**CONSTRUCTION CONTRACT**

[Contracts Under $15,000/$60,000]

THIS CONTRACT is between the       ("Owner") and       ("Contractor").

Owner and Contractor agree as follows:

1. Project. Contractor shall perform everything required to be performed and shall provide and furnish all labor, materials, tools, equipment, and all utility and transportation services required for the construction of:

("Project").

All work to be performed and materials to be furnished shall be in conformity with any plans, drawings, specifications, bonds, insurance policies, conditions, and modifications thereof which, by this reference, are made a part of this Contract.

2. Contract Price. Subject to the terms and conditions of this Contract, Owner shall pay to Contractor for all work to be performed under this Contract the total sum of $     .

3. Payments. Contractor shall be paid an amount equivalent to 95 percent of the Contract price upon acceptance of the Project by Owner’s Governing Board. Contractor shall be paid the remaining five percent of the Contract Price within 35 days following the recording of a "Notice of Completion."

From the payments specified above, Owner may make any deductions authorized or required by law or this Contract including, by way of example only, the following:

A. Liquidated and other damages described in Paragraph 6.

B. Defective work not remedied.

C. Failure of Contractor to make proper payments to its subcontractor(s) or materialmen for materials or labor.

D. Damage to another contractor.

E. Other damages sustained by Owner.

4. Time for Performance. Contractor shall commence work on the Project on the date stated in Owner's "Notice to Proceed" and shall complete the Project within       calendar days after that.

5. Submission of Bonds and Certificates. Contractor shall not commence any work on the Project until Contractor has submitted to Owner all certificates and bonds required by this Contract. All bonds and certificates shall be submitted to Owner within 10 days following execution of this Contract by Contractor.

6. Liquidated Damages. Pursuant to Government Code Section 53069.85, for each calendar day completion is delayed beyond the time allowed in this Contract, Contractor shall forfeit and pay to Owner the sum of $     , which shall be deducted from any payments due to or to become due to Contractor.

In addition to any liquidated damages which may be assessed, if Contractor fails to complete the Project within the time period provided in the Contract documents, and if as a result Owner finds it necessary to incur any costs and expenses (for example, relating to the acquisition and use of facilities pending completion of the Project), Contractor shall pay all those costs and expenses incurred by Owner. These costs and expenses may include but are not limited to such items as rental payments, inspection fees, and additional architectural fees related to the acquisition of facilities. These costs and expenses may be retained by Owner from any payments otherwise due to Contractor.

7. Insurance. Contractor shall obtain insurance acceptable to Owner with a company or companies licensed to do business in the state of California and acceptable to Owner. Contractor shall maintain, at its own cost and expense during the term of this Contract, the following insurance:

A. Workers Compensation for all of Contractor's employees in amounts not less than required by law. Pursuant to Labor Code Sections 3700 and 1860 et seq., Contractor shall submit to Owner an acceptable Workers Compensation certificate.

B. Public liability and property damage with per occurrence limits not less than $1,000,000 for death or personal injury and $1,000,000 for property damage.

The policy(ies) shall contain an endorsement naming Owner as an additional insured insofar as this Contract is concerned, and provide that notice shall be given to Owner as least 30 days prior to cancellation or material change in the form of such policy(ies). Contractor shall furnish Owner with certificates of insurance containing the endorsements required under this section, and Owner shall have the right to inspect the original policy(ies) of such insurance upon request.

8. Performance/Payment Bonds. Payment and performance bonds are not required on this Project, unless the Contract Price exceeds $25,000 or such bonds are required in supplementary conditions.

9. Extra Work. Contractor and Owner agree that changes in this Contract or in the work to be done under this Contract shall become effective only when written in the form of a supplemental contract or change order and approved and signed by Owner and Contractor. Should Owner direct or request additional Project work not otherwise included within Paragraph 1 of this Contract, the cost of the additional work shall be added to the Contract Price and paid by Owner pursuant to Paragraph 3 of this Contract. As used in this paragraph, the term “cost” means the actual cost to the Contractor of the labor, materials, or subcontracts required for the additional work, increased by no more than 10 percent for Contractor overhead and profit (including any increased bond costs).

10. Indemnification. Contractor shall indemnify and hold Owner, its officers, agents, and employees free and harmless from any and all claims, losses, damages, liabilities, and expenses, including attorney's fees and costs, arising from the death or injury of any person or persons, or from the damage or destruction of any property, caused by or connected with performance of this Contract by Contractor, Contractor’s agents, subcontractors, or employees.

