grounds for rejection of the COR.

In the event that costs or delay are continuing to accrue at the time that a COR is required to be submitted, Contractor must still timely submit the COR with all available information and documentation supporting the COR as described above, and Contractor shall identify the costs or delay that are continuing. For continuing costs, the COR must include an estimate of when the extra work is expected to conclude and the total costs that will be incurred by the time that the extra work is expected to conclude. For continuing delay, the COR must include a schedule and delay analysis of when Contractor estimates that the delay will cease, what the final time extension request is estimated to be, and an estimate of the total of delay damages, if any, that will be requested. When the continuing cost or delay ends, within ten (10) days Contractor shall submit an updated COR that states the final dollar amount and/or time extension requested and that includes all required information and documentation. Failure to submit such final COR shall act as a waiver as described above.

Contractor shall certify each COR that it submits, including the initial COR and final COR for a continuing cost or delay, using the form set forth in Section 4.5.5.1, except that every reference to "Claim" shall be changed to "COR." If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of Section 4.5.2. If the COR is not timely certified, Contractor will have completely waived its rights to any money or time for that issue. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. A certification of an initial COR for a continuing cost or delay shall include a statement that "Any estimates in the attached initial COR for a continuing cost or delay are based on true and correct facts and reasonable assumptions, as explained in the initial COR."

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days of submission of the COR by accepting the entire COR, accepting part of the COR and rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. In the case of continuing costs or delay, the 30-day deadline in the previous sentence shall not apply to the initial COR; it will only apply to the final COR (see above). If the Owner requests additional information within thirty (30) days of submission, then the Contractor shall submit the information within fifteen (15) days of the date

of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Contractor fails to submit the information within fifteen (15) days, then the COR shall be deemed rejected. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

4.5.3 DEFINITION OF CLAIM

A "Claim" is a separate demand by the Contractor sent by registered or certified mail, return receipt requested, for (a) a time extension, including, without limitation, a request for relief from damages or penalties for delay assessed by Owner under the Contract Documents; (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to (including but not limited to a claim for damages based on misleading or incomplete plans or specifications); or (c) an amount the payment of which is disputed by the Owner. A Claim includes any claim within the scope of Public Contract Code sections 9204 or 20104 et seq., and any alleged violation of a prompt payment statute. Resubmittal in any manner of a COR which was previously rejected under Section 4.5.2 constitutes a Claim, whether the COR was rejected in whole or in part, and whether the COR was rejected expressly or deemed rejected by Owner inaction. A Claim includes any dispute Contractor may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and including any alleged breach of contract by the Owner (such as wrongful withholding of a payment by the Owner). A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. In the event of a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, Section 4.5 shall take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; except that if insufficient time remains before the Claim deadline (see Article 4.5.4) for Contractor to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Contractor may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and Article 7 for COR's and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

A Claim does not include vouchers, invoices, progress payment applications, or other routine or authorized forms of requests for progress payments on the Contract; however, those documents remain "claims" for purposes of the California False Claims Act. A Claim does not include a Government Code Claim. ("Government Code Claim" means a claim under Government Code sections 900 et seq. and 910 et seq.)

4.5.4 TIME FOR SUBMITTING CLAIM; WAIVER

Contractor shall submit a Claim to the Owner's construction manager (or in the absence of a construction manager, to Architect) and Owner within the earlier of (a) fifteen (15) days after

Owner's rejection of a COR in whole or in part, or (b) fifteen (15) days after a COR being deemed rejected, pursuant to Section 4.5.2 above. If the Claim is not based on an issue for which a COR would be required (such as wrongful withholding by the Owner), then Contractor shall submit the Claim within fifteen (15) days after the date on which Contractor knew, or should have known, about the issue on which the Claim is based. If a Claim has not been submitted as of the date that the Contractor Completes the Work and submittal of the Claim was not yet required under the Contract Documents, then the Claim shall be submitted within seven (7) days of Completion of the Work; and such Claim shall not be barred due to lack of a Notice of Potential Change or COR if the deadline for the Notice of Potential Change or COR was after Completion of the Work.

In addition, within seven (7) days of Completion of the Work, Contractor shall submit to Owner, in writing, a list and summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed, which were fully compliant with the Contract's requirements for Claims, and which the Contractor wishes to pursue in whole or in part. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim or Claim summary, failure to specifically identify a Claim in the Claim summary, or failure to comply with any of the requirements in the Contract for a Claim, including but not limited to this Article 4, will act as a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6.4), and (c) initiate any action, proceeding or litigation for the money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Contractor reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

4.5.5 CONTENT OF CLAIM

4.5.5.1 *Claim Format; Waiver*

Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Contractor, and the Contractor shall furnish reasonable documentation to support each Claim, including as applicable, that documentation set forth in sections 4.5.5.2 through 4.5.5.4.

In addition, the Contractor shall include a certification with each and every Claim at the time of submission, as follows:

I, _____ [name of declarant], declare the following:

_____[Contractor company name] has entered into a Contract with _____
[public entity name] on the _____ [name of project] Project. _____
[Contractor company name] authorized me to prepare the attached Claim for
money and/or time extension) for _____ [public entity name] regarding _____
[Contractor company's name] Work on the Contract, and requesting
\$ _____ and/or _____ additional days), and I prepared the attached Claim. I
am the most knowledgeable person at _____ [Contractor company name]
regarding this Claim.

The attached Claim complies with all laws applicable to submission of a
Claim, including but not limited to California Penal Code section 72,
Government Code sections 12650 et seq. (False Claims Act), and Business
and Professions Code sections 17200 et seq. (Unfair Business Practices Act).
I am aware that submission or certification of false claims, or other claims that
violate law or the Contract, may lead to fines, imprisonment, and/or other
serious legal consequences for myself or _____ [Contractor company name].

The attached Claim does not breach the Contract between _____ [Contractor
company name] and _____ [public entity name] for this Project, is not a false
claim, does not violate any applicable law, satisfies all provisions of the
Contract applicable to submission of the Claim, only contains truthful and
accurate supporting data, and only requests money and/or time extensions that
accurately reflect the adjustments to money and time for which I believe that
_____ [public entity name] is responsible under its Contract with _____
[Contractor company name].

While preparing this declaration and Claim, I consulted with others (including
attorneys, consultants, or others who work for _____ [Contractor company
name]) when necessary to ensure that the statements were true and correct.

Contractor understands and agrees that any Claim submitted without this
certification does not meet the terms of the Contract Documents; that Owner,
or Owner's representatives, may reject the Claim on that basis; and that unless
Contractor properly and timely files the Claim with the certification,
Contractor cannot further pursue the Claim in any forum and all rights to
additional money or time for the issues covered by the Claim are waived due
to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California
that the foregoing is true and correct. Executed _____, 20 __, at
_____, California.

_____ [name of declarant]

Contractor's failure to timely submit a certification will constitute a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.3) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.2 Claims for Additional Money

Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Contractor could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for money at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any costs not asserted shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

4.5.5.3 Claims for Additional Time

4.5.5.3.1 Notice of Extent of Claim

If the Contractor wishes to make a Claim for an increase in the Contract Time (including but not limited to Section 4.5.3(a)), the Claim shall include, but not be limited to, all facts supporting the Claim, all documentation of such facts, all information required by the Contract Documents, all information establishing entitlement to a time extension pursuant to Section 8.4.1 below, a current and certified schedule (see Section 3.9.1, above), and a delay analysis explaining (a) the nature of the delay, (b) the Owner's responsibility for the claimed delay, (c) the claimed delay's impact on the critical path, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), and (e) why Contractor could not mitigate the delay impacts. Failure to include an updated and certified schedule, or a delay analysis, in a Claim seeking a time extension will act as a complete waiver of Contractor's rights to (i) recover money or time based on the issues addressed by the Claim, (ii) submit a Government Code Claim for the requested money or time (see Section 4.5.6.4), and (iii) initiate any action, proceeding or litigation for the requested money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for a time extension at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any time extension not timely asserted in a certified Claim shall be waived.

4.5.5.3.2 *Unusual and Uncommon Weather Claims*

If unusual and uncommon weather is the basis for a Claim for additional time, Contractor's delay analysis (see Section 4.5.5.3.1, above) must also provide Owner data and facts showing that the weather conditions were unusual and uncommon for the period of time, could not have been reasonably anticipated or mitigated, had an adverse effect on the critical path of the scheduled construction, and meet all other Contract requirements for a time extension (including but not limited to Section 8.4.1, below).

4.5.5.4 *Subcontractor Requests for Money or Time*

A Subcontractor or supplier to Contractor may not submit a request for additional time or money directly to the Owner due to its lack of contractual privity with Owner. If a Subcontractor or supplier submits to Contractor a request for additional money or time based on an alleged breach of the subcontract or supplier contract by Contractor, Contractor may elect to seek money or time from Owner based on that request of the Subcontractor or supplier.

For any such request to Owner by Contractor, Contractor must comply with the requirements and prerequisites in the Contract Documents for requests to the Owner for money or time (including but not limited to Section 4.5 of the General Conditions regarding Notices of Potential Change, Change Order Requests ["CORs"], Claims, and certifications) and with Public Contract Code section 9204(d)(5). Any such COR or Claim by Contractor must include Contractor's certification (see General Conditions §§4.5.2 and 4.5.5.1), a complete copy of the Subcontractor's or supplier's request for money or time (including all documents submitted by the Subcontractor or supplier), and any other necessary supporting documentation. Any such COR or Claim by Contractor must also include (a) Contractor's detailed analysis of the merit of Subcontractor's or supplier's request to the Contractor, including (i) analysis of Contractor's alleged breaches of the subcontract or supplier contract that allegedly caused the Subcontractor or supplier to incur damages or delay, and (ii) analysis of all of Contractor's defenses to the request for money or time by the Subcontractor or supplier; and (b) Contractor's detailed analysis of the Owner's liability to Contractor for any money or time that Contractor owes, or may later be determined to owe, to Subcontractor or supplier (including but not limited to how Owner's alleged breaches of the Contract Documents caused Contractor to breach the subcontract or supplier contract). In any such COR or Claim, Contractor may deny that it is liable to the Subcontractor or supplier for some or all of the requested money or time, or it may assert that it is merely submitting the COR or Claim to Owner on behalf of the Subcontractor or supplier; but doing one or the other would not excuse Contractor from complying with the above requirements for its request to the Owner.

Any failure by Contractor to timely comply with this Section 4.5.5.4 (including a failure to timely submit a Notice of Potential Change, COR, Claim, certifications, or detailed analysis) shall act as a complete waiver of Contractor's rights to (a) recover money or time from Owner based on any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier, (b) submit a Government Code Claim to Owner for the money or time requested by the Subcontractor or supplier (see Section 4.5.6.3), and (c) initiate any action, proceeding or litigation against Owner for any money or time that Contractor owes, or may later

be determined to owe, to the Subcontractor or supplier. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTION 9204)

Claims are subject to this section 4.5.6, and Public Contract Code section 9204, as well as the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5 and the rest of the Contract Documents. Claims of \$375,000 or less, are also subject to Public Contract Code sections 20104 et seq., but to the extent that one of the procedures in Sections 20104 et seq. conflicts with the procedures in Section 9204, the requirements of Section 9204 shall control.

4.5.6.1 *Claims*

The Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45-day period, plus any extension, Owner may request in writing additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor. Owner shall review any additional documentation Contractor supplies in response to that request within the 45 day, plus any extension, timeline.

After receipt of a Claim, the 45-day period may be extended by Owner and Contractor. The written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its governing board to provide the written response, and the governing board does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the governing board to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.2 *Meet and Confer*

If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a written demand sent by registered or certified mail return receipt requested, the Owner shall schedule a meet and confer conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Contractor, the conference may take place during regularly scheduled Project meetings. The informal conference is not a mediation since there is no neutral person facilitating communication to assist the parties to reach agreement; therefore, the provisions of Evidence Code sections 1115-1128 shall not apply to any portion of the informal conference (including but not limited to any documents provided or shown, or statements of fact or opinion made, by a party) unless the parties expressly agree in writing to their application. Any offer of compromise at an informal conference shall not be admissible to prove liability, as provided in Evidence

Code section 1152, but this statute's prohibition of admissibility shall not apply to other statements before or at the informal conference, or in any document prepared for or exchanged at the informal conference.

If Contractor fails to timely notify the Owner that it wishes to meet and confer pursuant to the previous paragraph, then Contractor will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6) for such money or time, and (c) initiate any action, proceeding or litigation for such money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the meet and confer conference, the Owner shall give a written statement to the Contractor identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written statement. Within ten (10) business days of issuance of Owner's written statement, Contractor shall identify in writing the disputed portion of the Claim that shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Contractor sharing the costs equally. The Owner and Contractor shall mutually agree to a mediator within ten (10) business days after the Contractor has identified in writing the disputed portion of the Claim. If they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. (Each party shall bear the fees and costs its respective mediator charged in connection with the selection of the neutral mediator). The parties may mutually waive in writing the requirement for mediation. If Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, Contractor will have waived all right to further pursue the Claim pursuant to section 4.5.4. The parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible. Owner's failure to respond to the Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.3 *Government Code Claim*

If the Claim or any portion remains in dispute after the mediation and Contractor wishes to pursue it, the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures coming first.

Failure to timely file a Government Code Claim shall act as complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Contractor shall proceed with the Government Code Claim according to Government Code, Section 900 et seq., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall be tolled from the time the Contractor submits a written Claim under Article 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process.

4.5.7 CONTINUING CONTRACT PERFORMANCE

Despite Contractor's submission of, or Owner's rejection of, a Notice of Potential Change, COR or Claim, or Government Code Claim based on alleged breaches of the Contract by Owner, the Contractor shall proceed diligently with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract. Contractor acknowledges that Completion of the Work is a high priority for both Owner and Contractor as failure to Complete the Work would most likely cause each of them to incur much greater costs and damages than would be incurred if the Work were Completed. If Contractor believes that Owner has breached the Contract and that such breach is preventing or delaying Contractor's performance as directed by Owner, then Contractor must submit notice as required by Section 3.18, above.

4.5.8 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.8.1 Trenches or Excavations Less Than Four Feet Below the Surface

If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, Contractor must comply with the provisions above for Notice of Potential Change, Change Order Request, and Claims (beginning with Section 4.5.1).

4.5.8.2 Trenches or Excavations Greater Than Four Feet Below the Surface

Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.8.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that

is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(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.

4.5.8.2.2 The public entity 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 in the Contract.

4.5.8.2.3 In the event that a dispute arises between the public entity 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 the Contract Completion deadline, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.9 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Contractor shall follow Section 4.5.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a "Specialty Contractor" as defined in section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

In accordance with Public Contract Code sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 GROUNDS FOR SUBSTITUTION

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and

specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the Contractor;

- B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code section 4108.
- E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.
- I. When the awarding authority determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 No Change in Contract. Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of time for Completion of the Work.

5.2.2.2 Substitution Due to Clerical Error. The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefor. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code section 4107. The determination by the awarding authority shall be final.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of section 5.3.

5.5.1 SUPERVISION BY SUBCONTRACTORS

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 DISCIPLINE AND ORDER

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Contractor, the Owner and Architect, or other Subcontractors as Contractor elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

5.5.4 SUBCONTRACTOR INFORMATION

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with

respect thereto.

5.5.5 TEMPORARY STRUCTURES

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 CHARGES TO SUBCONTRACTOR

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 FINES IMPOSED

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 PROJECT SIGNS

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost

plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

5.5.10 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, the Subcontractor shall continue to proceed diligently with the performance of the Work. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

5.5.11 APPLICATION FOR PAYMENT

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 COMPLIANCE WITH PROCEDURES

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other

Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 OWNER'S RIGHTS

The Owner reserves the right to perform Project work with the Owner's own forces, or to award separate contracts in connection with such other work or other construction or operations on the Site under contract conditions identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall proceed pursuant to Section 4.5 in the Contract Documents.

6.1.2 DESIGNATION AS CONTRACTOR

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Contractor agreement.

6.1.3 CONTRACTOR DUTIES

Although the Owner shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, Contractor shall cooperate with Owner. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor until subsequently revised.

6.1.4 OWNER OBLIGATIONS

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 NOTICE BY CONTRACTOR

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 COSTS INCURRED

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work or property shall be borne by the party responsible. Should Contractor cause damage to the work or property of any other contractor on the Project, or to the Project or property of a third party, or cause any delay to any such contractor or third party, the Contractor shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, above. Owner may withhold from progress payments and/or retention the cost of delay or damage to another contractor's work or damage to another contractor's property or to the property of Owner caused by Contractor.

6.2.4 CORRECTION OF DAMAGE

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Contractor to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Contractor with money or grant extra time for any extra work ordered by the Owner to be performed. Contractor shall follow the provisions of the Contract Documents, including General Conditions sections 4.5, 7.6, 7.7, and 8.4, when requesting additional money or additional time. Contractor shall expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Contractor shall follow Sections 7.5 and 7.7 in providing the credit to Owner. Contractor shall bring all potential credits to the Owner's attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work or payments under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under Section 4.5 and authorized by, and the cost thereof approved in writing by, Change Order or Construction Change Directive. Owner shall not be liable for, and Contractor shall bear the burden of, any post-bid escalation in the costs of materials; but Contractor will retain the benefit of any post-bid cost decreases. No extension of time for performance of the Work shall be allowed hereunder unless request for such extension is properly made under Section 4.5 and such time is thereof approved in writing by Change Order or Construction Change 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.

7.1.2 AUTHORITY TO ORDER MINOR CHANGES

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

7.2 CHANGE ORDERS (“CO”)

A CO is a written instrument signed by the Owner and the Contractor, stamped (or sealed) and signed by Architect, and approved by the Owner’s Governing Board and DSA, stating the agreement of Owner and Contractor upon all of the following:

- A. A change in the Work;
- B. The amount of the adjustment in the Contract Sum, if any; and
- C. The extent of the adjustment in the Contract Time, if any.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Contractor constitutes and includes full and complete money and time (including but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Contractor waives all Claims for all costs and effects caused by any of the changes, including but not limited to labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier.

7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)

7.3.1 DEFINITION

A CCD is a written unilateral order signed by the Owner directing performance of the Work or a change in the Work. The CCD may state an adjustment in the Contract Sum, Contract Time, or Milestone Deadline. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

7.3.2 USE TO DIRECT CHANGE

A CCD shall be used in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD, but it may pursue the Notice of Potential Change, COR and Claim procedures of Section 4.5 if Contractor believes it is entitled to changes in the Contract Sum or Contract Time.

7.4 REQUEST FOR INFORMATION (“RFI”)

7.4.1 DEFINITION

An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field

conditions.

7.4.2 SCOPE

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Sum, Contract Time, or the Contract Documents.

7.4.3 RESPONSE TIME

Unless Owner expressly directs otherwise in writing, Contractor shall submit RFIs directly to the Architect, with copies forwarded to the Owner. Contractor shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Contractor's requested order of priorities. The Owner and Contractor agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect's receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect's professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI's submitted concurrently and the reprioritization of pending RFI's submitted by the Contractor, among other things. If Contractor believes that the Architect's response results in a change in the Work that warrants additional money or time, or that Architect's response was unreasonably delayed and caused delay to the Work's critical path, Contractor shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect's receipt of the RFI. Contractor shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold \$100 from progress payments or retention in addition to any other remedies which Owner may have the right to pursue.

7.4.4 COSTS INCURRED

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

An RFP is Owner's written request asking the Contractor to submit to the Owner an estimate of

the effect, including credits, of a proposed change on the Contract Sum and the Contract Time.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section 7.7. The Contractor shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST (“COR”)

7.6.1 DEFINITION

A COR is any written request prepared by the Contractor asking the Owner for additional money or time, including a “proposed change order” or “PCO.” However, a Claim (see Sections 4.5.3-4.5.6) is not a COR. See Section 4.5.2 for additional COR requirements. The COR shall include all information necessary to establish the Contractor’s entitlement to additional money or time.

7.6.2 CHANGES IN PRICE

A COR shall include breakdowns per section 7.7 to validate any proposed change in Contract Sum.

7.6.3 CHANGES IN TIME

Where a change in a Milestone Deadline or Contract Time is requested, a COR shall also include delay analysis to validate any proposed change, and shall meet all requirements in these General Conditions, including but not limited to Section 8.4. 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 Work schedule as defined in section 3.9 and Division 1 of the Specifications.

7.7 PRICE OF CHANGE ORDERS

7.7.1 SCOPE

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

7.7.2 DETERMINATION OF COST

The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. Daily Reports by Contractor.

a) General: At the close of each working day, the Contractor shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector of Record and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

b) Labor: Show names of workers, classifications, and hours worked.

c) Materials: Describe and list quantities of materials used.

d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

e) Other Services and Expenditures: Describe in such detail as the Owner may require.

2. Basis for Establishing Costs.

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and

helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$100 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the Application for Payment.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the Application for Payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead, premiums and profit. For overhead, including direct costs, submit with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research for Owner initiated changes, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

7.7.3 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract.

	<u>EXTRA</u>	<u>CREDIT</u>
A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____
C. Equipment (attach any invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of item D.	_____	_____
F. Liability and Property Damage Insurance, Worker's Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G. Subtotal	_____	_____
H. General Contractor's Overhead and Profit, not to exceed fifteen percent (15%) of Item G; and for work performed by subcontractors, not to exceed five percent (5%).	_____	_____

I.	Subtotal	_____	_____
J.	Bond not to exceed one percent (1%) of Item I.	_____	_____
K.	TOTAL	_____	_____

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Contractor's costs and expenses resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including but not limited to delay analysis. Any costs or expenses not included are deemed waived.

7.7.4 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 omissions in the Work as provided herein.

7.7.5 ACCOUNTING RECORDS

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

7.7.6 NOTICE REQUIRED

Contractor shall submit a written Notice of Potential Change for additional money or time pursuant to section 4.5.1.

7.7.7 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

7.8 WAIVER OF RIGHT TO CLAIM MONEY OR TIME

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Contractor's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 CONTRACT TIME

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

8.1.2 NOTICE TO PROCEED

Contractor shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 DAYS

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 SUFFICIENT FORCES

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work, including Work directed pursuant to a CCD (see Section 7.3, above), in accordance with the Construction Schedule.

8.2.2 PERFORMANCE DURING WORKING HOURS

Work shall be performed during regular working hours 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 Owner.

8.2.3 LABOR CODE APPLICATION

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours

per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector of Record's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Contractor by the Owner and withheld from progress payments and/or retention. Contractor shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Contractor elects to perform work outside the Inspector of Record's regular working hours, costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Contractor by the Owner and withheld from progress payments and/or retention.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Milestone Deadlines and Contract Time are reasonable periods for performing the Work.

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 EXPEDITIOUS COMPLETION

The Contractor shall proceed expeditiously to perform the Work, including Work directed pursuant to a CCD (see Section 7.3, above), with adequate forces, labor, materials, equipment, services and management, shall achieve all Milestone Deadlines, and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

Contractor waives all rights and remedies as to any delay experienced during the Work (including any right to rescind the Contract and any right to refuse to perform the Contract) except for the rights and remedies expressly allowed by the Contract (including but not limited to time extensions and delay damages pursuant to this Section 8.4.1 and Section 8.4.2 below, and termination pursuant to Section 14.1 below).

8.4.1 CONDITIONS ALLOWING FOR EXTENSIONS OF TIME TO COMPLETE THE WORK ONLY (EXCUSABLE DELAY)

The Contractor shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions:

- (a) The delay was beyond the control of Contractor and its subcontractors and material suppliers;
- (b) The delay was caused by events that were not reasonably foreseeable to Contractor at the time of bidding;
- (c) All float in the schedule had been used, and the delay impacted and delayed the controlling items of Work (i.e., the as-built critical path, as determined from the as-planned schedule and the actual progress of the Work), thus delaying the achievement of a Milestone Deadline or the Completion of the whole Work within the Contract Time;
- (d) The delay was not caused by Contractor or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care;
- (e) The delay was not associated with loss of time resulting from the necessity of submittals to Owner for approval, or from necessary Owner surveys, measurements, inspections and testing;
- (f) The delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and
- (g) The delay could not have been prevented or mitigated by the exercise of care, prudence, foresight, and diligence by Contractor.

Excusable delays may include acts of God, acts of public enemy, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusual and uncommon weather for the time of year, unforeseen site conditions, or delays of subcontractors due to such causes. Owner shall take into consideration other relevant factors such as concurrent delays. Contractor has the burden of proving that any delay was excusable.

8.4.2 COMPENSABLE DELAY (TIME AND MONEY)

Compensable delays are those excusable delays for which Contractor is also entitled to money. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; *however*, Contractor shall not be entitled to monetary compensation when (a) Contractor could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner or the delay was caused by factors beyond the control of the Owner, including but not limited to a delay under Section 2.2.8 above or a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance; or (d) any other defense available to Owner under law or equity applies. Contractor has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency. Compensation shall be limited to field overhead (i.e., general conditions) and home office overhead, as may be allowed by law.

8.4.3 NOTICE BY CONTRACTOR REQUIRED; PROCEDURES FOR DEMANDING ADDITIONAL TIME OR MONEY

For notice and other required procedures related to requests by Contractor for additional time or money related to delay, Contractor shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7, above.

8.4.4 EARLY COMPLETION

Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the Work on the Project.

8.4.5 LIQUIDATED DAMAGES

Failure to Complete the Work within the Contract Time and in the manner provided for by the Contract Documents, or failure to complete any specified portion of the Work by a milestone deadline, shall subject the Contractor to liquidated damages as described in Article III of the Agreement and the Contract Documents. Accordingly, the parties agree that the amount set forth

in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work is delayed beyond the Contract Time as adjusted by Change Orders.

In addition, delaying another contractor's work on the Project or causing delay to the *completion* of the Project shall subject the Contractor to liquidated damages as described in Article III of the Agreement and the Contract Documents. Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Contractor delays the work of others on the Project or *completion* of the Project itself.

If liquidated damages accrue as described above, the Owner, in addition to all other remedies provided by law, shall have the right to assess and withhold as provided in Article III of the Agreement and the Contract Documents.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement, later adjusted by Change Orders and Construction Change Directives, and is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Contractor shall furnish the following:

- A. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a detailed breakdown of the Contract Sum (Schedule of Values) for each Project or Site. Each item in the schedule of values shall include its proper share of the overhead and profit.
- B. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a schedule of estimated monthly payment requests (cash flow) due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness

as the Owner may require;

- C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;
- D. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, the name, address, telephone number, fax number, license number and classification, and for all projects over Twenty-five Thousand Dollars (\$25,000) the public works contractor registration number, of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.2.2 OWNER ACCEPTANCE REQUIRED

The Owner shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be accepted by the Owner before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise, an itemized Application for Payment for operations completed in accordance with the Schedule of Values through the end of the previous calendar month. Such application shall be notarized, if required, and supported by the following or such portion thereof as the applicable entity requires:

- A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with 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;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;
- E. The Owner approved additions to and subtractions from the Contract Sum and Time;

- F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of Completion of the Contractor's Work by line item;
- I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment. Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to subcontractors or others because of a dispute or other reason; and
- J. Contractor's monthly reports, daily reports, and monthly schedule updates for all months of Work prior to the Application for Payment that Contractor has not previously submitted.

9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

9.3.3 WARRANTY OF TITLE

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Transfer of title to Work does not constitute a waiver by Owner

of any defects in the Work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 OWNER ACCEPTANCE

The Owner will, within seven (7) days after receipt of the Contractor's Application for Payment, either accept such payment or notify the Contractor in writing of the Owner's reasons for withholding acceptance in whole or in part as provided in paragraph 9.5.1.

9.4.2 OWNER'S REVIEW

The review of the Contractor's Application for Payment by the Owner will be based, at least in part, on the Owner's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the Application for Payment if it is not complete under section 9.3. The issuance of a Certificate for Payment will constitute a representation that the Contractor is entitled to payment in the amount certified, subject to any specific qualifications Owner expresses in the Certificate for Payment. However, Contractor's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to Completion. The issuance of a Certificate for Payment will not be a waiver by the Owner of any defects in the Work covered by the Application for Payment, nor will it be a representation that the Owner has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may withhold from a progress payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

- A. Defective or incomplete Work not remedied;
- B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop notice claimant's anticipated interest and court costs and an amount to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds to the Contractor, except that Owner may permanently withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties.
- C. Liquidated damages against the Contractor, whether already accrued or estimated to accrue in the future;
- D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Sum or within the Contract Time;
- E. Damage to the property or work of the Owner, another contractor, or subcontractor;
- F. Unsatisfactory prosecution of the Work by the Contractor;
- G. Failure to store and properly secure materials;
- H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- I. Failure of the Contractor to maintain record drawings;
- J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents;

- L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and Completion deadlines;
- M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Certificate for Payment;
- N. Failure by Contractor to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Contractor's failure to pay prevailing wage and any assessment of statutory penalties;
- O. Overpayment to Contractor on a previous payment;
- P. Credits owed to Owner for reduced scope of work or work that Contractor will not perform;
- Q. The estimated cost of performing work pursuant to Section 2.4;
- R. Actual damages related to false claims by Contractor;
- S. Breach of any provision of the Contract Documents;
- T. Owner's potential or actual loss, liability or damages caused by the Contractor; and
- U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties Owner or other entities assessed against Contractor. (See e.g., Labor Code section 1813 (working hours) or Public Contract Code section 4110 (subcontractor listings and substitutions))

Owner may, but is not required to, provide to Contractor written notice of the items for which Owner is withholding amounts from a progress payment.

To claim a breach of contract or violation of law based on wrongful withholding by the Owner from a progress payment or based on a late progress payment, or if Contractor otherwise disputes any progress payment or lack thereof, within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed progress payment Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

For any withheld amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Contractor to cover the excess amount. If available funds are not sufficient, Contractor shall pay Owner the difference.

Despite any withholding from a progress payment, or any other dispute about a progress payment, Contractor shall continue to expeditiously perform the Work pursuant to the Contract Documents, including but not limited to General Conditions sections 4.5.8, 7.1.1, 8.3.1, and 8.3.3.

9.5.2 PAYMENT AFTER CURE

When Contractor removes or cures the grounds for withholding amounts, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

9.5.3 OVERPAYMENT AND/OR FAILURE TO WITHHOLD

Neither Owner's overpayment to Contractor, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Contractor or to otherwise pursue recovery of those amounts from Contractor.

9.6 PROGRESS PAYMENTS

9.6.1 PAYMENTS TO CONTRACTOR

Unless otherwise stated in the Contract Documents, within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments; and Owner shall retain the other five percent (5%) of the undisputed value of the Work. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall base an Application for Payment only on the original Contract Sum plus any fully executed and Board-approved Change Orders. Contractor shall not include Notices of Potential Claims, CORs, Claims or disputed amounts.

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 Owner concerning the Work, or any portion thereof, remains uncomplied with. Payment shall not be a waiver of any such direction.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code section 7108.5, 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, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of Completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

9.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT

The Owner 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.

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An accepted Application for Payment, issuance of a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance or approval of any portion of the Work, especially any Work not in accordance with the Contract Documents.

9.6.7 JOINT CHECKS

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or 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. However, Owner has no duty to issue joint checks. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

9.7 COMPLETION OF THE WORK

9.7.1 CLOSE-OUT PROCEDURES

When the Contractor considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Contractor a comprehensive list of items to be Completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Contractor, including training, start-

up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds, and the documents described in Sections 9.3 and 9.9). The Contractor and/or its Subcontractors shall proceed promptly to Complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the Work so long as the statute of limitations (or repose) has not run.

When the Contractor believes the Punch List Work is Complete and in accordance with the Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Contractor of any items that are not complete or correct. Contractor shall promptly Complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner's governing body may formally accept the Work as Complete at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Contractor's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6).

Owner may record a Notice of Completion as allowed by Civil Code section 9200 *et seq.*

9.7.2 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests by Contractor to make inspections to confirm Completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed, or partially completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of it, nor shall such occupancy or use relieve Contractor of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

The Owner 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. When the Contractor considers a portion complete, the Contractor may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner, the Architect and the Contractor 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.

9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION

9.9.1 FINAL APPLICATION FOR PROGRESS PAYMENT

When, pursuant to Section 9.7.1, the Owner finds all of the Work is Completed in accordance with the Contract Documents, it shall so notify Contractor, who shall then submit to the Owner its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Owner shall issue a final Certificate of Payment, based on its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Owner in connection with the Work, that such Work has been Completed in accordance with the Contract Documents. If required to do so under Labor Code section 1773.3, subd. (d), Owner shall withhold final payment.

9.9.2 PROCEDURES FOR APPLICATION FOR FINAL PROGRESS PAYMENT

The Application for Final Progress Payment pursuant to Section 9.9.1 shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

- A. The Work shall be Complete, and the Contractor shall have made, or caused to have been made, all corrections to the Work which 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 Owner required under the Contract.
- B. 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, and Contractor delivered them to the Owner.
- C. The Contractor shall deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work "as built," with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents.
- D. Contractor shall provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

Acceptance of Final Progress Payment shall constitute a complete waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of Final Progress Payment.

9.9.3 RELEASE OF RETAINAGE

Owner shall withhold not less than 5% of the Contract Sum ("retainage," or "retention") until Completion and acceptance of the Project, per Public Contract Code section 9203.

Owner may withhold from release or payment of retainage up to 150% of disputed amounts, including but not limited to the issues listed in Section 9.5. If retainage is held in an escrow account pursuant to an escrow agreement under Public Contract Code section 22300 (see Section 9.10) and Owner withholds from release of retainage based on a breach of the Contract, or other default, by Contractor, Owner may withdraw the withheld retainage from the escrow account.

Owner shall release the undisputed retainage within sixty (60) days after Completion of the Project. For this purpose, "Completion" is defined in Public Contract Code section 7107(c). No interest shall be paid on any retainage, or on any amounts withheld, except as provided to the contrary in any Escrow Agreement and General Conditions between the Owner and the Contractor under Public Contract Code section 22300.

To claim a breach of contract or violation of law based on wrongful withholding by the Owner from retention or based on a late payment or late release of retention, or if Contractor otherwise disputes any payment or release of retention or lack thereof, within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed payment/release of retention Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

9.10 SUBSTITUTION OF SECURITIES

In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon Completion of the Contract, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Contract Documents.

Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner.

The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

Any escrow agreement entered by Owner and Contractor pursuant to Public Contract Code section 22300, shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 CONTRACTOR RESPONSIBILITY

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Contractor will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

10.1.2 SUBCONTRACTOR RESPONSIBILITY

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.3 COOPERATION

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

10.1.4 ACCIDENT REPORTS

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

10.1.5 FIRST-AID SUPPLIES AT SITE

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 THE CONTRACTOR

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, equipment, tools, construction equipment, and machinery to be incorporated therein or necessary for the proper execution and Completion of the Work, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 CONTRACTOR NOTICES

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 SAFETY BARRIERS AND SAFEGUARDS

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.2.5 FINGERPRINTING

At its own expense, Contractor shall comply with all fingerprinting requirements under law and Contract, including but not limited to the requirements of Education Code section 45125.2 and the Independent Contractor Student Contact Form which is a part of the Contract. Contractor shall hold harmless, defend and indemnify the Owner under section 3.16, for any costs, including attorneys' fees, Owner incurs from Contractor's failure to comply.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 PROTECTION OF WORK

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work or Completion of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner; except that for projects not solely funded through revenue bonds, (a) Contractor shall not be responsible for damages caused by a tidal wave to the extent that the damages exceed 5% of the Contract Sum, and (b) Contractor shall not be responsible for damages caused by an earthquake above 3.5 on the Richter Scale in magnitude to the extent that the damages exceed 5% of the Contract Sum, per Public Contract Code §7105(a).

10.3.2 PROTECTION FOR ELEMENTS

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 SHORING AND STRUCTURAL LOADING

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.3.6 SITE ACCESS

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.3.7 PROTECTION OF MATERIALS

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

10.4 EMERGENCIES

10.4.1 EMERGENCY ACTION

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

10.4.2 ACCIDENT REPORTS

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS

10.5.1 DISCOVERY OF HAZARDOUS MATERIALS

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Contractor, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

10.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR

In the event the presence of hazardous materials on the Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any delay or additional costs incurred in accordance with the applicable provisions of Article 7 and 8 herein. Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Contractor's active negligence, sole negligence or willful misconduct. By providing this indemnification, Owner does not waive any immunities.

10.5.4 NATURALLY OCCURRING ASBESTOS

If the Site is found to contain naturally occurring asbestos (asbestos naturally contained in rocks which can become airborne when released "NOA"), in addition to complying with applicable provisions in sections 10.5.1-10.5.3 above, Contractor shall comply with, and be solely responsible for, all applicable NOA requirements of the California Air Resources Board

(CARB), California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), any local air quality management district with jurisdiction over the Site, the County, and all other applicable federal, State and local governmental entities. This compliance and responsibility includes, but is not limited to, dust control mitigation measures and a monitoring plan.

10.5.5 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR

In the event the presence of hazardous materials on the Site is caused by Contractor, Subcontractors, materialmen or suppliers, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

10.5.6 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

10.5.7 ARCHEOLOGICAL MATERIALS

In the event the Contractor encounters or reasonably suspects the presence on the Site of archeological materials, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Contractor's receipt of written notice from the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

11.1.1 LIABILITY INSURANCE REQUIREMENTS

11.1.1 By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the

Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;
- 11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;
- 11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- 11.1.1.4 claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and
- 11.1.1.5 claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- 11.1.1.6 claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

11.1.3 OWNER'S INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The Contractor shall name, on any policy of insurance, the Owner and the Architect as additional insureds. Subcontractors shall name the Contractor, the Owner and the Architect as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the contractor fails to maintain such insurance, the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Contractor being injured or killed, and withhold from progress payments and/or retention the amount of the premium for such insurance.

11.1.6 BUILDER'S RISK/"ALL RISK" INSURANCE

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Unless provided by Owner at Owner's sole discretion, Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: Vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood including tidal wave (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by a tidal wave up to 5% of the Contract Sum [except as provided in Section 11.1.6.2, below; see Public Contract Code §7105(a)]), earthquake (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by an earthquake above 3.5 magnitude on the Richter Scale up to 5% of the Contract Sum [except as provided in Section 11.1.6.3, below; see Public Contract Code §7105(a)]), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable under the Builder's Risk/Course-of Construction insurance. The risk of the damage to the Work due to the perils covered by the Builder's Risk/Course-of-Construction insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner, nor will such loss or damage excuse the Complete and satisfactory performance of the Contract by the Contractor.

11.1.6.2 TIDAL WAVE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts an alternate bid by Contractor for insurance coverage for a tidal wave, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by tidal wave and other similar acts of God. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.6.3 EARTHQUAKE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts an alternate bid by Contractor for insurance coverage for an earthquake over 3.5 on the Richter Scale, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage

arising out of or caused by earthquake and/or other earth movement, whether seismic or volcanic in origin, over 3.5 on the Richter Scale in magnitude. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.7 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.1.8 FIRE INSURANCE

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.9 OTHER INSURANCE

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.1.10 PROOF OF CARRIAGE OF INSURANCE

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause:

This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- (c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.
- (d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

11.1.11 COMPLIANCE

In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

To the extent, if any, that the Contract Sum is increased in accordance with the Contract Documents, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate the Contract for cause.

11.2.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure

section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, Contractor must, if required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Contractor's expense without change in the Contract Sum or Time.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such work, and it shall be uncovered by the Contractor. If such work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such work is not in accordance with Contract Documents, the Contractor shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

12.2 CORRECTION OF WORK; WARRANTY

12.2.1 CORRECTION OF REJECTED WORK

The Contractor shall promptly correct the work rejected by the Owner for failing to conform to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, 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 Owner's expenses and costs incurred.

12.2.2 REMOVAL OF NONCONFORMING WORK

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted or approved by the Owner.

12.2.3 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT

If the Contractor fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. As part of Owner's correction of the work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If progress payments or retention then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.4 COST OF CORRECTING THE WORK

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming work.

12.2.5 WARRANTY CORRECTIONS (INCLUDES REPLACEMENT)

Pursuant to the warranty in Section 3.5, if within one (1) year after the Completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, the Contractor shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under the Contract and termination of the Contract.

12.2.6 NO TIME LIMITATION

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5 and 12.2.5 relates only to the specific warranty obligation of the Contractor to correct the Work after the date of commencement of warranties and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect

to the Contractor's obligations other than specifically to correct the Work.

12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT

If it is found at any time before Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any amount due or to become due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural related work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

13.4 RIGHTS AND REMEDIES

13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies

otherwise imposed or available by law.

13.4.2 NO WAIVER

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.5 TESTS AND INSPECTIONS

13.5.1 COMPLIANCE

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 INDEPENDENT TESTING LABORATORY

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall reimburse Owner for any additional shipping or transportation costs or expenses (mileage and hours). Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

13.5.3 ADVANCE NOTICE TO INSPECTOR OF RECORD

The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

13.5.4 TESTING OFF-SITE

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.5.1, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.5.6.

13.5.6 COSTS FOR RETESTING

If such procedures for testing, inspection, or approval under sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

13.5.7 COSTS FOR PREMATURE TEST

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 [INTENTIONALLY LEFT BLANK]

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE FEET

Pursuant to Labor Code section 6705, if the Contract Sum 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, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.7.2 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 Owner or by the person to whom authority to accept has been delegated by the Owner.

13.7.3 NO TORT LIABILITY OF OWNER

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

13.7.4 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.

13.8 WAGE RATES

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained 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 for this Project from the Director of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's Governing Board, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

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

13.8.4 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

If during the period this bid is required to remain open, the Director of Industrial Relations

determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

13.8.5 FORFEITURE AND PAYMENTS

Pursuant to Labor Code section 1775, the Contractor and any subcontractor under the Contractor shall as a penalty to the Owner, forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Contractor or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor; and (2) whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Contractor or subcontractor. Labor Code section 1777.1 shall also apply.

13.8.6 MINIMUM WAGE RATES

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

13.8.7 PER DIEM WAGES

Pursuant to Labor Code section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

13.8.8 POSTING OF WAGE RATES AND OTHER REQUIRED JOB SITE NOTICES

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

13.9 RECORD OF WAGES PAID: INSPECTION

13.9.1 APPLICATION OF LABOR CODE

Pursuant to section 1776 of the Labor Code:

(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the Owner and the Division of Labor Standards Enforcement of the Department of Industrial Relations ("DIR") and as may be required by the Labor Commissioner under Labor Code section 1771.4). The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement of the ... (DIR). If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Contractor.

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement (of the DIR) or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement (of the DIR) shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to

receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement (of the DIR), these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

13.10 APPRENTICES

13.10.1 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training. Contractor shall pay apprentices for any preemployment activities, as set forth in Labor Code section 1777.5.

13.10.2 APPRENTICE LABOR POOL

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall

be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 JOURNEYMAN/APPRENTICE RATIO

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

13.10.4.1 *Apprenticeable Craft or Trade.* "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.5 RATIO EXEMPTION

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.6 APPRENTICE FUND

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

13.10.7 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with section 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this section 13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

13.10.9 No BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

13.10.10 VIOLATION OF LABOR CODE

Pursuant to Labor Code sections 1777.1 and 1777.7, in the event a Contractor or Subcontractor fails to comply with the provisions of this section 13.10 and Labor Code section 1777.5, among other things:

- (a) If a Contractor or Subcontractor willfully fails to comply, the Labor Commissioner may deny to the contractor or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.
- (b) A contractor or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of One Hundred Dollars (\$100) for each full calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the contract progress payments or retention then due or to become due.
- (c) In lieu of the penalty provided, the Labor Commissioner may for a first time violation and with the concurrence of an applicable apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.
- (d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund.
- (e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to section 1777.1 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner 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. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders Final Progress Payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

13.12 AUDIT

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after release of all retention under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period. During the progress of the Work and for three (3) years after release of all retention under the Contract, Owner shall also have the right to an audit of Contractor's books, records, subcontracts, material and equipment contracts, files, and information related to the project, and Contractor must cooperate by producing all requested items within seven (7) days.

13.13 STORM WATER DISCHARGE PERMIT

If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-

DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

Contractor may not terminate performance for convenience. Contractor may only terminate performance for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 GROUNDS FOR TERMINATION

The Owner may terminate performance of the Contract if the Contractor:

- A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work to meet a Milestone Deadline or to Complete within the Contract Time;
- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;
- C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code

section 1771.1(f);

- D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- E. Otherwise is in breach of the Contract Documents.

14.2.2 NOTIFICATION OF TERMINATION

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a "Notice of Intent to Terminate"). If Contractor fails to **either** (a) completely cure the grounds for termination within seven (7) days **or** (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate the performance of Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Contractor's surety on the performance bond ("Surety"):

- A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. Accept assignment of subcontracts pursuant to section 5.4; and
- C. Complete the Work by whatever reasonable method the Owner may deem expedient, including tender of completion to the Surety.

14.2.3 PAYMENTS WITHHELD

If the Owner terminates performance of the Contract for one of the reasons stated in section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is Complete.

14.2.4 PAYMENTS UPON COMPLETION

If the unpaid balance of the Contract Sum exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive Completion of the Work.

14.2.5 INCLUSION OF TERMINATION FOR CONVENIENCE

Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 *Adjustments.* An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 *Adjustments for Fixed Cost.* Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.2.1 The Owner may, at any time, terminate performance of the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- 1. Cease operations as directed by the Owner in the notice;
- 2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- 3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 NOT A WAIVER

Any suspension or termination by Owner of performance by Contractor for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or

others for damages based on breach of contract, negligence or other grounds.

14.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree in writing to terminate performance of this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order Work on the Project to cease. The Owner will remain obligated to pay for the Work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the Work has not been done.

**ADDENDUM ONE TO THE AGREEMENT BETWEEN
MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
AND KYA SERVICES, INC.
MONSON-SULTANA SCHOOL GYMNASIUM BUILDING**

This Addendum Number One (“Addendum”) to the Agreement by and between Monson-Sultana Joint Union Elementary School District (“Owner”) and KYA Services, Inc. (“Contractor”) (collectively the “Parties”), dated June 6, 2023, for the for Monson-Sultana School Gymnasium Building (the “Project”) is entered into as of the date last signed below (“Effective Date”).

AGREEMENT

1. The General Conditions attached hereto as **Exhibit 1** (“General Conditions”) are incorporated herein by reference and together with the Agreement, this Addendum, and any and all of the documents listed in Article 1.1.1. of the General Conditions, comprise the Contract Documents which form the Contract, as defined in Article 1.1.2 of the General Conditions.
2. Section 3 of the Agreement is replaced in its entirety with the following:
 3. **Payment.** Owner agrees to pay Contractor for work satisfactorily performed in accordance with the Scope of Work—Pricing attached to the Agreement as page 3 of Exhibit A, and after receipt of properly documented and submitted Applications for Payment, and to make payments on account thereof, as provided in the General Conditions.
2. Section 6 of the Agreement is replaced in its entirety by the following:
 6. **Completion.** Completion of the Work (as that term is defined in the General Conditions) shall be determined in accordance with the General Conditions.
3. Section 9 of the Agreement is replaced in its entirety by the following:
 9. **Delays.** Delays in performance of the work under this Agreement shall be governed in accordance with the General Conditions.
4. Section 10 of the Agreement is replaced in its entirety by the following:
 10. **Time to Complete and Liquidated Damages.** Time is of the essence in this Agreement. The time for completion of the Project shall be not later than May 31, 2024, which. The date of occupancy of the Project and the Date for Completion (as that term is defined in the General Conditions) shall also be no later than May 31, 2024.

Failure to complete the Project within the date(s) and in the manner provided for by the Contract Documents (as that term is defined in the General Conditions), shall subject the Contractor to liquidated damages for each calendar day by which such completion is

delayed beyond the Date for Completion. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed by the Date for Completion are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer if completion is delayed include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the Parties agree that the following dollar figure shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: \$1,500 for each calendar day by which completion of the Project is delayed beyond the Date for Completion, which may be adjusted in accordance with the Contract Documents.

If the Contractor becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the withheld payments are not sufficient to discharge all liabilities of the Contractor incurred under this Section, then the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

5. Section 13 of the Agreement is replaced in its entirety by the following:

13. Changes. Changes in this Agreement or the Work to be done under this Agreement, shall be made as provided in the General Conditions and shall be in the form of a written amendment or change order to this Agreement approved by the Owner's governing board.

6. Section 14 of the Agreement is replaced in its entirety with the following:

14. Insurance. Contractor shall obtain and maintain insurance for the work performed under the Agreement in accordance with the requirements set forth in the General Conditions. The amount of general liability insurance shall be \$2,000,000 per occurrence for bodily injury, personal injury and property damage and general aggregate liability of \$4,000,000. The amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit.

By this statement, Contractor represents that it has secured Workers' Compensation insurance in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code.

Contractor shall supply Owner with certificates of insurance evidencing that all required insurance is in effect prior to commencing work and will provide Owner will thirty (30) days' advance notice of cancellation.

7. Section 15 of the Agreement is replaced in its entirety with the following:

15. Indemnity. Contractor will defend, indemnify, and hold harmless Owner, its governing board, members of its governing board, officers, agents, employees and others as provided in the General Conditions.

8. Exhibit A: Conditions and Warranty. Sections 4, 5, 11, 13, 14, 16, and 17 of the Conditions and Warranty attached as pages 4 and 5 of **Exhibit A** are removed in their entirety.
9. Use of Federal Funds. Federal funds are being used either in whole or in part for this Project; therefore, the Project is subject to, and Contractor must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Contractor agrees to comply with all such federal requirements, as set forth in additional detail in Section 3.20 of the General Conditions.
10. Prevailing Wage. The Project is a public work, and all on-site Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Contract or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Contract.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such

work or craft in which such worker is employed. The difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each subcontractor shall keep or cause to be kept an accurate record for Work on this Contract showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner at least monthly.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

11. Working Hours. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

12. Apprentices. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Design-Builder for all apprenticeable occupations.
13. DSA Oversight Process. The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process").
14. Termination. The Owner or Contractor may terminate the Agreement as provided in the General Conditions.
15. Agreement to Remain in Effect. All other provisions of the Agreement shall remain in full force and effect, unless specifically modified by this Addendum.

IN WITNESS WHEREOF, this Addendum One has been executed by the authorized representatives of the Parties.

CONTRACTOR:

KYA SERVICES, INC.

By: _____

Name: _____

Title: _____

Date: _____

OWNER:

MONSON-SULTANA UNION
ELEMENTARY SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT

Board Meeting Agenda Item Summary

September 5, 2023

AGENDA SECTION: **CONSENT ITEM**

AGENDA ITEM: **9.12 NEW MARQUEE BIDS**

ATTACHMENTS: **STEWART SIGNS QUOTE**
GOLDEN RULE SIGNS QUOTE
SIGNS PLUS QUOTE

DISCUSSION: The District has been awarded a USDA Grant for the Campus Improvements. The District received three quotes and recommended approval of purchase from Golden Rule Signs 10mm sign. The recommendation is due to Installation Included.

RECOMMENDATION: The Superintendent recommends that the Board approve the bid and purchase from Golden Rule Signs.

PROPOSED ACTION: **APPROVE**



Quote #1023151-2
Customer #1650158
Quoted 7/27/2023
Valid until 8/26/2023*

Prepared for

Monson Sultana Joint Union Esd
10643 Ave 416
Sultana, CA 93666 0025

Prepared by

Shay Einhaus
seinhaus@stewartsigns.com
Office: 1.888.237.3928 x2310
Cell: 941.504.2555

DESCRIPTION

PRICE

Single Sided Full Color TekStar Outdoor LED Sign

LED display integrated inside of an aluminum sign cabinet with solar-grade polycarbonate vandal cover to protect from impacts, vandalism and the sun.

\$15,608.00

LED display

- 10.66mm full color at 60 pixels high by 210 pixels wide (12,600 total pixels)
- Active display area 2'1" x 7'4" (15.4 square feet)
- 1 to 7 rows of text and use your own images and video clips
- Entire sign UL Listed and FCC Part 15 compliant

[See full display capabilities](#)

Communication method

Communication to sign provided by Ethernet cable.

[See full specifications](#)

Sign structure and faces

- Single sided 5' x 8' sign cabinet with 12" deep extruded aluminum
- TCI® industrial powder coat finish, color: ** NOT SELECTED **
- Graphics digitally printed on 3M™ vinyl and adhered to inside of sign face
- Internal illumination with LED lamps
- TUFFAK® SL pan-formed face removable via internal retainers
- External horizontal angles mount
- Lifetime warranty on structure & face, including vandalism (see warranty for info)

Electrical specifications

- One 20 amp circuit, 120 volts; Max draw: 5.7 amps

Custom options

- Estimated Tax Included
- Estimated Freight Included

Software

SignCommand.com Cloud-based LED Sign Software FREE for the lifetime of the product.
Control your sign from anywhere using any device. No monthly fees. [Learn more.](#)

Included

Special instructions

BREAKDOWN:

SIGN = \$13,461.00
TAX = \$1,043.23
FRT = \$1,103.77

TOTAL = \$15,608.00*

*Does NOT include installation

Total: \$15,608.00
+ any applicable sales tax and freight
Payment terms: Net 30 with Purchase Order Issued to
Stewart Signs



Prepared for: Monson Sultana Joint Union Esd • Sultana, CA

Prepared by: Shay Einhaus • seinhaus@stewartsigns.com • 1.888.237.3928 x2310

SHIPPING INFORMATION

Invoices

MONSON SULTANA JOINT UNION ESD
PO BOX 25
SULTANA, CA 93666 0025

All items not specified here will be shipped to:
Monson Sultana Joint Union Esd
10643 Ave 416
Sultana, CA 93666 0025

Shipping terms: FOB Origin. Storage and other freight services may be added to your invoice should they be required. Unless managed installation services are included, customer is responsible for unloading of sign upon delivery. Signs greater than 6 feet wide are not eligible for lift gate services.

TERMS & CONDITIONS (*unless noted elsewhere in this quote)

TAX: Any applicable sales tax will be added to your invoice. Organizations exempt from sales tax must include exemption certificate with order.

PERMITS: Permits and zoning are the responsibilities of the buyer. Check with your city or county zoning office for proper permitting procedures in your area. Sealed engineer drawings available at additional cost.

INSTALLATION: Installation of footers, erection, electrical service to sign site, electrical hook-up, removal and/or disposal of any existing signage, and any decorative masonry are the responsibilities of the buyer. Managed installation services are available at additional cost.
[Learn about typical installation methods.](#)

CANCELLATION: Any cancellation may be subject to cancellation, return, and/or restocking fees. A late fee of 1.5% per month will be charged on any overdue balances. In the event of a payment default, customer will be responsible for all of Stewart Signs' costs of collection, including but not limited to court costs, filing fees and attorney fees.

SUPPORT: US-based phone and internet support are provided FREE for the lifetime of the product. A premier service warranty is available at additional cost.

SOFTWARE: By purchasing the SignCommand.com software product, you are agreeing with the Website Terms of Use (<https://www.signcommand.com/terms>) and Software End User License Agreement (<https://www.signcommand.com/eula>).

COMMUNICATION: Connectivity requires Ethernet Cat5e or Cat6 cable to sign site. Maximum cable length of 330 feet.

I have read and understand the Terms & Conditions above.

INITIALS

ORDERING INSTRUCTIONS

1. Review this quote for accuracy. Initial the Terms & Conditions box. Sign and date the quote here.
2. Review any corresponding artwork provided with this quote. Check all spelling and colors. Sign and date the artwork.
3. Submit both documents along with your deposit payment to your sign consultant. Speak with your consultant about payment method options.

Customer's authorized signature for quote #1023151-2

SIGNATURE

PRINT NAME

DATE

Shay Einhaus

Shay Einhaus, Sign Consultant

7/27/2023

Prepared for: Monson Sultana Joint Union Esd • Sultana, CA

Prepared by: Shay Einhaus • seinhaus@stewartsigns.com • 1.888.237.3928 x2310

Limited Product Warranty ("Limited Warranty")

Definition of Warranty Coverage:

- 1) Stewart Signs (the "Company") expressly warrants to the original purchaser ("You" or "Buyer" or "Owner" or "Customer") that, for a period of five (5) years from the date of shipment (the "Warranty Period"), the electronic displays and the associated Company products (the "Product") will be reasonably free of material defects in materials and workmanship impacting Product fit, form and/or function. During the Warranty Period, the Company will, at its discretion, repair or replace any defective covered Product. The Owner will be responsible for removing and reinstalling any and all repaired or replacement parts. This Limited Warranty only applies to the Company's Product if installed, used, and maintained in the manner recommended by Company, and this Limited Warranty is conditioned upon compliance with all such instructions. Lifetime telephone support for the Product is provided, as needed.
- 2) In the event the Product is damaged during shipping, it is the responsibility of the Buyer to refuse delivery, causing the Product to be returned to the manufacturer for repair. Title to the Product passes to the Buyer upon the Company's delivery to the freight carrier. The Company assumes no liability for damage caused by careless handling or poor installation, except for work completed by employees of the Company. Loss or damage to the Product when in possession of the freight carrier is the responsibility of the Customer and is not covered by this Limited Warranty.
- 3) Any information or suggestion by the Company with respect to the Product concerning applications, specifications or compliance with zoning, codes and standards is provided solely for your convenience and without any representation as to accuracy or suitability. You must verify and test the suitability of any information with respect to the Product for your specific application.
- 4) Sign Structure and Sign Face: In the event the sign structure or identification/changeable copy portion of the sign malfunctions under normal use and service thereof DURING THE LIFE OF THE SIGN due to material defects in workmanship or materials, the Company will, at its option, repair or replace any defective materials. Excludes Cornerstone monument signs and other Cornerstone components.
- 5) Vandalism to Sign Faces: This Limited Warranty covers polycarbonate faces against breakage due to vandalism DURING THE LIFE OF THE SIGN. Warranty protection does not extend to these surfaces if damaged by gunshots, or when damaged coincident with damage to the sign cabinet in which the faces are installed. Excludes Cornerstone monument signs and other Cornerstone components.
- 6) Failed electronic parts or assemblies, with the exception of lamps, will be repaired or replaced, at the sole discretion of the Company. Owner bears the expense and responsibility of shipping Product to Company's Repair Center. Replacement or repaired parts are warranted to be free from material defects in material or workmanship for ninety (90) days, or for the remainder of the Warranty Period of the Product they are replacing or in which they are installed, whichever is longer.
- 7) The Company will repair failed LED pixels if greater than one half of one percent (0.5%) of the total number of pixels in the sign have failed in one (1) calendar year, provided the sign is installed with the recommended ventilation system for its location. The definition of pixel failure is when all LED's in the pixel will no longer emit light. Pixel repair is performed at the Company Repair Center. It is common knowledge within the sign industry that all LEDs degrade and produce less light as they age. Eventually the LEDs will require replacement even though the LEDs will still emit light. This Limited Warranty does not cover normal LED degradation.
- 8) Customer Obligations:
Failure by the Customer to properly maintain the Product, including but not limited to filters and the ventilation/air conditioning systems, will void coverage for affected components. The Customer shall notify the Company immediately of equipment failure and allow the Company full and free access to the Product when required. Waiver of liability or other restriction shall not be imposed as a site access requirement. The Customer is responsible for all costs and management oversight associated with providing the Company access to the Product, providing the necessary machines, communication facilities and other equipment, inclusive of but not limited to lifting equipment. Should on-site repair be required, Customer is required to have a responsible individual on-site to provide access to the Product as well as sign off on a completed work order.
- 9) Exclusions and Restrictions:
The Company reserves the right to restrict service, limit replacement parts, or invalidate this Limited Warranty to Customers whose account balance is past due.
This Limited Warranty specifically excludes any on-site labor required to service the covered Product, including diagnosis, removal, and installation of parts and/or products. Any on-site service required by the Customer of Company technicians or a local Company-authorized service provider is billable to the Customer based on an agreed-upon written quote.
This Limited Warranty does not apply to software. Software is covered by a separate agreement, which appears in the Company's software license agreement.
Ballasts are covered for three (3) years.
ID cabinet LED illumination and power supply are covered for two (2) years, when purchased as a system.
- 10) This Limited Warranty specifically does not cover the following:
 - a) Third-party communication devices such as wireless devices and modems, which are covered by a separate electronic communication warranty.
 - b) Damage to Product that has been moved from its original installation location or is mounted in a mobile structure.
 - c) Cosmetic damage to the Product (including but not limited to scratches and dents that do not otherwise affect the fit, form or functionality of the Product or materially impair its use).
 - d) Temperature sensor results: temperature sensors will register variable results, given local environmental factors such as direct sunlight, distance from concrete or asphalt, etc.; results are not guaranteed or covered under this Limited Warranty.
 - e) Recovery or transfer of any data or software stored on the Product not originally installed on the Product by the Company.
 - f) Light bulbs or lamps.

Prepared for: Monson Sultana Joint Union Esd • Sultana, CA

Prepared by: Shay Einhaus • seinhaus@stewartsigns.com • 1.888.237.3928 x2310

- 11) This Limited Warranty specifically does not cover conditions, defects or damage caused by or resulting from the following:
- a) Defects caused by: unreasonable or unintended use of Product; improper or unauthorized handling; accident; omission; neglect; vandalism (unless otherwise noted in this Limited Warranty); misuse; physical abuse; installation, use and/or fabrication, and maintenance of the Product by any party other than the Company.
 - b) Damage (not resulting from manufacturing defects) that occurs while the Product is in the Owner's control and/or possession, unless otherwise noted in this Limited Warranty.
 - c) Extreme physical or electrical stress or interference; environmental conditions beyond the Company's control, such as man-made or naturally occurring electrochemical oxidation or corrosion and/or metallic pollutants; normal wear and tear; inadequate, improper, or surges of electrical power; lightning, floods, fire, acts of God, war, terrorism, or other external causes, including Force Majeure.
 - d) Unauthorized modification, including installation of third-party software on the Product.
 - e) Product modification or service by anyone other than: (a) the Company, (b) a Company-authorized service provider, or (c) Customer's own installation of Company approved parts with instruction from the Company. Service to damaged or malfunctioning Product which has not been ordered or authorized by the Company's Customer Satisfaction Department is not covered under this Limited Warranty and will automatically invalidate this Limited Warranty.
 - f) Computer viruses, Trojan horses, worms, self-replicating code or like destructive code which was not included in the Product by the Company.
 - g) Products installed with known or visible manufacturing defects at the time of installation.
- 12) All items returned to the Company must have a Return Materials Authorization ("RMA") number, available by using the contact information below. Items received without an RMA number will not be processed and will be returned to the Customer at their expense. The Customer is responsible for sending a defective part to the Company, after which the Company will send a repaired or replacement part to the Customer.
- 13) The Company will provide and be responsible for the cost of shipping parts from the Company to the Customer, with the exception of sign faces replaced due to vandalism. Standard shipping via the United States Postal Service or other commercial parcel delivery company is the default method of delivery. Expedited delivery is available to the Customer at his or her expense. The Customer will provide and be responsible for the cost of shipping parts to the Company.
- 14) Warranty claims must be registered with the Company within thirty (30) days of damage or malfunction. To register a claim, the Customer must contact the Company at the location specified below and provide (a) his or her name and any other required contact information, (b) Product and purchase descriptions, and (c) the nature of the defect. The Company reserves the right (at its sole discretion) to require proof of original purchase (e.g. paid invoice, receipt) and to visit the site of the installation or to require documentation of the claim before assuming any responsibility under the provisions of this Limited Warranty.
- 15) THE LIMITED WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES MADE BY THE COMPANY IN CONNECTION WITH THE PRODUCT. THE COMPANY CANNOT AND DOES NOT MAKE ANY IMPLIED OR EXPRESS WARRANTIES WITH RESPECT TO THE PRODUCT, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY'S SOLE OBLIGATION UNDER THIS LIMITED WARRANTY SHALL BE TO REPAIR OR REPLACE MALFUNCTIONING OR DEFECTIVE PARTS OF THE PRODUCT. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE PRODUCT PURCHASED, WHETHER USED SINGULARLY OR IN COMBINATION WITH ANY OTHER PRODUCTS OR SUBSTANCES.
- 16) NO CLAIM BY BUYER OF ANY KIND, INCLUDING CLAIMS FOR INDEMNIFICATION, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCT WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. IN NO EVENT SHALL COMPANY BE LIABLE TO BUYER IN TORT, CONTRACT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR LOSS OF PROFIT, REVENUE OR USE, IN CONNECTION WITH, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCT SOLD HEREUNDER, OR FOR ANY LIABILITY THAT BUYER HAS TO ANY THIRD PARTY WITH RESPECT THERETO.

Contact Information:

Stewart Signs Customer Satisfaction

2201 Cantu Court, Suite 215

Sarasota, FL 34232

Phone: 855-841-4624

Web: www.stewartsigns.com/support/

Email: support@stewartsigns.com



Quote #1023146-2
Customer #1650157
Quoted 7/27/2023
Valid until 8/26/2023*

Prepared for

Monson Sultana Joint Union Elem
10643 Avenue 416
Sultana, CA 93666 0025

Prepared by

Shay Einhaus
seinhaus@stewartsigns.com
Office: 1.888.237.3928 x2310
Cell: 941.504.2555

DESCRIPTION	PRICE
10.66mm 60x210 Full Color Tekstar Internal Cabinet Upgrade; Double sided with controller, send card, receive cards, hubs, and light sensor	\$18,095.00

5'x8' TekStar sign faces (2)

BREAKDOWN:

INTERNAL LED = \$13,099.00
SIGN FACES = \$2,490.00
TAX = \$1,208.15
FRT = \$1,297.85

TOTAL = \$18,095.00*

*Does NOT include installation.

Total: \$18,095.00
+ any applicable sales tax and freight
Payment terms: 50% Down, 50% Net 30

Internal note: if a freestanding sign, footer detail and template to be requested when ordered.



Quote #1023146-2
Customer #1650157
Quoted 7/27/2023
Valid until 8/26/2023*

Prepared for: Monson Sultana Joint Union Elem • Sultana, CA

Prepared by: Shay Einhaus • seinhaus@stewartsigns.com • 1.888.237.3928 x2310

SHIPPING INFORMATION

All items related to this order

10643 AVE 416
SULTANA, CA 93618
Attn: MONSON SULTANA SCHOOL
559-591-1634
ADMIN@MSSCHOOL.ORG

Invoices

MONSON-SULTANA SCHOOL
10643 AVE 416
PO BOX 25
SULTANA, CA 93666 0025

Shipping terms: FOB Origin. Storage and other freight services may be added to your invoice should they be required. Unless managed installation services are included, customer is responsible for unloading of sign upon delivery. Signs greater than 6 feet wide are not eligible for lift gate services.

TERMS & CONDITIONS (*unless noted elsewhere in this quote)

TAX: Any applicable sales tax will be added to your invoice. Organizations exempt from sales tax must include exemption certificate with order.

PERMITS: Permits and zoning are the responsibilities of the buyer. Check with your city or county zoning office for proper permitting procedures in your area. Sealed engineer drawings available at additional cost.

INSTALLATION: Installation of footers, erection, electrical service to sign site, electrical hook-up, removal and/or disposal of any existing signage, and any decorative masonry are the responsibilities of the buyer. Managed installation services are available at additional cost.

CANCELLATION: Any cancellation may be subject to cancellation, return, and/or restocking fees. A late fee of 1.5% per month will be charged on any overdue balances. In the event of a payment default, customer will be responsible for all of Stewart Signs' costs of collection, including but not limited to court costs, filing fees and attorney fees.

SUPPORT: US-based phone and internet support are provided FREE for the lifetime of the product. A premier service warranty is available at additional cost.

I have read and understand the Terms & Conditions above.

INITIALS

ORDERING INSTRUCTIONS

1. Review this quote for accuracy. Initial the Terms & Conditions box. Sign and date the quote here.
2. Review any corresponding artwork provided with this quote. Check all spelling and colors. Sign and date the artwork.
3. Submit both documents along with your deposit payment to your sign consultant. Speak with your consultant about payment method options.

Customer's authorized signature for quote #1023146-2

SIGNATURE

PRINT NAME

DATE

Shay Einhaus

Shay Einhaus, Sign Consultant

7/27/2023

Prepared for: Monson Sultana Joint Union Elem • Sultana, CA
Prepared by: Shay Einhaus • seinhaus@stewartsigns.com • 1.888.237.3928 x2310

Limited Product Warranty ("Limited Warranty")

Definition of Warranty Coverage:

- 1) Stewart Signs (the "Company") expressly warrants to the original purchaser ("You" or "Buyer" or "Owner" or "Customer") that, for a period of five (5) years from the date of shipment (the "Warranty Period"), the electronic displays and the associated Company products (the "Product") will be reasonably free of material defects in materials and workmanship impacting Product fit, form and/or function. During the Warranty Period, the Company will, at its discretion, repair or replace any defective covered Product. The Owner will be responsible for removing and reinstalling any and all repaired or replacement parts. This Limited Warranty only applies to the Company's Product if installed, used, and maintained in the manner recommended by Company, and this Limited Warranty is conditioned upon compliance with all such instructions. Lifetime telephone support for the Product is provided, as needed.
- 2) In the event the Product is damaged during shipping, it is the responsibility of the Buyer to refuse delivery, causing the Product to be returned to the manufacturer for repair. Title to the Product passes to the Buyer upon the Company's delivery to the freight carrier. The Company assumes no liability for damage caused by careless handling or poor installation, except for work completed by employees of the Company. Loss or damage to the Product when in possession of the freight carrier is the responsibility of the Customer and is not covered by this Limited Warranty.
- 3) Any information or suggestion by the Company with respect to the Product concerning applications, specifications or compliance with zoning, codes and standards is provided solely for your convenience and without any representation as to accuracy or suitability. You must verify and test the suitability of any information with respect to the Product for your specific application.
- 4) Sign Structure and Sign Face: In the event the sign structure or identification/changeable copy portion of the sign malfunctions under normal use and service thereof DURING THE LIFE OF THE SIGN due to material defects in workmanship or materials, the Company will, at its option, repair or replace any defective materials. Excludes Cornerstone monument signs and other Cornerstone components.
- 5) Vandalism to Sign Faces: This Limited Warranty covers polycarbonate faces against breakage due to vandalism DURING THE LIFE OF THE SIGN. Warranty protection does not extend to these surfaces if damaged by gunshots, or when damaged coincident with damage to the sign cabinet in which the faces are installed. Excludes Cornerstone monument signs and other Cornerstone components.
- 6) Failed electronic parts or assemblies, with the exception of lamps, will be repaired or replaced, at the sole discretion of the Company. Owner bears the expense and responsibility of shipping Product to Company's Repair Center. Replacement or repaired parts are warranted to be free from material defects in material or workmanship for ninety (90) days, or for the remainder of the Warranty Period of the Product they are replacing or in which they are installed, whichever is longer.
- 7) The Company will repair failed LED pixels if greater than one half of one percent (0.5%) of the total number of pixels in the sign have failed in one (1) calendar year, provided the sign is installed with the recommended ventilation system for its location. The definition of pixel failure is when all LED's in the pixel will no longer emit light. Pixel repair is performed at the Company Repair Center. It is common knowledge within the sign industry that all LEDs degrade and produce less light as they age. Eventually the LEDs will require replacement even though the LEDs will still emit light. This Limited Warranty does not cover normal LED degradation.
- 8) Customer Obligations:
Failure by the Customer to properly maintain the Product, including but not limited to filters and the ventilation/air conditioning systems, will void coverage for affected components. The Customer shall notify the Company immediately of equipment failure and allow the Company full and free access to the Product when required. Waiver of liability or other restriction shall not be imposed as a site access requirement. The Customer is responsible for all costs and management oversight associated with providing the Company access to the Product, providing the necessary machines, communication facilities and other equipment, inclusive of but not limited to lifting equipment. Should on-site repair be required, Customer is required to have a responsible individual on-site to provide access to the Product as well as sign off on a completed work order.
- 9) Exclusions and Restrictions:
The Company reserves the right to restrict service, limit replacement parts, or invalidate this Limited Warranty to Customers whose account balance is past due.
This Limited Warranty specifically excludes any on-site labor required to service the covered Product, including diagnosis, removal, and installation of parts and/or products. Any on-site service required by the Customer of Company technicians or a local Company-authorized service provider is billable to the Customer based on an agreed-upon written quote.
This Limited Warranty does not apply to software. Software is covered by a separate agreement, which appears in the Company's software license agreement.
Ballasts are covered for three (3) years.
ID cabinet LED illumination and power supply are covered for two (2) years, when purchased as a system.
- 10) This Limited Warranty specifically does not cover the following:
 - a) Third-party communication devices such as wireless devices and modems, which are covered by a separate electronic communication warranty.
 - b) Damage to Product that has been moved from its original installation location or is mounted in a mobile structure.
 - c) Cosmetic damage to the Product (including but not limited to scratches and dents that do not otherwise affect the fit, form or functionality of the Product or materially impair its use).
 - d) Temperature sensor results: temperature sensors will register variable results, given local environmental factors such as direct sunlight, distance from concrete or asphalt, etc.; results are not guaranteed or covered under this Limited Warranty.
 - e) Recovery or transfer of any data or software stored on the Product not originally installed on the Product by the Company.
 - f) Light bulbs or lamps.

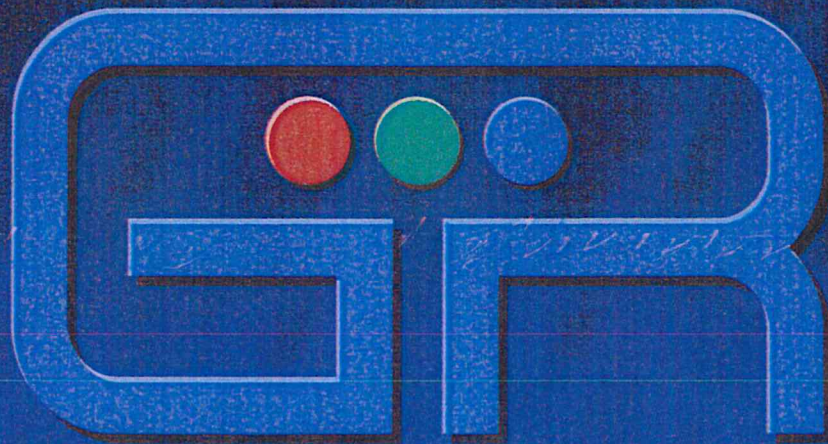
Prepared for: Monson Sultana Joint Union Elem • Sultana, CA

Prepared by: Shay Einhaus • seinhaus@stewartsigns.com • 1.888.237.3928 x2310

- 11) This Limited Warranty specifically does not cover conditions, defects or damage caused by or resulting from the following:
- a) Defects caused by: unreasonable or unintended use of Product; improper or unauthorized handling; accident; omission; neglect; vandalism (unless otherwise noted in this Limited Warranty); misuse; physical abuse; installation, use and/or fabrication, and maintenance of the Product by any party other than the Company.
 - b) Damage (not resulting from manufacturing defects) that occurs while the Product is in the Owner's control and/or possession, unless otherwise noted in this Limited Warranty.
 - c) Extreme physical or electrical stress or interference; environmental conditions beyond the Company's control, such as man-made or naturally occurring electrochemical oxidation or corrosion and/or metallic pollutants; normal wear and tear; inadequate, improper, or surges of electrical power; lightning, floods, fire, acts of God, war, terrorism, or other external causes, including Force Majeure.
 - d) Unauthorized modification, including installation of third-party software on the Product.
 - e) Product modification or service by anyone other than: (a) the Company, (b) a Company-authorized service provider, or (c) Customer's own installation of Company approved parts with instruction from the Company. Service to damaged or malfunctioning Product which has not been ordered or authorized by the Company's Customer Satisfaction Department is not covered under this Limited Warranty and will automatically invalidate this Limited Warranty.
 - f) Computer viruses, Trojan horses, worms, self-replicating code or like destructive code which was not included in the Product by the Company.
 - g) Products installed with known or visible manufacturing defects at the time of installation.
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- 14) Warranty claims must be registered with the Company within thirty (30) days of damage or malfunction. To register a claim, the Customer must contact the Company at the location specified below and provide (a) his or her name and any other required contact information, (b) Product and purchase descriptions, and (c) the nature of the defect. The Company reserves the right (at its sole discretion) to require proof of original purchase (e.g. paid invoice, receipt) and to visit the site of the installation or to require documentation of the claim before assuming any responsibility under the provisions of this Limited Warranty.
- 15) THE LIMITED WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES MADE BY THE COMPANY IN CONNECTION WITH THE PRODUCT. THE COMPANY CANNOT AND DOES NOT MAKE ANY IMPLIED OR EXPRESS WARRANTIES WITH RESPECT TO THE PRODUCT, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY'S SOLE OBLIGATION UNDER THIS LIMITED WARRANTY SHALL BE TO REPAIR OR REPLACE MALFUNCTIONING OR DEFECTIVE PARTS OF THE PRODUCT. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE PRODUCT PURCHASED, WHETHER USED SINGULARLY OR IN COMBINATION WITH ANY OTHER PRODUCTS OR SUBSTANCES.
- 16) NO CLAIM BY BUYER OF ANY KIND, INCLUDING CLAIMS FOR INDEMNIFICATION, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCT WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. IN NO EVENT SHALL COMPANY BE LIABLE TO BUYER IN TORT, CONTRACT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR LOSS OF PROFIT, REVENUE OR USE, IN CONNECTION WITH, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCT SOLD HEREUNDER, OR FOR ANY LIABILITY THAT BUYER HAS TO ANY THIRD PARTY WITH RESPECT THERETO.

Contact Information:

Stewart Signs Customer Satisfaction
2201 Cantu Court, Suite 215
Sarasota, FL 34232
Phone: 855-841-4624
Web: www.stewartsigns.com/support/
Email: support@stewartsigns.com



Golden Rule

S I G N S

Monson-Sultana Elementary

20mm 30x105 - Full Color

GREAT SIGNS. GREAT SERVICE. GREAT PRICES.



*Artistic and illustration purposes only; not drawn to scale - see quote for dimensions.





SIGN SPECIFICATIONS

Color: Full Color / RGB text, pictures & video
 Pitch: 20mm
 Matrix: 30x105
 Dimensions: 2'-0" x 7'-0" (Tall x Wide)
 Max # of Lines: 4
 Max Letter Per Line: 18
 Cabinet Size: 2'-0" x 7'-0" (Tall x Wide)

Cabinet PMS Color:
PANTONE 7621 C

Colors used:

CMYK	PMS
	PMS White
	PMS 7621 C
	PMS 426 C

SIGNATURE

DATE

Client is responsible for ensuring that the product correct in all areas. Double-check spelling, grammar, layout and design before approving artwork. If a proof is returned with a correction, the client is responsible for payment of original cost as well as correction's materials, and re-issues. This custom artwork is not intended to provide an exact match to the original, but to provide a close approximation. Golden Rule Signs is not responsible for the product unless otherwise specifically stated. Golden Rule Signs is designed to be illuminated at all times. Signage is subject to this provision. This is a custom-made product. Built to order for people for people. Small items and details may occur and can be expected with hand made products. Industry standards is to view this product from a minimum distance of 10 feet to determine quality acceptability.

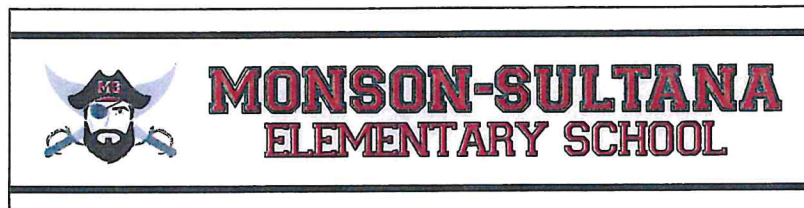
VERSION #: R05192302

1083 Brooks Industrial
 Shelbyville, KY 40065

TF 1-800-732-9886
 Fax 1-502-416-0544
www.goldenrulesigns.com

Golden Rule
 SIGNS

ADDITIONAL DESIGN OPTIONS:



A



B



C



1083 Brooks Industrial
Shelbyville KY 40065

Consultant Quinton Vo
1-800-732-9886
quinton@goldenrulesigns.com

Quote #30580
Date 05-18-2023

Client Dain Arias
Monson-Sultana Elementary
10643 Avenue 416
Sultana CA 93666

Great Signs. Great Service. Great Prices.

L.E.D. Message Unit (Impact G3 Series)

Color	RGB -2 Billion Colors
Pitch	20mm
Matrix	30 x 105
Dimensions	2' -0" x 7' -0" (Height x Length)
Max # of Lines	4
Max letter per line	18
Configuration	Double Face

Communication Capabilities

Ethernet - Client Provided
Text, Pictures, Graphics, Video
Animations, Time & Temperature

Certifications



Identification/Logo Cabinet & Support Structure (Full Depth Cabinet)

Cabinet Size	2'-0" x 7'-0" (Tall x Wide) DS
Pedestal Size	Not required
Structure	4" steel structural support #1

Your sign cabinet will be internally lit and controlled by a day/night sensor. It contains translucent faces which display digitally printed lettering/art (name of organization/mascot etc.) which will be approved prior to manufacturing.

Client providing high resolution/vectorized artwork

Electrical Requirements

	120v	240v
Typical Amps	3.64	2.18
Max Amps	12.62	7.30

Our sign system can be manufactured for 110v-120v or 220v-240v service. Our Project Management Team will confirm your choice at the time of order and answer any questions you may have on grounding requirements.

Alternate Resolution Options

Pitch: 10mm	Pitch: 15mm
Matrix: 60 x 210	Matrix: 40 x 140
Total: \$ 26,048.77	Total: \$ 22,942.04

Pitch: 6mm
Matrix: 100 x 350
Total: \$ 28,519.96

If choosing an alternate resolution option,
Please circle your selection &
Initial _____

Additional Items (included in total)

Price

Installation, Delivery & Warranty

Installation	Professional Installation - Retro Fit
Site Survey	Site Survey L2
Existing Sign	Removal included - V2
Delivery	Included - LTL5
Warranty	Limited Lifetime Warranty

Total	\$ 21,022.94
50% Deposit:	\$ 10,511.47
25% Prior to Shipping:	\$ 5,255.74
25% Balance:	\$ 5,255.74

To begin the purchase process please sign and fax to 502-416-0544 or scan and e-mail to your Project Consultant.

Signature: _____ Date: _____

Applicable sales tax will be added to your invoice - exempt organizations must provide certificate. Manufacturing lead time is 4-10 weeks depending on scope of work - confirm with your Project Manager. Engineering, permit acquisition, permit fee and running electric are not included unless specifically stated in this quote. This quote is valid for 90 days

Golden Rule Signs, Terms and Conditions of Sale v5117

1.0 Basis of Sale

No variation to these Conditions shall be binding unless agreed in writing between authorized representatives of the Buyer & Seller. Additional, different, or inconsistent terms or conditions proposed or received from Buyer, including without limitation, any additional, different, or inconsistent terms or conditions in Buyer's request for proposals or order, are hereby rejected and shall not be a part of the parties' contract. Seller's commencement of any work or delivery of any goods does not constitute acceptance of or consent to any additional, different, or inconsistent terms. Changes in orders must be requested by Buyer in writing. No changes in orders or these terms and conditions shall be binding on Seller unless specifically agreed in writing signed by Seller. Seller is not liable or responsible for any delays caused by Buyer's changes in orders. Sales literature, price lists, and other documents issued by Seller in relation to the Goods are subject to alteration by Seller without notice, do not constitute offers to sell the Goods which are capable of acceptance, and do not constitute a part of this Contract unless the parties otherwise expressly agree in writing. Typographical, clerical, or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.0 Orders, Specifications & Permits

All specifications of the order, products, and services provided by the Seller shall be listed on the Buyer's signed quote form including items such as shipping, installation, permitting, training, custom artwork, and design. Items not listed on the quote are not included in the specifications of the Goods. Seller does not provide/run electric lines – this is a Buyer responsibility unless otherwise specifically stated on the signed quote form. No order which has been accepted by the Seller may be canceled by the Buyer except with agreement in writing by the Seller and with the understanding that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller. The cost for local zoning permits, if required, are the sole responsibility of the Buyer unless included as a line item in the order. The Seller may, at its option assist in providing drawings, sketches/renderings, or technical information. Permits are added to the balance invoice at cost unless a line item price has already been assigned. If a variance process is required, a change order is required. Any required core samples, engineered drawings, inspections, architect reviews, or additional certifications/tests requested or required by the Buyer or the Buyer's local government are the financial responsibility of the Buyer. If for any reason the local governing authorities (be it city, county, or state planning/zoning, permit office, building inspections etc.) deny the permit application, Buyer is conclusively responsible for all costs incurred. Rock and uncommon conditions clause: In the event that the site soil or rock conditions are such to prevent normal excavation and construction, Buyer is responsible for additional charges at cost if incurred. Such as increased footer size due to engineering requirements, structural forms, water pump-out, rock or sediment requiring removal or additional machinery outside of the typical scope. Buyer will be notified in such an event, is responsible for all charges at cost which will be reflected in the balance invoice. If Seller is to utilize a client's existing support structure when installing a sign, it is hereby known that Seller has no knowledge of the depth, size, or integrity of the footer below grade or materials/methods used to construct the existing support structure. As such, Buyer agrees to hold Seller harmless and void of all liability as it relates to the existing support structure, including the footer.

3.0 Terms of Payment Payment to Seller

Terms of Payment to Seller is specified on the Quote. In the event that Buyer is paying through installments, "due on or before" dates will be set forth on the Quote. Any payments that are past due by 7 or more calendar days shall be assessed a \$50 late fee. In addition, any payments that are past due by more than 30 calendar days shall bear interest at a rate equal to the lesser of (a) one and one-half percent (1.5%) per month or (b) the maximum permitted by law. Noncompliance with payment terms or any other failure by Buyer to observe, perform, and be in compliance with the terms and conditions of this Contract, will be a breach of contract by the Buyer. In that event, (a) Seller may exercise all rights and remedies available to it at law or in equity, and title to the Goods shall revert to the Seller, and (b) the Buyer waives all rights to the Goods and services that were to be provided as well as monetary damages. In the event that Seller hires an attorney to represent it in any dispute in any way related to this Contract, Buyer expressly agrees to pay all legal fees and costs incurred by such attorney in such a matter.

4.0 Delivery

The date of delivery of the Goods may vary due to the nature of manufacturing custom signage. Estimated delivery/installation dates are estimations. Seller shall be held harmless if the estimated delivery/installation date is exceeded. Buyer is responsible for any increased installation costs due to delays caused by Buyer (lack of access to site or personnel during the planned visit, delivery or installation, undisclosed underground lines, or unprepared site provisions or customer-caused delays). Shipping terms are FOB Plant. If Goods are shipped directly to Buyer, Buyer is solely responsible for any damage during shipping. Buyer is advised to examine the crate and Goods before accepting and reject any damaged shipment. This does not apply to projects where a Seller contracted installer is receiving Goods.

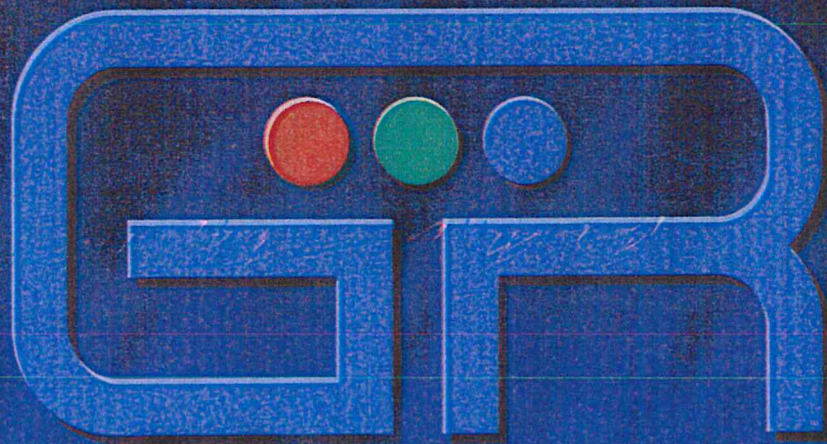
5.0 Assignment of Manufacturer's Warranties

Seller hereby assigns to Buyer, to the extent assignable, all manufacturer's warranties and service agreements with respect to the Goods, if any, for the purpose of making appropriate claims against the manufacturer, provided that the Seller shall retain at all times the right to be protected by these warranties, agreements, and indemnities.

6.0 Legal

Buyer represents and warrants that it is duly authorized to enter into this Contract and that this Contract constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms. It is the responsibility of the Buyer to ensure that this purchase and signing of this contract is compliant with the Buyers protocol and procedures. This contract shall be governed by the laws of the Commonwealth of Kentucky, without regard to its conflict of laws principles. The parties hereby irrevocably submit to the exclusive jurisdiction of the Federal and State courts located in Shelby County, Kentucky regarding the interpretation and enforcement of this Contract and the transactions contemplated hereby and hereby waive and agree not to assert as a defense that it is not subject thereto or that any such action may not be brought or maintained in such courts or that such venue may not be appropriate or convenient. This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, previous contracts for this signage, understandings, representations, and warranties both oral and written with respect to such subject matter.

- END OF DOCUMENT -



Golden Rule

S I G N S

Monson-Sultana Elementary

20mm 30x105 - Full Color

GREAT SIGNS. GREAT SERVICE. GREAT PRICES.

SIGN SPECIFICATIONS

Color: Full Color / RGB text, pictures & video
Pitch: 25mm
Matrix: 39x105
Dimensions: 2'-0" x 7'-0" (Tall x Wide)
Max # of Lines: 4
Max Letter Per Line: 18
Cabinet Size: 2'-0" x 7'-0" (Tall x Wide)

Cabinet PMS Color:
PANTONE 7621 C

Colors used:

CMYK	PMS
<input type="checkbox"/>	<input type="checkbox"/> PMS White
<input type="checkbox"/>	<input type="checkbox"/> PMS 7621 C
<input type="checkbox"/>	<input type="checkbox"/> PMS 426 C

MONSON-SULTANA
ELEMENTARY



SPORTS DAY
TODAY!

VERSION #: R05192304

SIGNATURE

DATE

1083 Brooks Industrial
Shelbyville, KY 40065

TF 1-800-732-9886
Fax 1-502-416-0544

www.goldenrulesigns.com



ADDITIONAL DESIGN OPTIONS:



MONSON-SULTANA
ELEMENTARY SCHOOL

A

MONSON-SULTANA
ELEMENTARY SCHOOL



B



MONSON-SULTANA
ELEMENTARY

C



1083 Brooks Industrial
Shelbyville KY 40065



Consultant Quinton Vo
1-800-732-9886
quinton@goldenrulesigns.com

Quote #30576
Date 05-18-2023

Client Dain Arias
Monson-Sultana Elementary
10643 Avenue 416
Sultana CA 93666

Great Signs. Great Service. Great Prices.

L.E.D. Message Unit (Impact G3 Series)

Color	RGB -2 Billion Colors	Communication Capabilities	Ethernet - Client Provided Text, Pictures, Graphics, Video Animations, Time & Temperature
Pitch	20mm	Certifications	 
Matrix	30 x 105		
Dimensions	2' -0" x 7' -0" (Height x Length)		
Max # of Lines	4		
Max letter per line	18		
Configuration	Single Face		

Identification/Logo Cabinet & Support Structure (Full Depth Cabinet)

Cabinet Size	2'-0" x 7'-0" (Tall x Wide) SS	Your sign cabinet will be internally lit and controlled by a day/night sensor. It contains translucent faces which display digitally printed lettering/art (name of organization/mascot etc.) which will be approved prior to manufacturing.
Pedestal Size	Not required	
Structure	Wall Mount Brackets per Engineering #2	Client providing high resolution/vectorized artwork

Electrical Requirements	120v	240v	Our sign system can be manufactured for 110v-120v or 220v-240v service. Our Project Management Team will confirm your choice at the time of order and answer any questions you may have on grounding requirements.
	Typical Amps	1.82 1.09	
	Max Amps	6.31 3.65	

Alternate Resolution Options

Pitch: 10mm Pitch: 15mm
Matrix: 60 x 210 Matrix: 40 x 140
Total: \$ 15,959.29 Total: \$ 14,420.92

Pitch: 6mm
Matrix: 100 x 350
Total: \$ 17,194.88

If choosing an alternate resolution option,
Please circle your selection &
Initial _____

Additional Items (included in total)

Price

Installation, Delivery & Warranty

Installation	Professional Installation Included - Wall Mount	Total	\$ 13,446.37
Site Survey	Site Survey L2	50% Deposit:	\$ 6,723.19
Existing Sign	Not Applicable	25% Prior to Shipping:	\$ 3,361.59
Delivery	Included - LTL5	25% Balance:	\$ 3,361.59
Warranty	Limited Lifetime Warranty		

To begin the purchase process please sign and fax to 502-416-0544 or scan and e-mail to your Project Consultant.

Signature: _____ Date: _____

Applicable sales tax will be added to your invoice - exempt organizations must provide certificate. Manufacturing lead time is 4-10 weeks depending on scope of work - confirm with your Project Manager. Engineering, permit acquisition, permit fee and running electric are not included unless specifically stated in this quote. This quote is valid for 90 days.

Golden Rule Signs, Terms and Conditions of Sale v5117

1.0 Basis of Sale

No variation to these Conditions shall be binding unless agreed in writing between authorized representatives of the Buyer & Seller. Additional, different, or inconsistent terms or conditions proposed or received from Buyer, including without limitation, any additional, different, or inconsistent terms or conditions in Buyer's request for proposals or order, are hereby rejected and shall not be a part of the parties' contract. Seller's commencement of any work or delivery of any goods does not constitute acceptance of or consent to any additional, different, or inconsistent terms. Changes in orders must be requested by Buyer in writing. No changes in orders or these terms and conditions shall be binding on Seller unless specifically agreed in writing signed by Seller. Seller is not liable or responsible for any delays caused by Buyer's changes in orders. Sales literature, price lists, and other documents issued by Seller in relation to the Goods are subject to alteration by Seller without notice, do not constitute offers to sell the Goods which are capable of acceptance, and do not constitute a part of this Contract unless the parties otherwise expressly agree in writing. Typographical, clerical, or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.0 Orders, Specifications & Permits

All specifications of the order, products, and services provided by the Seller shall be listed on the Buyer's signed quote form including items such as shipping, installation, permitting, training, custom artwork, and design. Items not listed on the quote are not included in the specifications of the Goods. Seller does not provide/run electric lines – this is a Buyer responsibility unless otherwise specifically stated on the signed quote form. No order which has been accepted by the Seller may be canceled by the Buyer except with agreement in writing by the Seller and with the understanding that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller. The cost for local zoning permits, if required, are the sole responsibility of the Buyer unless included as a line item in the order. The Seller may, at its option assist in providing drawings, sketches/renderings, or technical information. Permits are added to the balance invoice at cost unless a line item price has already been assigned. If a variance process is required, a change order is required. Any required core samples, engineered drawings, inspections, architect reviews, or additional certifications/tests requested or required by the Buyer or the Buyer's local government are the financial responsibility of the Buyer. If for any reason the local governing authorities (be it city, county, or state planning/zoning, permit office, building inspections etc.) deny the permit application, Buyer is conclusively responsible for all costs incurred. Rock and uncommon conditions clause: In the event that the site soil or rock conditions are such to prevent normal excavation and construction, Buyer is responsible for additional charges at cost if incurred. Such as increased footer size due to engineering requirements, structural forms, water pump-out, rock or sediment requiring removal or additional machinery outside of the typical scope. Buyer will be notified in such an event, is responsible for all charges at cost which will be reflected in the balance invoice. If Seller is to utilize a client's existing support structure when installing a sign, it is hereby known that Seller has no knowledge of the depth, size, or integrity of the footer below grade or materials/methods used to construct the existing support structure. As such, Buyer agrees to hold Seller harmless and void of all liability as it relates to the existing support structure, including the footer.

3.0 Terms of Payment Payment to Seller

Terms of Payment to Seller is specified on the Quote. In the event that Buyer is paying through installments, "due on or before" dates will be set forth on the Quote. Any payments that are past due by 7 or more calendar days shall be assessed a \$50 late fee. In addition, any payments that are past due by more than 30 calendar days shall bear interest at a rate equal to the lesser of (a) one and one-half percent (1.5%) per month or (b) the maximum permitted by law. Noncompliance with payment terms or any other failure by Buyer to observe, perform, and be in compliance with the terms and conditions of this Contract, will be a breach of contract by the Buyer. In that event, (a) Seller may exercise all rights and remedies available to it at law or in equity, and title to the Goods shall revert to the Seller, and (b) the Buyer waives all rights to the Goods and services that were to be provided as well as monetary damages. In the event that Seller hires an attorney to represent it in any dispute in any way related to this Contract, Buyer expressly agrees to pay all legal fees and costs incurred by such attorney in such a matter.

4.0 Delivery

The date of delivery of the Goods may vary due to the nature of manufacturing custom signage. Estimated delivery/installation dates are estimations. Seller shall be held harmless if the estimated delivery/installation date is exceeded. Buyer is responsible for any increased installation costs due to delays caused by Buyer (lack of access to site or personnel during the planned visit, delivery or installation, undisclosed underground lines, or unprepared site provisions or customer-caused delays). Shipping terms are FOB Plant. If Goods are shipped directly to Buyer, Buyer is solely responsible for any damage during shipping. Buyer is advised to examine the crate and Goods before accepting and reject any damaged shipment. This does not apply to projects where a Seller contracted installer is receiving Goods.

5.0 Assignment of Manufacturer's Warranties

Seller hereby assigns to Buyer, to the extent assignable, all manufacturer's warranties and service agreements with respect to the Goods, if any, for the purpose of making appropriate claims against the manufacturer, provided that the Seller shall retain at all times the right to be protected by these warranties, agreements, and indemnities.

6.0 Legal

Buyer represents and warrants that it is duly authorized to enter into this Contract and that this Contract constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms. It is the responsibility of the Buyer to ensure that this purchase and signing of this contract is compliant with the Buyers protocol and procedures. This contract shall be governed by the laws of the Commonwealth of Kentucky, without regard to its conflict of laws principles. The parties hereby irrevocably submit to the exclusive jurisdiction of the Federal and State courts located in Shelby County, Kentucky regarding the interpretation and enforcement of this Contract and the transactions contemplated hereby and hereby waive and agree not to assert as a defense that it is not subject thereto or that any such action may not be brought or maintained in such courts or that such venue may not be appropriate or convenient. This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, previous contracts for this signage, understandings, representations, and warranties both oral and written with respect to such subject matter.

- END OF DOCUMENT -



ASCEND

TO HIGHER RESOLUTION



We're Making Something Different.

Signs Plus Ascend uses our Advanced Modular System with ultra-bright LEDs, lightweight aluminum frames and waterproof aluminum LED panels. This transformative 100% solid-state design with its future proof functional elements results in long term value.



Get In Touch

**SIGNS
PLUS+**
NEW IDEAS-NEW TECHNOLOGY, INC.



800-848-4262



info@signsplussigns.com



4242 McIntosh Ln, Sarasota, FL 34232

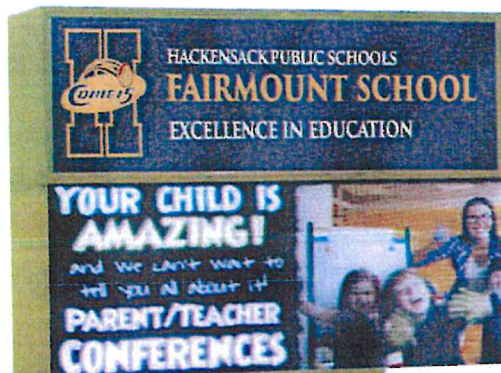
New Ideas New Technology

Present your message with a Full Color LED sign to grab the attention of passersby with something truly eye-catching. LED signs of the past have large pixel pitches resulting in coarse images with little detail.

That's why Signs Plus introduced our Ascend high resolution LED screens that will become the focal point and transform your presence within your community.

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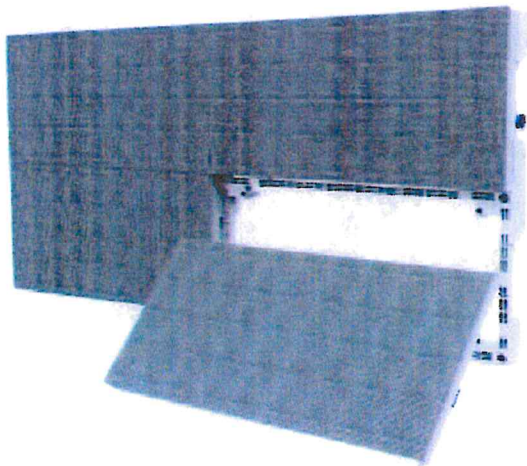


ASCEND



Ascend Raises Your Organization to the **TOP LEVEL**

**We're Making
Something Different**



- ✓ **Precise Power Control**
20% Energy Savings
Creates Less Heat
Longer Life
- ✓ **Future Proof**
Upgrade to Higher Resolution or
add LED Panels to Increase Size
or Both! Without Replacing Your
Sign.
- ✓ **Remote Diagnostics &
Lifetime Technical Support**
Our In-house Team Provides
Support for the Life of Your Sign.
- ✓ **No Internal Servicable Parts**
Traditional LED Cabinets
have Dozens. The Ascend
Advanced Modular System
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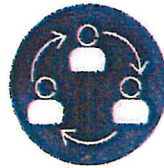
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Light Weight Frames

Combining structural aluminum and CNC Machining for extreme precision and reduced weight.



Connectivity

Network with Wi-Fi, Ethernet, Fiber Optic or Cellular Technology.



Waterproof LED Panel

IP 67 Rating.
Fully Sealed LED Modules
Increased Lifespan
IP67 Rating, Front and Back



Ascend Media Player

Always-on Cloud Software
Control with Remote
Diagnostic System.



6-Year Warranty

6-Year Module Replacement
Plus 10-Year Parts
Availability Guarantee.



SMD LEDs

Ultra Bright up to 10,000 nits
100,000 Hours Lifetime
More colors than the Eyes
Can See!



LED Display Control

Program Display with PC, Mac,
Smartphone, Tablet, or any other
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A smaller pixel pitch of 4, 6, or 8mm produce higher resolution creating sharper images with crisp details..

A larger pixel pitch of 12, 16 or 20mm results in low resolution and coarse images with little to no details..

SIGNS PLUS
 NEW IDEAS - NEW TECHNOLOGY, INC.
 4242 McIntosh Ln, Sarasota, Florida 34232
 t. 800-848-4262 f. 941-378-4062

Monson-Sultana School District
 10643 Ave
 Sultana CA 93666
 Attention: Dain Arias
 559-643-7969

Mark George
 Sr. Product Manager
 Mark@SignsPlusSigns.com
 Quote #: 145412-6
 Date: Sep 1, 2023

Qty	Description
1	<p>8mm Ascend LED Sign: Single Sided 5' 0"x 8' 0" (HxW)</p> <ul style="list-style-type: none"> - Active LED Screen Size of 2' 0"x 8' 0" (HxW) with a Pixel Matrix of 80x 320 - High Resolution with 25,600 Pixels - 1'x 2' Self-contained Aluminum Modular System Replaces Traditional LED Cabinet - Display Text, Graphics, Images, and Video Clips - Brightness, up to 10,000 Nits, Average LED Life: 100,000 Hours - Fully Sealed & Waterproof Aluminum LED Panels, IP67 Rated, Front & Back - 6-YEAR Limited Warranty & 10-YEAR Part Availability for LED Panels. Refer to Warranty Document for Complete Details. - Ascend Media Player, Always-on Cloud Based Software Included - Industrial Waterproof Controller, Quad-core Processor, 16 GB On-board Storage PLUS Cloud Storage - Remote Diagnostics - Lifetime In-house Tech Support Included - Remote Calibration for LED Panel Brightness - 100% Solid State System. Zero Moving Parts - LED Panels have No Internal Serviceable Parts - LED Panels Removeable with Quick & Easy Latch System - Bidirectional Data-flow Between LED Panels - Non-daisy Chained PRECISE POWER Control System - Fanless System with Solid Aluminum Heatsinks - 60 Frames per Second for Smoother & More Realistic Imaging - Image Refresh Rate >3,000 HZ for Reduced Motion Blur - 16.7 Quadrillion Colors (On Average the Human Eye can Distinguish 710 Million Colors) - 100 Levels of Auto Brightness Control - ISO 9001 Certified Factory Compliance: FCC Part 15 & ETL <p>Single Sided 3' 0"x 8' 0" Identification Cabinet with Internal LED Illumination</p> <ul style="list-style-type: none"> - All Aluminum with Welded Unitized Construction and Industrial Graffiti Resistant Finish - Unbreakable Polycarbonate Face(s) with Internal 3m Vinyl Graphics - Graphics, Colors, and Text per Customer Approved Artwork <p>Electrical Requirements: 1 Circuit, 120-Volt, Max Draw: 7.8 Amps</p> <p>Mounting Structure Provided by Others</p>
1	Data Cable Sign Communication, Cat 5 Ethernet Cable - Maximum Cable Length: 328 FT. Provided by Customer - Recommend Belden #7919A
1	Freight Included

Prices are valid for 30 days. Unless otherwise noted in Special Instructions freight & applicable sales tax will be added to your invoice. Organizations exempt from sales tax must include exempt certificate with order. **Total Investment: \$17,756.12**

Terms

Unless otherwise indicated in the buyer approved sign installation agreement, Form SIA-1020-6, sign permits, footers, sign erection, electrical service, electrical connection and planters or other decorative masonry or other structures are the responsibilities of the buyer. All signs subject to zoning and code per city/county. Signs Plus furnishes engineered footer drawings when applicable. Buyer acknowledges and agrees that any cancellation may result in charges that exceed the deposit. In the event of payment default disruptions of the LED display operation may occur. The Buyer is responsible for all collection costs incurred by Signs Plus, including but not limited to court costs, filing fees and attorney fees. All legal proceedings will be in Sarasota County, Florida. A 2% convenience fee applies to all credit card transactions.

Special Instructions

Please contact me if I can be of further assistance.

Here is the quote you requested.

Approval / Authorization

I have read and fully understand the contents of this document and I agree to the stated terms and conditions.

Authorized Signature: _____

Title: _____

Date: _____

Customer:

Monson-Sultana School District
10643 Ave
suite 416
Sultana, CA 93666
US

Attention: Dain Arias
559-643-7969
dain@msschool.org

Ship Sign To:

Monson-Sultana School District
10643 Ave
suite 416
Sultana, CA 93666
US

Attention: Dain Arias
559-643-7969
dain@msschool.org

Invoice To:

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New Ideas New Technology

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That's why Signs Plus introduced our Ascend high resolution LED screens that will become the focal point and transform your presence within your community.

*Increase your prominence with the Ascend and make the focal point **YOUR LOCATION.***

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PLUS** 
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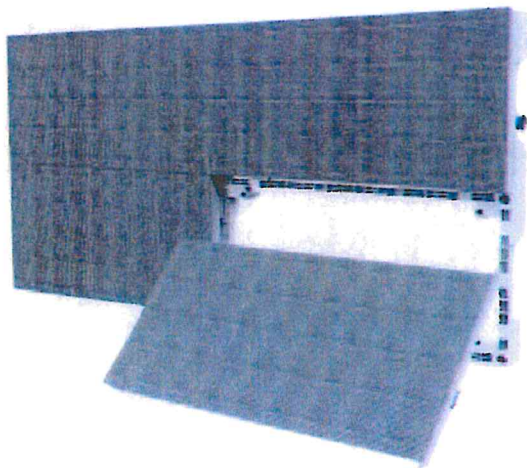


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**We're Making
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- ✓ **Precise Power Control**
20% Energy Savings
Creates Less Heat
Longer Life
- ✓ **Future Proof**
Upgrade to Higher Resolution or
add LED Panels to Increase Size
or Both! Without Replacing Your
Sign.
- ✓ **Remote Diagnostics &
Lifetime Technical Support**
Our In-house Team Provides
Support for the Life of Your Sign.
- ✓ **No Internal Servicable Parts**
Traditional LED Cabinets
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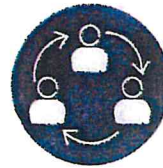
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Light Weight Frames

Combining structural aluminum and CNC Machining for extreme precision and reduced weight.



Connectivity

Network with Wi-Fi, Ethernet, Fiber Optic or Cellular Technology.



Waterproof LED Panel

IP 67 Rating.

Fully Sealed LED Modules

Increased Lifespan

IP67 Rating, Front and Back



Ascend Media Player

Always-on Cloud Software Control with Remote Diagnostic System.



6-Year Warranty

6-Year Module Replacement

Plus 10-Year Parts

Availability Guarantee



SMD LEDs

Ultra Bright up to 10,000 nits

100,000 Hours Lifetime

More colors than the Eyes

Can See!



LED Display Control

Program Display with PC, Mac, Smartphone, Tablet, or any other Internet-connected Device.



A smaller pixel pitch of 4, 6, or 8mm produce higher resolution creating sharper images with crisp details..

A larger pixel pitch of 12, 16 or 20mm results in low resolution and coarse images with little to no details..



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4242 McIntosh Ln, Sarasota, Florida 34232
t. 800-848-4262 f. 941-378-4062

Monson-Sultana School District
10643 Ave
Sultana CA 93666
Attention: Dain Arias
559-643-7969

Mark George
Sr. Product Manager
Mark@SignsPlusSigns.com
Quote #: 145412-2
Date: Sep 1, 2023

Qty	Description
1	<p>8mm Ascend LED Sign: Double Sided 5' 0" x 8' 0" (HxW)</p> <ul style="list-style-type: none">- Active LED Screen Size of 2' 0" x 8' 0" (HxW) with a Pixel Matrix of 80x 320- High Resolution with 25,600 Pixels Per Side, in a Double Sided Configuration- 1' x 2' Self-contained Aluminum Modular System Replaces Traditional LED Cabinet- Display Text, Graphics, Images, and Video Clips- Brightness, up to 10,000 Nits, Average LED Life: 100,000 Hours- Fully Sealed & Waterproof Aluminum LED Panels, IP67 Rated, Front & Back- 6-YEAR Limited Warranty & 10-YEAR Part Availability for LED Panels. Refer to Warranty Document for Complete Details.- Ascend Media Player, Always-on Cloud Based Software Included- Industrial Waterproof Controller, Quad-core Processor, 16 GB On-board Storage PLUS Cloud Storage- Remote Diagnostics- Lifetime In-house Tech Support Included- Remote Calibration for LED Panel Brightness- 100% Solid State System. Zero Moving Parts- LED Panels have No Internal Serviceable Parts- LED Panels Removeable with Quick & Easy Latch System- Bidirectional Data-flow Between LED Panels- Non-daisy Chained PRECISE POWER Control System- Fanless System with Solid Aluminum Heatsinks- 60 Frames per Second for Smoother & More Realistic Imaging- Image Refresh Rate >3,000 HZ for Reduced Motion Blur- 16.7 Quadrillion Colors (On Average the Human Eye can Distinguish 710 Million Colors)- 100 Levels of Auto Brightness Control- ISO 9001 Certified Factory Compliance: FCC Part 15 & ETL <p>Double Sided 3' 0" x 8' 0" Identification Cabinet with Internal LED Illumination</p> <ul style="list-style-type: none">- All Aluminum with Welded Unitized Construction and Industrial Graffiti Resistant Finish- Unbreakable Polycarbonate Face(s) with Internal 3m Vinyl Graphics- Graphics, Colors, and Text per Customer Approved Artwork- Pedestal Mount: 3' 6" x 2' 8" (HxW); Overall Sign Height: 8' 6"- Entire Sign Engineered for 125mph Wind Load, Exposure B <p>Electrical Requirements: 1 Circuit, 120-Volt, Max Draw: 14.6 Amps</p>
1	Data Cable Sign Communication, Cat 5 Ethernet Cable - Maximum Cable Length: 328 FT. Provided by Customer - Recommend Belden #7919A
1	Freight Included

Prices are valid for 30 days. Unless otherwise noted in Special Instructions freight & applicable sales tax will be added to your invoice. Organizations exempt from sales tax must include exempt certificate with order.

Total Investment: \$29,333.86

Terms

Unless otherwise indicated in the buyer approved sign installation agreement, Form SIA-1020-6, sign permits, footers, sign erection, electrical service, electrical connection and planters or other decorative masonry or other structures are the responsibilities of the buyer. All signs subject to zoning and code per city/county. Signs Plus furnishes engineered footer drawings when applicable. Buyer acknowledges and agrees that any cancellation may result in charges that exceed the deposit. In the event of payment default disruptions of the LED display operation may occur. The Buyer is responsible for all collection costs incurred by Signs Plus, including but not limited to court costs, filing fees and attorney fees. All legal proceedings will be in Sarasota County, Florida. A 2% convenience fee applies to all credit card transactions.

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Please contact me if I can be of further assistance.

Here is the quote you requested.

