

## EXHIBIT "A"

### ENERGY SERVICES AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING PROPOSITION 39, THE CLEAN ENERGY JOBS ACT OF 2012

This Energy Services Agreement for Design, Installation and Commissioning of Energy Conservation Facilities funded in whole or in part through Proposition 39, The Clean Energy Jobs Act Of 2012 ("Agreement") is made as of \_\_\_\_\_, 20\_\_, between the Hillsborough City School District ("District") and \_\_\_\_\_ ("Contractor") (together, "Parties"). The Contractor shall render the Services, as defined herein, in relation to all energy conservation measures, referred to as "System" or "Project," as described herein

- 1. Services.** Contractor shall furnish to the District all professional services, labor, equipment, material, and other services set forth in this Agreement and as otherwise reasonably required to complete all design, engineering, construction, installation, integration, interconnection, testing and commissioning of the improvements to real property, along with all appurtenances, fixtures, and furnishings, described in Exhibit B, "Scope of Work and Requirements," attached hereto and incorporated herein by this reference ("Services" or "Work").
- 2. Completion Date.** Contractor shall commence providing the Services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such Services as described herein and as otherwise reasonably required to achieve Substantial Completion of the System(s) (as defined below) on or before \_\_\_\_\_, 20\_\_, and Final Completion of the System(s) (as defined below) on or before \_\_\_\_\_, 20\_\_
  - 2.1. Substantial Completion.** Completion, being the point at which the District will substantially have the beneficial use and enjoyment of the System(s), and at which time the District shall first be able to accept the System(s) as complete, means that each of the following has been achieved in accordance with the requirements of the Contract Documents:
    - 2.1.1.** Mechanical Completion, defined as the point at which all work of every kind necessary to make the System(s) usable for its intended function is actually complete and all fire/life safety systems are completely installed and fully operational;
    - 2.1.2.** Acceptance Testing, defined as testing of all systems comprising the System(s) in accordance with the requirements of the Agreement, the results thereof meeting the requirements set forth herein, and acceptance by the District of the successful testing, which acceptance shall not unreasonably be withheld; and
    - 2.1.3.** The System(s) is capable of operating safely in accordance with all applicable laws, codes, rules and regulations.
  - 2.2. Final Completion.** Final Completion shall occur after Substantial Completion, when Punch List items are completed, all required training has occurred and documentation has been provided to the District, including, without limitation, all warranties, record drawings, Operation and Maintenance manuals, and as-built drawings.
    - 2.2.1.** Pending Final Completion, the parties agree and acknowledge that the District may withhold from the final payment an amount not to exceed 150 percent of the reasonably estimated value of all obligations of the Contractor due and remaining to be performed following Substantial Completion pursuant to Public Contract Code Section 7107.
- 3. Liquidated Damages.** Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the

actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per System(s), per day as liquidated damages for each and every day's delay beyond the Final Completion Date that Final Completion is not achieved.

It is hereby understood and agreed that this amount is not a penalty, but is a reasonable estimate of the damages that District will incur.

In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement, the District may seek recovery of Liquidated Damages from the Respondent's Performance Bond Surety and/or the District may seek recovery of Liquidated Damages from the Respondent or the Performance Bond Surety without having exhausted remedies against the other.

4. **Funding/Grants/Rebates/Incentives.** Contractor shall ensure all Work is done in strict compliance with all requirements of California Proposition 39, The Clean Energy Jobs Act of 2012, including, without limitation, the Guidelines and all other written guidance promulgated by the California Energy Commission ("CEC") effective concurrently herewith and as amended from time to time by CEC, as well as all applicable Division of the State Architect ("DSA"), Office of Public School Construction ("OPSC"), and/or California Department of Education ("CDE") regulations, rules, procedures and guidance.
5. **Submittal of Documents.** Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

Signed Agreement

Non-collusion Affidavit

Workers' Compensation Certification

Criminal Background Investigation Certification

Drug-Free Workplace Certification

Tobacco-Free Environment Certification

Insurance Certificates and Endorsements

Performance Bond

Payment Bond

The above-referenced Contract Documents shall be presented to the District for approval within fourteen (14) days after execution of the Agreement.