11. Termination of Contract. Should Contractor commit any of the acts specified in this paragraph, Owner may, by giving seven day's written notice to Contractor, without prejudice to any other rights or remedies afforded Owner by law or by this Contract, terminate the services of Contractor under this Contract; take possession of the Project and the premises on which it is located; take possession of all materials, tools, and appliances located on the premises; and complete the Project by whatever method Owner may deem expedient. Contractor shall be deemed to have committed an act specified in this paragraph if Contractor:

A. Is adjudged a bankrupt;

B. Makes a general assignment for the benefit of creditors;

C. Refuses or fails to supply enough properly skilled workers or proper materials to complete the Project in the time specified in this Contract;

D. Fails to make prompt payment to subcontractors, workers, or materialmen for labor performed on or materials furnished to the Project;

E. Persistently disregards any laws or ordinances relating to the Project or its completion; or

F. Otherwise commits a substantial violation of any provision of this Contract.

12. Extension of Time. Liquidated damages shall not be imposed because of any delays in completion of the Project work due to (1) unforeseeable causes beyond the control and without the fault or negligence of Contractor and (2) performing any extra work pursuant to Paragraph 9 of this Contract.

13. Clean-up. On completion of the Project, Contractor shall remove all debris and surplus materials from the Project site.

14. Notices. Any and all notices or other matters required or permitted by this Contract or by law to be served on, given to, or delivered to either Owner or Contractor by the other party to this Contract shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or to a supervisorial employee of that party, or in lieu of personal service, when deposited in the United States mail, first class postage paid, addressed to the party at the address listed on the signature page of this Contract. Either party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this paragraph.

15. Assignment. This Contract is for the personal services of Contractor in performing the work described in Paragraph 1 and Contractor may not assign this Contract, Contractor's right to monies becoming due under this Contract, or Contractor's duties under this Contract to any other person or entity without the written consent of Owner.

16. Guarantee. Contractor guarantees all Project work for a period of one year after acceptance of the work by Owner and shall repair or replace any or all work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials. This shall be in addition to any equipment or materials warranties as specified and/or required elsewhere.

17. Prevailing Wage Rates and Payroll Records. Pursuant to the provisions of Article 2, commencing with Section 1770 of the Labor Code, Owner’s Governing Board has obtained 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 worker needed to execute this Contract. The general rates of per diem wages are available at the offices of Owner. In the event that the listed or posted rates are in error, Contractor is responsible to pay those rates determined by the Director of Industrial Relations to be applicable, and Owner shall not be responsible for any damages arising from the error.

It is the responsibility of Contractor to comply with the provisions of Labor Code Section 1776 dealing with the maintenance and inspection of employee payroll records. The project is subject to prevailing wage monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor and all subcontractors will be subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations.  Contractor and all subcontractors will be required to furnish electronic certified payroll records to the DIR on the frequency specified in the Notice Calling for Bids using the DIR’s eCPR system at <https://apps.dir.ca.gov/ecpr/DAS/AltLogin>. Failure to timely submit certified payroll records may result in debarment from public works projects by the Labor Commissioner for a period of one to three years. Contractor shall comply with all requirements of the Labor Code and attendant regulations pertaining to prevailing wage monitoring and compliance as indicated in the Contract Documents, and/or as required by the DIR, including, but not limited to, posting job site notices prescribed by Title 8 CCR § 16451(d). Contractor shall permit Owner, the DIR or their designee to interview Contractor’s employees concerning compliance with prevailing wage, apprenticeship, and related matters, whether or not during work hours, and shall require each subcontractor to provide Owner, the DIR or their designee with such access to its employees.

18. Apprentices. If applicable, Contractor shall comply with the requirements of Labor Code Section 1777.5 dealing with employment of apprentices.

19. Hours. Pursuant to the provisions of Article 3, commencing at Section 1810 of the Labor Code, Contractor shall pay the required rate of overtime for all hours worked in excess of eight hours per day and 40 hours per week.

20. Laws and Regulations. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the work required by this Contract.

21. Permits/Licenses. All necessary permits and licenses shall be secured and paid for by Contractor.

22. Substitutions. Contractor may request a substitution of any equivalent materials for those required by this Contract. If the substitution offered by Contractor is not in Owner’s opinion substantially equal to or better in every respect to that specified, Contractor shall furnish the material specified.