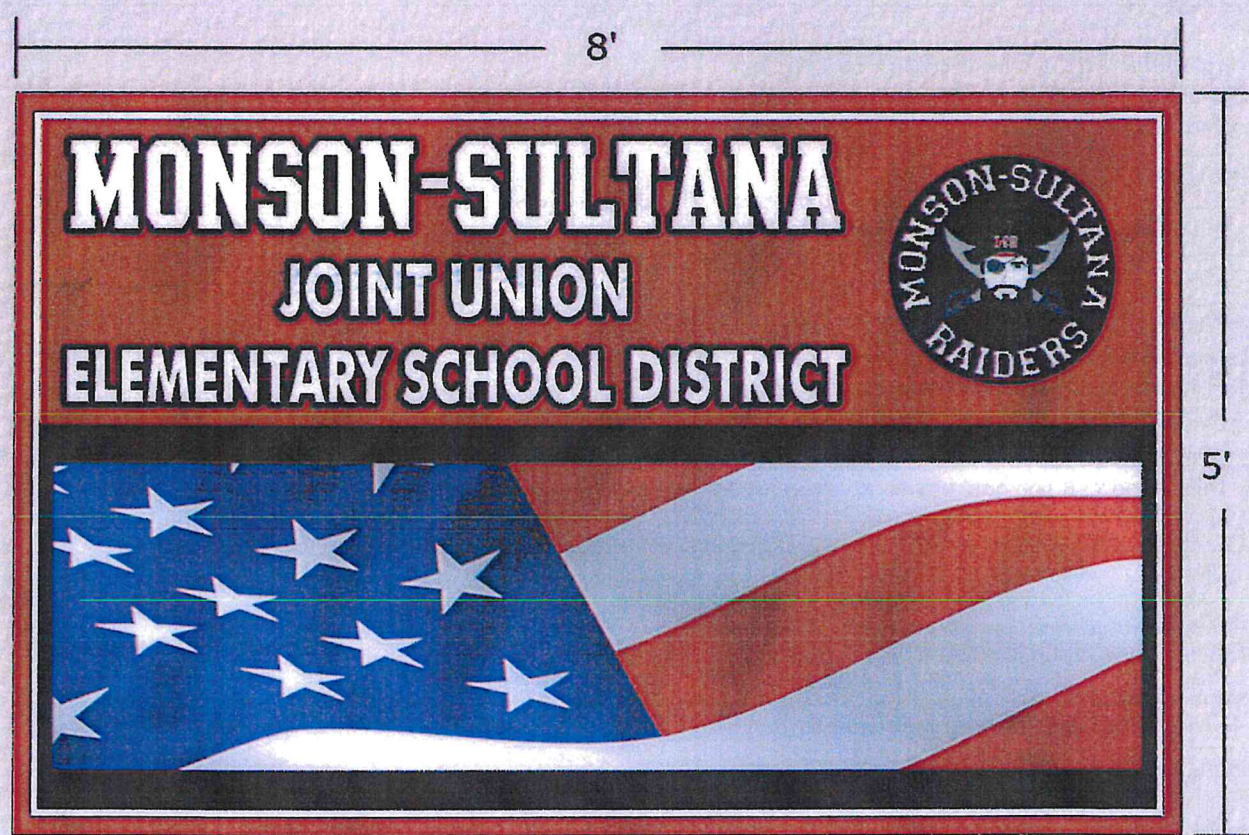
Approval / Authorization

I have read and fully understand the contents of this document and I agree to the stated terms and conditions.

Authorized Signature: _____

Title: _____ Date: _____

Customer:	Ship Sign To:	Invoice To:
Monson-Sultana School District 10643 Ave suite 416 Sultana, CA 93666 US	Monson-Sultana School District 10643 Ave suite 416 Sultana, CA 93666 US	Monson-Sultana School District 10643 Ave suite 416 Sultana, CA 93666 US
Attention: Dain Arias 559-643-7969 dain@msschool.org	Attention: Dain Arias 559-643-7969 dain@msschool.org	Attention: Dain Arias 559-643-7969 dain@msschool.org



TekStar 58, 10.66mm

The provided graphics will be insufficient quality for the manufacturing process. Please see our web site, <http://www.stewartsigns.com/support-artwork.php> or your consultant for a list of acceptable formats.

Cabinet: 5' x 8'
Mount: Wall

Cabinet Color: Dark Red
Face Color: Dark Red
Line Colors: White/Black

Outline Color: Black
Fonts: Intramural, Futura(b), Arial
Logos: monsonsultanaraidersheadnewblk, squar



ORIGINAL DESIGN DO NOT DUPLICATE

DUE TO THE PHYSICAL LIMITATIONS OF THE PAPER AND THE VARIOUS PRINTING PROCESSES, THIS DESIGN ARTWORK IS NOT INTENDED TO PROVIDE AN EXACT MATCH TO THE FINAL PRODUCT. ANY DISCREPANCY BETWEEN THE PAPER AND THE FINAL PRODUCT IS THE RESPONSIBILITY OF THE CUSTOMER. ANY MEASUREMENTS SHOWN ARE APPROXIMATIONS. DIMENSIONS OF FINAL PRODUCT MAY VARY. THIS IMAGE IS NOT A SIMULATION TO IMITATE OR REPRODUCE. IT IS A DESIGN FOR INFORMATION ONLY. A STYLIZED SIGN IS DESIGNED TO BE LIT AT ALL TIMES, AS IT INCREASES THE LIFE OF THE SIGN'S LIGHTING COMPONENTS. SKETCHES ARE BASED OFF OF THIS MESSAGE.

APPROVED AS SHOWN.

X _____ DATE _____ 1. _____

APPROVED WITH LISTED CHANGES.

X _____ DATE _____ 2. _____

X _____ DATE _____ 3. _____

Sketch #301680 Customer #1650158
7/27/2023 Shay Einhaus -PROPOSAL-

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **CONSENT**

AGENDA ITEM: **10.0 AUTHORIZATION OF VENDOR PAYMENTS REPORTS
DATED JULY 31, 2023 THROUGH AUGUST 15, 2023**

ATTACHMENTS: **ACCOUNTS PAYABLE FINAL REPORTS**

DISCUSSION:

The attached Accounts Payable Final Reports dated July 31, 2023 through August 15, 2023 are for expenditures after July 31, 2023 and before August 15, 2023.

RECOMMENDATION: The Superintendent recommends that the Board
APPROVE the Accounts Payable Final Reports.

PROPOSED ACTION: **APPROVE**

	Total Payments Report	Detailed Subcontracted by Vendor	Date Paid between 07/31/2023 and 08/15/2023	Report Date:	08/23/2023	Page 1 of 5
29	Monson-Sultana Jc. Union Elem. School District					
10	ACSA	PV	240147 08/11/2023	23/24 DUES	0 62201525 O 010-000000-0-00000-71500-53000-0-0000	Vaca 23/24 Dues \$1,785.00
1377	AMPARAN FLOORING, INC.	PV	240113 08/04/2023	7035	0 62199698 R	\$1,785.00 *
1291	BDIech	PV	240103 08/04/2023	5089	0 62199699 O 010-81500-0-00000-81101-56000-0-0000	Office Carpet \$17,280.00
499	CALIFORNIA BUSINESS MACHINES	PV	240114 08/04/2023	328795	0 62199700 R	\$17,280.00 *
800	CENTRAL VALLEY CULLIGAN	PV	240096 08/04/2023	195475	0 62199701 R	\$17,280.00 *
	CENTRAL VALLEY CULLIGAN	PV	240099 08/04/2023	195742	0 62199701 R	\$17,280.00 *
111	DINUBA LUMBER CO.	PV	240095 08/04/2023	655313	0 62199702 R	Tubing/Tube Copper \$167.80 *
	DINUBA LUMBER CO.	PV	240098 08/04/2023	633718	0 62199702 R	Bungee Cord \$123.06
1331	DYNAMIC AUTO DIESEL REPAIR	PV	240120 08/11/2023	1197	0 62201526 O	Tractor Repair \$158.82 *
1214	EAGLESHIELD PEST CONTROL, INC	PV	240127 08/11/2023	1669	0 62201527 O	\$616.25 *
135	FEDDEX	PV	240097 08/04/2023	8-206-09005	0 62199703 R	Overnight OPSC Check \$375.00 *
	FEDEX	PV	240124 08/11/2023	8-213-65992	0 62201528 R	Overnight OPSC Check \$34.71
519	FRUIT GROWERS SUPPLY CO.	PV	240123 08/11/2023	92403221	0 62201529 O	Blower/Rope Recoil \$69.27 *
1184	GONZALEZ, PRISCILLA	PV	240132 08/11/2023	REIMBURS	0 62201530 O	Storage Shelves/Light covers \$315.16 *
163	GOPHER SPORT	PV	240141 08/11/2023	IN304218	0 62201531 O	PE Equipment 23/24 \$149.18 *
529	HEINEMANN	PV	240104 08/04/2023	9317314	0 62199704 R	RUCOS Grade K \$3,017.99 *
1307	JAEQUELINE MONTELANO	PV	240131 08/11/2023	REIMBURS	0 62201532 R	Board Meeting Luncheon \$740.07 *
1179	JUAN T REYES CONSULTING	PV	240085 08/04/2023	0001	0 62199705 R	August Services \$97.79 *
1043	KIMBALL MIDWEST	PV	240143 08/11/2023	101314119	0 62201533 O	Assortment of supplies \$9,090.00 *
1372	LEARNING GENIE, INC	PV	240119 08/11/2023	INV-1899	0 62201534 O	UTK Curriculum \$252.14 *
1237	MISSION LINEN SERVICES	PV	240139 08/11/2023	519809779	0 62201535 O	\$336.38 *
	MISSION LINEN SERVICES	PV	240138 08/11/2023	519809781	0 62201535 O	\$54.92 *

29	Monson-Sultana Jc. Union Elem. School District	Total Payments Report										Report Date:	08/23/2023	Page 1 of 5
Detailed Subtotalled by Vendor														
Date Paid between 07/31/2023 and 08/15/2023														
624	SYSO FOODSERVICES	00	PV	240112	08/04/2023	384700443	0	62199718	R	130-53100-0-00000-37000-43000-0-0000	Total Payment Amount:		\$6,554.96	*
	SYSO FOODSERVICES	00	PV	240117	08/11/2023	384708643	0	62201542	O	130-53100-0-00000-37000-47000-0-0000			\$1,000.26	
	SYSO FOODSERVICES	00	PV	240118	08/11/2023	384708642	0	62201542	O	130-53100-0-00000-37000-47000-0-0000			\$1,828.79	
	SYSO FOODSERVICES	00	PV	240118	08/11/2023	384708642	0	62201542	O	130-53100-0-00000-37000-43000-0-0000			\$4,829.53	
	SYSO FOODSERVICES	00	PV	240118	08/11/2023	384708642	0	62201542	O	130-53100-0-00000-37000-43000-0-0000			\$38.65	
										Total Payment Amount:			\$7,697.23	*
1376	TEACHING STRATEGIES, LLC	06	PV	240111	08/04/2023	INV174625	0	62199719	O	010-60530-0-11100-10000-42000-2-0105	TK Curriculum		\$7,397.52	
										Total Payment Amount:			\$7,397.52	*
1249	THE HOME DEPOT PRO	00	PV	240090	08/04/2023	756723003	0	62199720	R	010-00000-0-00000-81000-43000-0-0000	Towel Bowl caddy		\$24.74	
	THE HOME DEPOT PRO	00	PV	240091	08/04/2023	757047477	0	62199720	R	010-00000-0-00000-81000-43000-0-0000	Custodial Supplies		\$1,744.20	
	THE HOME DEPOT PRO	00	PV	240092	08/04/2023	757206917	0	62199720	R	010-00000-0-00000-81000-43000-0-0000	Gloves		\$87.00	
	THE HOME DEPOT PRO	00	PV	240089	08/04/2023	755835774	0	62199720	R	010-00000-0-00000-81000-43000-0-0000	Trash Liners		\$111.84	
										Total Payment Amount:			\$1,967.78	*
1332	TLS CHOICE LLC	06	PV	240145	08/11/2023	13	0	62201543	O	350-77120-0-00000-85000-62740-0-1000	App #13		\$20,030.94	
	TLS CHOICE LLC	06	PV	240144	08/11/2023	8	0	62201543	O	010-32130-0-00000-85000-62000-0-0303	App # 8		\$5,914.94	
	TLS CHOICE LLC	06	PV	240140	08/11/2023	9	0	62201543	O	010-32130-0-00000-85000-62000-0-0303	App # 9		\$24,290.98	
										Total Payment Amount:			\$50,236.86	*
611	TULARE COUNTY OFFICE OF EDUCAT	00	PV	240106	08/04/2023	240196	0	62199721	O	010-07200-0-11100-83000-58000-0-0301	50% Actinel		\$4,500.00	
	TULARE COUNTY OFFICE OF EDUCAT	00	PV	240125	08/11/2023	240168	0	62201544	O	010-00000-0-00000-71100-53000-0-0000	23/24 Due for TC School Board		\$60.00	
										Total Payment Amount:			\$4,560.00	*
903	U.S. BANCORP SERVICE CENTER	00	PV	240107	08/04/2023	CORTEZ	0	62199722	R	010-60530-0-11100-10000-42000-2-0105	TK Classroom Kit		\$498.02	
	U.S. BANCORP SERVICE CENTER	00	PV	240107	08/04/2023	CORTEZ	0	62199722	R	010-63000-0-11100-10000-42000-2-0000	3rd & 4th Workbooks		\$189.60	
	U.S. BANCORP SERVICE CENTER	00	PV	240107	08/04/2023	CORTEZ	0	62199722	R	010-00000-0-00000-73000-43000-0-0000	Office supplies		\$26.20	
	U.S. BANCORP SERVICE CENTER	00	PV	240107	08/04/2023	CORTEZ	0	62199722	R	010-07200-0-11100-10000-43000-2-0102	Kinder jump start water		\$23.88	
	U.S. BANCORP SERVICE CENTER	00	PV	240107	08/04/2023	CORTEZ	0	62199722	R	010-60530-0-11100-10000-42000-2-0105	TK Curriculum		\$189.00	
	U.S. BANCORP SERVICE CENTER	00	PV	240137	08/11/2023	B CORCOR	0	62201545	O	010-07200-0-11100-10000-43000-2-0122	2 White Board Dry Erase		\$818.88	
	U.S. BANCORP SERVICE CENTER	00	PV	240137	08/11/2023	B CORCOR	0	62201545	O	010-07200-0-11100-10000-43000-2-0121	Wagon for PE Dept		\$116.50	
	U.S. BANCORP SERVICE CENTER	00	PV	240137	08/11/2023	B CORCOR	0	62201545	O	010-00000-0-00000-81000-43000-0-0000	Sod for quad area		\$391.90	
										Total Payment Amount:			\$2,253.98	*
574	VERIZON WIRELESS	00	PV	240146	08/11/2023	9941028672	0	62201546	O	130-53100-0-00000-37000-59000-0-0000			\$80.43	
	VERIZON WIRELESS	00	PV	240146	08/11/2023	9941028672	0	62201546	O	010-00000-0-00000-27000-59000-0-0000			\$486.71	
										Total Payment Amount:			\$567.14	*
425	VISALIA UNIFIED SCHOOL DISTRIC	00	PV	240122	08/11/2023	TS 22802	0	62201547	O	010-07200-0-11100-10000-43000-2-0307	T-shirts		\$4,457.75	
										Total Payment Amount:			\$4,457.75	*
1274	ZEARN	00	PV	240101	08/04/2023	INV101172	0	62199723	O	010-30100-0-11100-10000-58000-2-0000	Subscription 2023/24		\$2,500.00	
										Total Payment Amount:			\$2,500.00	*
										Total Payment Amount:			\$384,248.94	*
										Grand Total Payment Amount:			\$384,248.94	**

MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT
Board Meeting Agenda Item Summary
September 5, 2023

AGENDA SECTION: **PERSONNEL**

AGENDA ITEM: **11.1 PERSONNEL ORDER**

ATTACHMENTS: **NONE**

DISCUSSION:

- | | |
|------------------------------|--|
| 11.1.1 Garcia, Maria Esthela | Resignation of Food Service Assistant position effective August 25, 2023. |
| 11.1.2 Jimenez, Maria | Maria Jimenez applied, was interviewed, and is being recommended for a 5.5 hour Behavior Instructional Assistant position. |
| 11.1.3 Ruiz, Mariah | Mariah Ruiz applied, was interviewed, and is being recommended for a 5.5 hour Behavior Instructional Assistant position. |
| 11.1.4 Vaughn, Briseida | Briseida Vaughn applied, was interviewed, and is being recommended for a 5.5 hour Behavior Instructional Assistant position. This position will be covered with COVID funds and will be a temporary (one year) position. |
| 11.1.5 Cristobal, Mosera | Mosera Cristobal applied, was interviewed, and is being recommended for Primary Grade Teaching Position for the 2023-2024 school year. |

RECOMMENDATION: **The Superintendent recommends that the Board approve the personnel order as presented.**

PROPOSED ACTION: **APPROVE**