6. **Anticipated Savings.** As required under SB 73, the District anticipates annual savings on energy to result from the Project in the amount of 117,227 kWh over the life cycle of the Project. That anticipated sum exceeds the Total System Price by a ratio of at least 1.01. The Parties agree and acknowledge that these savings are anticipated and may, for many reasons beyond the control of the Parties, such as changes in anticipated Utility rates for electrical energy, vary in actuality from the amount anticipated.
7. **Compensation.** As compensation for the Work, the District shall pay to the Contractor in the amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) ("**Total System(s) Price**"). Such amount shall not be increased without the express approval of the Board.

**8. Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District.

**9. Payment.** The Total System(s) Price shall be paid in periodic partial payments in accordance with this section.

**9.1. Processing of Progress Payments; Retention:** Each month while Contractor is providing the Work under this Agreement, the District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the Work performed and the value of equipment and material integrated into one or more of the System(s), delivered to one or more Sites, or stored subject to or under the control of the District, up to the last day of the previous month, less aggregate of previous payments (the "Progress Payments"). The remaining five percent (5%) of such amounts shall be held as the Retention Amount and shall be released in accordance with Public Contract Code section 7107. If all of the necessary information is submitted and accurate (including the schedule of values and certified payrolls), District shall approve the Progress Payment within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such Progress Payment within fifteen (15) days after the District's approval of the periodic estimate for partial payment.

**9.2. Option for Escrow or Securities in Lieu of Retention.** Pursuant to the requirements of Public Contract Code Section 22300, upon Contractor's request, District will make payment to Contractor of any earned retention funds withheld from payments under this Agreement if Contractor deposits with the District or in escrow with a California or federally chartered bank acceptable to District, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

**9.2.1.1.** Contractor shall be the beneficial owner of any securities substituted for retention funds withheld and shall receive any interest thereon.

**9.2.1.2.** All expenses relating to the substitution of securities under said Section 22300 and under this Article 8.2, including, but not limited to District's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the Contractor.

**9.2.1.3.** If Contractor shall choose to enter into an escrow agreement, such agreement shall be in the form as set forth in Public Contract Code section 22300(f) attached hereto as part of the Project Documents and which shall allow for the conversion to cash to provide funds to meet defaults by the Contractor including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Project Documents.

**9.2.1.4.** Securities, if any, shall be returned to Contractor only upon satisfactory completion of the Agreement.

**9.2.2.** To minimize the expense caused by such substitution of securities, Contractor shall, prior to or at the time Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the District determines to withhold, Contractor shall immediately, and at Contractor's expense, deposit additional security qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.

**9.2.3.** In the alternative, under Section 22300, Contractor, at its own expense, may request District to make payment of earned retention funds directly to the escrow agent. Also at

the expense of Contractor, Contractor may direct investment of the payments into securities, and Contractor shall receive the interest earned on the investment upon the same conditions as shown in paragraph (a) for securities deposited by Contractor. Upon satisfactory completion of the Agreement, Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from District, pursuant to the terms of Section 22300.

**9.2.4.** If any provision of this Article 8.2 shall be found to be illegal or unenforceable, then, notwithstanding, this Article 8.2 shall remain in full force and effect, and such provision shall be deemed stricken.

**9.3. Waiver and Release Upon Payment.** Each Progress Payment shall be conditioned upon Contractor providing to District with the corresponding Progress Payment Application a conditional waiver and release of claims for payment upon payment from the Contractor and each of its subcontractors and materials suppliers in the form required by Civil Code Section 8132, covering all sums requested in such Progress Payment Application, and an unconditional waiver and release of claims for payment from each party, in the form required by Civil Code Section 8132, covering sums disbursed pursuant to the most recently preceding Progress Payment Application. Failure to provide either a condition waiver and release, or unconditional waiver and release shall result in the subject sums being in dispute, and thus withheld from payment.

**9.4. Estimated Progress Payments.** Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by any Inspector and/or design professional designated by District, or any other approved representative of the District, and filed before the fifth (5) Day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any Surety from such work or from enforcing each and every provision of the Agreement and Construction Documents. The District shall have the right subsequently to correct any error made in any estimate for payment.

**9.5. Corrective Work and Progress Payment:** Contractor shall not be entitled to payment for non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by the District lacks correction by Contractor. District may withhold from the Progress Payments one hundred fifty percent (150%) of the estimated value of any amount in dispute between District and Contractor. This provision shall also apply in the event that a portion of non-complying Work may impact other completed Work, resulting in a need to reconstruct or rework related Work. The District shall not unreasonably withhold payment for unrelated and uninvolved Work in the event of dispute over non-complying Work without entering into negotiations to arrive at settlement of said conflict, unless withholding pursuant to a Stop Payment Notice.

**9.6. Title to Delivered Materials.** Title to new materials and/or equipment for the Work of this Agreement, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or Work of this Agreement shall remain with Contractor until incorporated into the Work and accepted by District pursuant to this Agreement; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Agreement; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the District or his authorized representative. Contractor shall maintain all course of construction and other insurance as necessary to protect said equipment and Work. The District shall not become responsible for risk of loss or other insurable risk until Substantial Completion of each Phase of the Project.

**10. Proposition 39 (Clean Energy Jobs Act Of 2012) Requirements.** Contractor shall comply with all requirements of California Senate Bill 73 and with all requirements of the California Energy Commission Guidelines applicable to the design and installation of energy conservation measures funded through Proposition 39 (2012).

- 11. Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
- 12. Standard of Care.** Contractor shall perform its obligations under this Agreement using its best professional skill and judgment, acting with due care and in accordance with the standard of care applicable to the Work and Services to be provided by Contractor, the covenants, terms and conditions of this Agreement, and all applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code (Title 24), the California Code of Regulations, Electrical Utility (Utility) Requirements, the requirements of the Division of State Architect (DSA) and the California Department of Education, the District's Design Guides and Technical Specifications, and all other federal, state, and local jurisdictions having authority. Contractor represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 13. Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
- 14. Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall constitute "works made for hire" and become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 15. Notice to Proceed and Course of Performance.** After the Contract Documents are submitted, the District shall provide a Notice to Proceed to Contractor for design work, at which time Contractor shall proceed with the design work. After the design of each of the System(s) is approved by the District, the District shall provide a separate Notice to Proceed to Contractor at which time Contractor shall proceed with the Work of performing construction services necessary to install and/or build the System(s). Contractor shall be solely responsible for scheduling and conducting all necessary meetings with appropriate District personnel and stakeholders and presenting thereto, on a regular basis from time to time during design development, design documents for review by and input from District and stakeholders. District may, in its sole discretion, reject any design, including any element of design, to which it reasonably objects, including, without limitation, on procedural, functional, financial, educational, or aesthetic grounds.
- 16. Site Examination.** Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

- 16.1. Soils and Geotechnical Conditions.** Contractor acknowledges that it has secured information on the soils and geotechnical conditions of the Site sufficient for it to evaluate the existing soils conditions. Whereupon, Contractor assumes the sole and complete risk of unforeseen soils or geotechnical conditions at the Site. The Contractor agrees that no claim against District will be made by the Contractor for damages or loss of any kind related to such materially differing soils or geotechnical conditions, and hereby waives any rights to damages or recovery for any loss in the event the Contractor fails to notify District as set forth above.
- 16.2. Disclaimer of Warranty:** District does not warrant the soils or geological conditions at the Site. Any information on the soils and geotechnical conditions of the Site is provided for informational purposes, only, and is expressly understood to reflect the professional judgment of the entity that prepared it based on limited sampling and observation and may not be comprehensive or accurate in any of its findings or implications. Contractor acknowledges and agrees that it has conducted an independent investigation of the Site and the soils and geological conditions of the Site adequate for the Contractor to assume the risk that the soils and/or geological conditions at the Site may vary from the information provided to the Contractor. District does not warrant the soils or geological conditions of the Site and Contractor is fully responsible to ascertain all Site conditions for the purposes of determining construction means and methods and costs of construction of the System(s).
- 16.3. Existing Utilities.** Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities.
- 17. Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
- 17.1. Anti-Trust Claim.** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.
- 17.2. Substitutions.** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.
- 17.3. Hazardous Materials.** If photovoltaic modules using hazardous materials are to be provided by Contractor, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs and/or District responsibilities related to photovoltaic modules containing hazardous materials must be clearly identified.
- 18. Equipment and Labor.** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
- 18.1. Conduct of the Work.** Contractor is responsible for the Work, including without limitation, all labor, materials, equipment tools and implements needed for design, engineering, permits, fees,

approvals, project management, construction, alteration, installation, integration, interconnection, startup, training, checkout, warranty, and insurance specifically associated with the Work to be performed. in order to make the Work fully operational. Contractor is not responsible for any equipment, systems, controls, comfort problems, balancing, duct cleaning, etc. not specifically included in this Agreement. 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 activities. Contractor requires all underground conduits between buildings to be clear of obstruction, of sufficient size to accommodate new wire and cable, and easily accessible.

**19. Warranty/Quality.** Unless a longer warranty is called for elsewhere in this Agreement, the Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located.

**19.1.** Contractor shall assign to District all manufacturer's warranties for material and/or equipment integrated into or incidental to the System(s) prior to and as a condition of Final Completion.

**20. Correction of Errors.** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein.

**21. Trench Shoring.** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

**22. Excavations Over Four Feet.** This Article shall pertain to all Construction comprising the excavation of any trench or trenches four (4) feet or more in depth.

**22.1.** If applicable, Contractor shall submit to the District for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches four (4) feet or more in depth. Contractor's plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that Contractor's registered civil or structural engineer certifies that the plan complies with the current and applicable CAL-OSHA Construction Safety Orders, or stating that Contractor's registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders. No excavation of any such trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

All shoring submittals shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittals shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions adequate for worker protection. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon District, its Board, or any of its employees.

**22.2.** In relation to digging trenches or other excavations that extend deeper than four (4) feet below

the surface of the ground, Contractor shall comply with the following requirements and include similar provisions in any contract for the Project which involves digging trenches or other excavations:

**22.2.1.** Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:

**22.2.1.1.** Material that the Contractor or any Subcontractor or Consultant 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 provisions of existing law;

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

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

**22.2.2.** District 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.

**22.2.3.** In the event that a dispute arises between the District and the Contractor, whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Construction Provisions but shall proceed with all work to be performed under the Construction Provisions. 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.

**23. Lead-Based Paint.** No lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

**24. Change in Scope of Work.** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District and approved by the District Board. The foregoing notwithstanding, the Contractor shall continue to perform its Work under the Agreement and shall not cause a delay of the Work by virtue of the inability of District and Contractor to agree upon the extent of any adjustment to the Contract Time and/or the Total System(s) Price on account of such change. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Total System(s) Price by fair and reasonable valuations.

**24.1. Adjustment to Total System(s) Price.** Adjustments to the Total System(s) Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

**24.1.1. Mutual Agreement.** By negotiation and mutual agreement, on a lump sum basis, between District and Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change.

**24.1.2. Determination by the District.** The District shall notify Contractor in writing of its determination of the actual and necessary costs incurred by the Contractor on the basis of Contractor's records. Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Total System(s) Price on account of a Change to the Work unless Contractor shall notify the District, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination.

**24.1.3. Basis for Adjustment of Total System(s) Price.** If Changes in the Work require an adjustment of the Total System(s) Price, the basis for adjustment of the Total System(s) Price shall be as follows:

**24.1.3.1.1. Labor.** Contractor shall be compensated for the actual costs, without markup, of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

**24.1.3.1.2. Materials and Equipment.** Contractor shall be compensated for the actual costs, without markup, of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefore shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

- 24.1.3.1.3. Construction Equipment.** Contractor shall be compensated for the actual cost, without markup, of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.
- 24.1.3.1.4. Overhead.** In determining the cost to the District and the extent of increase to the Total System(s) Price resulting from a Change adding to the Work, the allowance for overhead (including home office and field overhead), general conditions costs and profit (hereinafter "Change Order Overhead") associated with the Change shall not exceed 15% of the direct actual costs for performance of the Change. In the event a portion of Changes to the Work is performed by a first tier subcontractor, the subcontractor Change Order Overhead shall not exceed 15%. In the event a portion of Changes to the Work is performed by a sub-subcontractor, the sub-subcontractor Change Order Overhead shall not exceed 15%. The subcontractor markup on the total charges of a sub-subcontractor of any lower tier is limited to 5% of the costs of such change, regardless of the number of subcontractors, of any tier, performing any portion of any Change to the Work.
- 24.1.3.1.5.** If a Change to the Work reduces the Total System(s) Price, no profit, general conditions or overhead costs shall be paid by the District to the Contractor for the reduced or deleted Work.

**24.1.4. Required Documentation.** Contractor agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete, and relate only to the Change referenced therein. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative or superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District upon request. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Total System(s) Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Total System(s) Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor.

**24.2. Adjustment to Contract Time.** The Contract Time shall be extended or reduced by change order for a period of time commensurate with the time reasonably necessary to perform such Change. Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

**25. Claims.** If Contractor shall claim compensation for any reason, including, without limitation, changes to the in the Work or Services, extensions of time, and/or damages sustained by Contractor for which it may seek recovery from the District ("Claim"), Contractor shall, within ten (10) business days after the first occurrence giving rise to the Claim, make and deliver to the District a written statement of the amount of the Claim, the first occurrence giving rise the Claim, and description of the occurrences, events and bases for the Claim ("Notice of Claim"). Contractor shall file with the District an itemized statement of all details and the amount of the Claim within fifteen (15) business days of delivery to District of the Notice of Claim.

**25.1. Bar Against Claims for Failure to Follow Contract Procedures.** Unless the Notice of Claim shall be made as required, Contractor's claim for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage. Contractor expressly acknowledges and agrees that this provision shall not be waived or otherwise modified by any communication not rendered to the Contractor in writing by the District, and that this is a reasonable notice provision pursuant to Public Contract Code section 7102 and Government Code section 930.2.

**26. Workers.** Contractor shall at all times enforce strict discipline and good order among Contractor's employees, Subcontractors, Consultants, and all other invitees to the Site and shall not employ or allow the employment on the work of any unfit person or anyone not skilled in work assigned to Contractor.

- 26.1.** Contractor shall remove from the Site any person in the employ of Contractor or any Subcontractor or Consultant whom District may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of District.
- 26.2.** Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its Subcontractors or Consultants report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Site is not affected thereby). Contractor shall advise its employees, Subcontractors, suppliers, and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its Subcontractors, suppliers, and other invitees. Contractor shall execute, under penalty of perjury, the certification of a drug-free workplace and certification of a tobacco-free workplace on the forms provided herewith provided herewith.

## **27. Wages.**

- 27.1.** Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the contract.
- 27.2.** Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term “per diem wages” is used herein.
- 27.3.** Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.
- 27.4.** Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.
- 27.5.** Each worker of Contractor and any of its Subcontractors engaged in work on the System(s) shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractors and such workers.
- 27.6.** Contractor shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any Subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.
- 27.7.** Copies of the determined prevailing wage rates are on file and available upon request at the District’s office. District shall provide Contractor with current prevailing wage rates, in writing. Contractor shall post, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates.

**27.8.** Any worker employed to perform work on the System(s) which is not covered by any classification available in the District office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

**28. Record Of Wages Paid: Inspection.** Pursuant to Labor Code § 1776, Contractor stipulates to the following:

**28.1.** Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work under the Facilities Lease and Construction Provisions. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776.

**28.2.** 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 Contractor on the following basis:

**28.2.1.** A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.

**28.2.2.** A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of the District, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.

**28.2.3.** A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Contractor.

**28.2.4.** Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.

**28.2.5.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Contractor awarded the contract or performing the contract shall not be marked or obliterated.

**28.2.6.** Contractor shall inform the District of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

**28.2.7.** In the event of noncompliance with the requirements of this Article, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, Contractor shall pay a penalty of FIFTY DOLLARS (\$50.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

**28.2.8.** The responsibility for compliance with this Article shall rest upon Contractor.

## **29. Hours Of Work.**

**29.1.** As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Contractor or by 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 provisions 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 upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**29.2.** Contractor shall pay to the District a penalty of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of these Construction Provisions by Contractor or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker 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.

**29.3.** Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District, unless otherwise agreed to by the parties.

**29.4.** Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of Contractor and in compliance with applicable ordinances.

## **30. Apprentices.**

**30.1.** All apprentices employed by Contractor to perform services under these Construction Provisions shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

**30.2.** When Contractor to whom the work under these Construction Provisions is awarded by the District or any Subcontractor under Contractor, in performing any of the work under the Construction Provisions, employs workers in any apprenticeable craft or trade, 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 public work, for a certificate approving 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. Contractor 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 public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

**30.3.** “Apprenticeable craft or trade” as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

**30.4.** Contractor, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other Contractors in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that Contractor employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other Contractors do, but where the trust fund administrators are unable to accept the funds, Contractors not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. Contractor or Subcontractor may add the amount of such contributions in computing their 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 Labor Code § 227.

**30.5.** The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprenticeable occupations is with Contractor.

**30.6.** The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**31. Contractor Supervision.** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**32. Fingerprinting of Employees.** If Contractor will have contact with any pupils, Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor’s responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual’s commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

- 33. Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on campus grounds, particularly when children are present.
- 34. Clean Up.** Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
- 35. Access to Work.** District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.
- 36. Protection of Work and Property.** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.
- 37. Occupancy.** District reserves the right to occupy improvements comprising or related to the System(s) at any time before Final Completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.
- 38. Force Majeure.** Contractor shall be excused from performance hereunder during the time and to the extent that it is actually prevented, despite the Contractor taking all commercially reasonable actions to mitigate such prevention of performance, by an occurrence of Force Majeure. As used herein, the term "Force Majeure" shall include, without limitation, (1) theft, vandalism, sabotage, riots or civil disturbances, (2) acts of God, (3) acts of the public enemy, (4) terrorist acts affecting the Site, (5) willful and deliberate acts, or active and primary negligence of the District, (6) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, power surge, landslide or similarly cataclysmic occurrence, (7) insect or animal damage, (8) prohibitions imposed by new law or regulation, (9) appropriation or diversion of electricity by sale or order of any governmental authority having jurisdiction thereof, or (10) any other action by any superior governmental authority (including, without limitation, an unstayed order of a court or administrative agency). Economic hardship shall not constitute an occurrence of Force Majeure under this Agreement.
- 39. District ownership of Work Product.** In accordance with Education Code Sections 17316 and 17317, and subject to the provisions thereof, Contractor agrees that any and all intellectual properties, including, but not limited to, all ideas, concepts, themes, computer programs or parts thereof, documentation or other literature, or illustrations, or any components thereof, conceived, developed, written, or contributed by Contractor, either individually or in collaboration with others, pursuant to this Agreement, shall belong to and be the sole property of District.
- 39.1.** Contractor agrees that all rights in all works prepared or performed by Contractor pursuant to this Agreement, including patent rights and copyrights applicable to any of the intellectual properties described in Subsection (a) above, shall belong exclusively to District and shall constitute "works made for hire."
- 39.2.** The provisions of this Section shall not apply to any of Contractor's rights in any invention for which no equipment, supplies, facilities, or trade secret information of District was used, which was developed entirely on Contractor's own time, and which:
- 39.2.1.** Does not relate, at the time of conception or reduction to practice of the invention, to District's business or to District's actual or demonstrably anticipated research or development; or

**39.2.2.** Does not result from any work performed by Contractor for District.

**40. Termination.**

**40.1. For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Contractor for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

**40.2. With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

**40.2.1.** material violation of this Agreement by the Contractor; or

**40.2.2.** any act by Contractor exposing the District to liability to others for personal injury or property damage; or

**40.2.3.** Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and costs to the District exceed the cost of providing the service pursuant to this Agreement, Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

**40.3.** Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

**41. Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "Damage Claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants and/or attorney's fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor under or in conjunction with this Agreement, unless the Damage Claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

## 42. Insurance.

- 42.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance:
- 42.1.1. **General Liability.** One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability, including Products Liability and Completed Operations coverage.
  - 42.1.2. **Automobile Liability Insurance.** One Million Dollars (\$1,000,000) combined single limit per occurrence for any automobile that shall protect the Contractor and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Contractor.
  - 42.1.3. **Workers' Compensation and Employers' Liability Insurance.** For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
  - 42.1.4. **Professional Liability (Errors and Omissions).** One Million Dollars (\$1,000,000) for errors and omissions as appropriate to profession of engineer designing system, coverage to continue through completion of construction plus two years thereafter.
  - 42.1.5. **Builder's Risk Insurance.** On a replacement cost value basis, Contractor shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.
  - 42.1.6. **Umbrella or Excess Liability.** Four Million Dollars (\$4,000,000) per occurrence to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**42.1.7. Other Insurance Provisions:** The policies are to contain, or be endorsed to contain, the following provisions:

**42.1.7.1.** For the general liability and automobile liability policies:

**42.1.7.1.1.** The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Contractor; instruments of Service and completed operations of the Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

**42.1.7.1.2.** For any claims related to the projects, Contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Contractor's insurance and shall not contribute with it.

**42.1.7.1.3.** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

**42.1.7.2.** Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**42.1.7.3.** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

**42.1.7.4.** Contractor shall furnish the District with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.

**42.1.8. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

**43. Payment Bond and Performance Bond.** Contractor shall not commence the Work until it has provided to the District, in a form provided by the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Total System(s) Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

- 44. Permits and Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force, at Contractor's sole cost and expense, such permits and licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement.
- 45. Assignment.** The rights, burdens, duties, or obligations of Contractor pursuant to this Agreement shall not be assigned by the Contractor without the prior written consent of the District.
- 46. Subcontractors.** Subcontractors, if any, engaged by the Contractor for any Service or Work under this Agreement shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Agreement, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.
- 47. Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
- 47.1.** Contractor hereby acknowledges that the District's representative, the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.
- 48. Audit.** In accordance with Government Code Section 8546.7 (and Davis Bacon, if applicable), records of both the District and the Contractor shall be subject to examination and audit for a period of five (5) years after a Final Payment or the Recording of a Notice of Completion, whichever occurs first. Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 49. Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractors.
- 50. Environmental Attributes and Energy Credits.** District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of the

System(s) and each of its component parts. This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:

**50.1.** All Environmental Incentives associated in any way with the Generating Facilities. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the foregoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives of any kind and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the System(s), if any.

**50.2.** All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases.

**50.3.** All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.

**50.4.** The proceeds of any and all other incentive programs available in relation to the System(s).

**51. Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

**52. Confidentiality.** Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**53. Disputes.** In the event of a dispute between the parties as to performance of the Work, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, Contractor agrees it will neither rescind the Agreement nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. All Claim of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. The demand for mediation of any claim over \$375,000 shall be made within the required Notice of Claim submitted by the Contractor as set forth herein, or within a reasonable time after written notice of the dispute has been provided by the District to the Contractor.

**53.1.** For purposes of this Section, a "Claim" means any demand by Contractor for:

**53.1.1.** Time extension;

**53.1.2.** Damages related to delay of performance of this Agreement,

**53.1.3.** Payment of money for disputed work or work performed without a Change Order

meeting the requirements of this Agreement

**53.1.4.** Damages arising under this Agreement, payment of which is not otherwise expressly provided for or to which Contractor is not expressly entitled under this Agreement, or

**53.1.5.** Any amount sought by Contractor, of which Contractor's right or entitlement to payment is disputed by the District.

**53.2.** Continuation of Work: The Contractor shall continue to perform all obligations under this Agreement and District and DSA approved construction documents even though a written Claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all Claims that may arise during the performance of this Agreement.

**53.3.** Claim Notification: Contractor shall, within ten (10) business days after the cause of a Claim first occurs, make and deliver to the District a written statement of the damage sustained ("Notice of Claim"). Contractor shall file with the District an itemized statement of the details and amount of such damage within fifteen (15) business days of delivery to District of the Notice of Claim. Unless the Notice of Claim shall be made as required, Contractor's claim for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage. Contractor expressly acknowledges and agrees that this provision shall not be waived or otherwise modified by any communication not rendered to Contractor in writing by the District, and that this is a reasonable notice provision pursuant to Public Contract Code Section 7102 and Government Code Section 930.2.

**53.4.** Signature of Certification: All Claims and Claim Appeals shall be executed by an officer of Contractor having overall responsibility for the conduct of Contractor's affairs.

**53.5.** These claims provisions are prerequisite to bringing any civil action against District pursuant to Government Code Sections 930, et seq.

**53.6.** Attorney Fees and Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

**54. Attorney Fees and Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

**55. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**District**

Anthony Ranii, Superintendent  
Hillsborough City School District  
300 El Cerrito Avenue  
Hillsborough, California 94010

**Contractor**

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 56. Governing Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.
- 57. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 58. Waiver.** Any delay or forbearance in enforcing, or failure to enforce any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 59. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party of its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 60. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 61. Cooperation.** The Parties hereto hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.
- 62. Binding Contract.** This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
- 63. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 64. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 65. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
- 66. Counterparts.** This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.
- 67. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 68. Entire Contract.** This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**[DISTRICT]**

Anthony Ranii, Superintendent  
Hillsborough City School District  
300 El Cerrito Avenue  
Hillsborough, CA 94010

**[CONTRACTOR]**

Date: \_\_\_\_\_, 20\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
License No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**Information regarding Contractor:**

Proper Name: \_\_\_\_\_  
License No.: \_\_\_\_\_  
DIR Registration No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or Social Security  
Number

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.**

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership

Corporation,

State: \_\_\_\_\_

Limited Liability Company

Other: \_\_\_\_\_

**ATTACHMENTS**  
**Required Forms**

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKERS' COMPENSATION FORM**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees.
3. For any county, city, city and county, municipal corporation, public District, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

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

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Date)

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and submitted with the Contractor's bid.

**NON-COLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ [Title] of \_\_\_\_\_ [Name of Company],  
the party making the foregoing bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [Date], at \_\_\_\_\_ [City], \_\_\_\_\_ [State].

Signed: \_\_\_\_\_

Typed Name: \_\_\_\_\_

**PAYMENT BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the HILLSBOROUGH CITY SCHOOL DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: Energy Services Design Build Contractor for Proposition 39 Energy Efficiency and Conservation Projects (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 9550;

NOW, THEREFORE, We, \_\_\_\_\_, the undersigned Contractor, as Principal; and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the HILLSBOROUGH CITY SCHOOL DISTRICT and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been

given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

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

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

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

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:  
(Name and Address of Surety)

(Name and Address of agent or representative for  
service for service of process in California)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF CALIFORNIA                    )  
  )ss.  
COUNTY OF                                    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (Surety) and acknowledged to me that he/she/they subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-in-Fact on the executed instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

**PERFORMANCE BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the HILLSBOROUGH CITY SCHOOL DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: Energy Services Design Build Contractor for Proposition 39 Energy Efficiency and Conservation (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated \_\_\_\_\_, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the HILLSBOROUGH CITY SCHOOL DISTRICT in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or

independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract Price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract. Obligee shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

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

SURETY:

\_\_\_\_\_

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

Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged: \$\_\_\_\_\_ (This must be filled in by a corporate surety).



**GUARANTEE**

Guarantee for Hillsborough City School District. We hereby guarantee that the \_\_\_\_\_, which we have installed in \_\_\_\_\_ has been done in accordance with the Contract Documents, including without limitation, the drawings and specifications, and that the work as installed will fulfill the requirements included in the bid documents. The undersigned and its surety agrees to repair or replace any or all such work, together with any other adjacent work, which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of two years from the date of the Notice of Completion of the above-mentioned structure by the Hillsborough City School District, ordinary wear and tear and unusual abuse or neglect excepted.

In the event the undersigned or its surety fails to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than ten (10) days after being notified in writing by the District or within forty-eight (48) hours in the case of an emergency or urgent matter, the undersigned and its surety authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned and its surety, who will pay the costs and charges therefor upon demand. The undersigned and its surety shall be jointly and severally liable for any costs arising from the District's enforcement of this Guarantee.

Countersigned

\_\_\_\_\_  
(Proper Name)

\_\_\_\_\_  
(Proper Name)

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

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

\_\_\_\_\_  
(Signature of Subcontract or Contractor)

\_\_\_\_\_  
(Signature of General Contractor if for Subcontractor)

Representatives to be contacted for service:

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

**(OPTIONAL)**  
**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Hillsborough City School District, 300 El Cerrito Avenue, Hillsborough, CA 94010, hereinafter called "District", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Contractor", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Escrow Agent".

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

4. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for Retention earnings required to be withheld by District pursuant to the Construction Contract entered into between the District and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the District shall make payments of the Retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the District within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as Retention under the terms of the Contract between the District and Contractor. Securities shall be held in the name of the District, and shall designate the Contractor as beneficial owner.
5. The District shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
6. When the District makes payments of Retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the District pays the Escrow Agent directly.
7. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the District. These expenses and payment terms shall be determined by the District, Contractor, and Escrow Agent.
8. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the District.
9. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by Contractor.
10. The District shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days' written notice to the Escrow Agent from the District of the notice of default under Article 2.2, Article 9.6 or Article 14, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the District.
11. Upon receipt of written notification from the District certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

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

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

On behalf of District:

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Title

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Name

---

Signature

---

Address

On behalf of Contractor:

---

Title

---

Name

---

Signature

---

Address

On behalf of Agent:

---

Title

---

Name

---

Signature

---

Address

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

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

OWNER

CONTRACTOR

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

## CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

\_\_\_\_\_ certifies that it has performed one of the following:

[Name of contractor/consultant]

- Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the Hillsborough City School District, pursuant to the contract/purchase order dated \_\_\_\_\_, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, attached hereto as Attachment "A" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

- Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:
  - 1. The installation of a physical barrier at the worksite to limit contact with pupils.
  - 2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
[Name of Contractor/Consultant]

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

**CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS**

*(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)*