23. Utilities. Unless otherwise agreed by the parties in writing, all utilities including, but not limited to, electricity, water, gas, and telephone used on the Project shall be furnished and paid for by Contractor.

24. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted and this Contract shall be read and enforced as though it were included. If through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the Contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract, and any later changes which do not materially and substantially alter the positions of the parties.

25. Contractor's License and DIR Registration. In order to perform the work required by this Agreement, Contractor must possess a valid, active license issued by the State of California, of the following classification,      , which shall remain valid and active throughout the Project. Further, in order to perform the work required by this Contract, Contractor must be registered with DIR as a public works contractor throughout the Project. Contractor registration is accomplished through the portal <http://www.dir.ca.gov//dlse/dlsePublicWorks.html>.

26. Trenching or Other Excavations. If the Project involves digging trenches or other excavations that extend deeper than four feet, the following provisions shall be a part of this Contract:

A. Contractor shall promptly, and before the following conditions are disturbed, provide written notice to Owner if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(2) Subsurface or latent physical conditions at the site which are different from those indicated or expected.

(3) Unknown physical conditions at the site of any unusual nature or which are materially different from those ordinarily encountered and generally recognized as inherent in work which the Contractor generally performs.

B. In the event that Contractor notifies Owner that Contractor has found any of the conditions specified in subparagraphs (1), (2), or (3), above, Owner shall promptly investigate the condition(s). If Owner finds that the conditions are materially different or that a hazardous waste is present at the site which will affect Contractor's cost of, or the time required for, performance of this Contract, Owner shall issue a change order in accordance with the procedures set forth in this Contract.

C. In the event that a dispute arises between Owner and Contractor regarding any of the matters specified in Paragraph (B), above, Contractor shall proceed with all work to be performed under the Contract and Contractor shall not be excused from completing the Project as provided in this Contract. In performing the work pursuant to this paragraph, Contractor retains all rights provided by law which pertain to the resolution of disputes and protests between the contracting parties.

27. Claims.

A. All public works claims of $375,000 or less between Contractor and Owner are subject to the provisions of Public Contract Code Section 20104 et seq., the provisions of which are incorporated by reference in this Contract.

B. Notice of each claim must be submitted in writing within 10 days after the damage was sustained, or after the event or action giving rise to the claim, and shall include all documents necessary to substantiate the claim.

C. Failure to give timely, proper notice shall constitute a waiver of the claim. Owner may thereafter consider the claim, but such consideration does not affect the invalidity of the claim.

28. Safety/Inspection. Contractor shall at all times maintain proper facilities and provide safe access for inspection by Owner to all parts of the work, and to the shops where the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice of its readiness for inspection to Owner or Owner’s representative, and without the approval of Owner. Should any such work be covered up without such notice, approval or consent, if required by Owner or its representative, it must be uncovered for examination at Contractor's expense.

29. Fingerprinting Workers.

A. Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to pupil safety and fingerprinting Contractor’s employees. Contractor shall also ensure that each of its subcontractors on the Project complies with the applicable requirements of Sections 45125.1 and 45125.2. Neither Contractor nor Contractor’s subcontractors shall commence work on the Project or permit their employees to come into contact with Owner’s pupils until Contractor has satisfactorily completed Owner’s fingerprinting certification form.

B. Should Contractor or any subcontractor feel its employees will have limited or less contact with Owner’s pupils, application shall be made to Owner for a determination on that question. Owner’s determination shall be final.

C. Use of Education Code Section 45122.2(a)(1), (2), and/or (3) for compliance with these fingerprinting requirements is subject to Owner’s prior approval. Owners’ determination on application of any of these sections shall be final.

30. Hazardous Materials. This Contract does not include the removal, handling, or disturbance of any hazardous substances or materials encountered in the new construction or on the Project grounds. If such substances or materials are encountered, work shall cease in that area and Owner shall be notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to Owner.

31. Ownership of Drawings. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials, and other Project documents and copies of them furnished by Owner, are Owner’s property. They are not to be used in other work and are to be returned to Owner on request at completion of work.

32. Entire Agreement. This document, including any conditions, exhibits, schedules, plans, or specifications to which it refers, constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the construction project which is the subject of this Contract and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Contract.

Executed at      ,       County, California.

DATED:      

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

Title:

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

Representative of Contractor

Print Name:

Title:

Address:

Contractor's License No.:      

Contractor’s DIR Registration No.: