



Santa Clara County  
Office of Education

**CUPCAA  
INFORMAL BID & CONTRACT  
DOCUMENTS OVER 60K - \$200K**

**NOTICE TO BIDDERS – INFORMAL PROJECT  
PURSUANT TO PUBLIC CONTRACT CODE 22000 ET SEQ.  
(CALIFORNIA UNIFORM PUBLIC CONTRUCTION COST ACCOUNTING ACT)**

**NOTICE IS HEREBY GIVEN** that the \_\_\_\_\_ Santa Clara County Office of Education, acting by and through its Governing Board, hereinafter referred to as the SCCOE will receive up to, but not later than \_\_\_\_\_ **o'clock** \_\_\_\_\_ of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, sealed bids for the award of a contract for:

<b>Informal Bid No.</b>	<b>Bid Name</b>
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Any bid received by the SCCOE after the Bid Deadline shall be returned to the bidder unopened.

**PLACE FOR SUBMITTING BIDS:** Bids must be delivered to the SCCOE at the following location: **1290 Ridder Park Drive, San Jose, CA. 95131-2304**

**OBTAINING OFFICIAL BID DOCUMENTS:** Prospective bidders may secure a set of bid documents at: <https://www.sccoe.org/depts/bizserv/purchasing/Pages/Bids-Posting-System.aspx>

**REQUIREMENTS FOR BID:** Bids must be submitted on the Bid Form provided by the SCCOE and included in the bid documents. Each bid must strictly conform with and be responsive to this Notice Inviting Bids and other Contract Documents.

**Bids may be mailed via U.S. mail to:** **1290 Ridder Park Drive, San Jose, CA. 95131-2304** or delivered by Fed Ex, UPS, or other courier to the above address. Bids not received in the Purchasing Department by the specified date and time will be returned unopened. It is the sole responsibility of the bidder to see that the bid is received in proper time at the address and department noted herein.

**REQUIRED BID SECURITY:** Each bid must be submitted with security in an amount not less than ten percent (10%) of the maximum bid amount as a guarantee that the bidder will enter into the proposed contract, if awarded to the bidder, and will provide the performance and payment bonds, insurance certificates and other documents described in the Contract Documents. Such security must be in one of the following forms: (1) a cashier's check made payable to the SCCOE; (2) a certified check made payable to the SCCOE; or (3) a bond made payable to the SCCOE in the form set forth in the Contract Documents. Any bond must have been issued by a California-admitted surety as defined in Code of Civil Procedure Section 995.120

**REQUIRED CONTRACTOR LICENSE:** The class(es) of California contractor's license(s) required in order to bid on and perform the contract for this Project is:

<b>Informal Bid No.</b>	<b>Contractor's License Requirement</b>
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**MANDATORY PRE-BID CONFERENCE AND SITE VISIT:** The SCCOE will conduct a pre-bid conferences and site visits on **Date, at Time** for the purpose of acquainting all prospective bidders with the bid documents and the work site. Attendance is mandatory, and any bidder that does not attend will be disqualified from work on the Project. The pre-bid conference(s) will begin **at the** \_\_\_\_\_, \_\_\_\_\_ and move on to the project site.

**SCCOE STANDARDS:** The SCCOE has made a finding that certain brand or trade names are necessary to maintain conformity among its campuses, compatibility with existing systems, and to streamline maintenance and parts storage.

**PERFORMANCE AND PAYMENT BONDS:** The successful bidder will be required to provide both a performance bond and a separate payment bond, each in an amount equal to 100% of the total contract amount. The forms of the bonds are set forth in the Contract Documents and all bonds must be issued by a California-admitted surety as defined in California Code of Civil Procedure Section 995.120.

OPTIONAL  
May be deleted  
if not  
applicable.

**PREVAILING WAGES:** The successful bidder and each of its subcontractors of any tier will be required to pay not less than the general prevailing rates of per-diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract (“Prevailing Wages”). A copy of the per-diem rates of Prevailing Wages applicable to the Project is on file and available for review at the location specified above as the place for submitting bids, and a copy will be posted at the site of the Project.

**Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted, nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work. If awarded a Contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.**

For public project in excess of \$25K or maintenance project in excess of

**This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this project, it shall be the Bidder’s sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its bid.**

**WAGE THEFT PREVENTION:** A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the SCCOE may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the SCCOE, may be in material breach of its contract with the SCCOE if the violation is not fully disclosed and/or satisfied per SCCOE guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

The contract will be awarded to the lowest responsive, responsible bidder based on the specifications noted in the bid. The SCCOE reserves the right to reject any or all bids, to accept or reject any one or more items of a bid or to waive any irregularities or informalities in the bids or in the bidding.

No bidder may withdraw his bid for a period of sixty (60) days after the date set for the opening of bids. In the event of identical bids, the Superintendent of Schools or designee may determine by lot which bid shall be accepted per Public Contract Code 20117.

County Superintendent of Schools  
Santa Clara County Office of Education

By: Jas Sohal  
Manager, Purchasing Services

**BID FORM**

Pursuant to and in compliance with your Notice to Contractors Calling for Bids and other documents relating thereto, the undersigned bidder, having thoroughly examined and familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, and with the drawings and specifications and other contract documents, hereby proposes and agrees to perform, within the time stipulated, the contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with the:

**Project Name**  
**Informal Bid No.**

all in strict conformity with the drawings and specifications and other contract documents, including addenda nos. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, on file at the office of Business, Facilities, & Operations of SCCOE for the sum of:

**BASE BID:**

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents. (\$\_\_\_\_\_).

Said sums includes all applicable taxes and costs.

**ALLOWANCES:**

Allowances for work not included in the plans and specifications: (to be used at the direction of the SCCOE or its representative):

		\$
<b>Total Allowances:</b>		<b>\$</b>

**TOTAL EXTENDED BID PRICE (BASE + ALLOWANCE):**

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents. (\$\_\_\_\_\_).

Said sums includes all applicable taxes and costs.

1. It is understood that the SCCOE reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.
2. The following forms are to be submitted with the bid. Failure to submit these forms may render the bid non-responsive:
3. Bid Security Form (bid bond) or Bid Guarantee Form (no bid bond)
  - a. Proposed Subcontractors Form (for listing subcontractors)
  - b. Non-Collusion Declaration
4. It is understood and agreed that bidder shall provide the addresses, telephone numbers, and license numbers of all listed subcontractors within one business day of bid opening or bidder's bid may be rejected as nonresponsive.
5. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to

remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the SCCOE a contract in the form attached hereto in accordance with the bid as accepted. The undersigned will also furnish and deliver to the SCCOE the Performance Bond and Payment Bond for Public Works as specified, all within **five (5)** business days after Notice of Award. The work under the contract shall be commenced by the undersigned bidder, if awarded the contract, on the date to be stated in the SCCOE's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the contract documents.

6. Bidder certifies that he is licensed in accordance with the law providing for the registration of Contractors, License No. \_\_\_\_\_, Expiration Date \_\_\_\_\_, class of license \_\_\_\_\_. Copy of bidders wallet license is **attached hereto**.

I, \_\_\_\_\_, the \_\_\_\_\_ of the bidder, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the bidder in connection with this bid and all of the representations made herein are true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ County, California.

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

By \_\_\_\_\_

\_\_\_\_\_  
Signature of Bidder

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents; if bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his or her signature shall be placed above.

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

Place of Residence: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

**NONCOLLUSION DECLARATION  
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

I am the \_\_\_\_ of \_\_\_\_, 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 this:

\_\_\_\_\_ day of \_\_\_\_\_

City of \_\_\_\_\_ State of \_\_\_\_\_

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

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

**LIST OF SUBCONTRACTORS FORM**

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each bidder shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, and (c) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price. Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself. **[\*\*DELETE NEXT SENTENCE AND LAST COLUMN OF CHART BELOW IF SELF PERFORMANCE IS NOT REQUIRED\*\*]**The Prime Contractor is required to complete at least \_\_\_% of the contract value with its own forces.

Work to be done by Subcontractor	Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number (Must be submitted within 24 hours of bid opening)	% of the Work

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

PROJECT/CONTRACT NO.: [PROJECT NUMBER] between Santa Clara County Office of Education (the "SCCOE" or the "Owner") and \_\_\_\_\_  
\_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project including, without limitation, the requirement that it and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

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

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

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

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

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

**Wage Theft:**

The bidder certifies that the bidding company is not subject to a final non-appealable wage theft adjudication defined as (i) a final judgement against an employer arising from the employer's nonpayment of wage for work performed which remains unsatisfied for a period of 20 days after the time to appeal therefrom has expired and no appeal therefrom is pending; (ii) a final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired and no petition is pending. The Bidder acknowledge that notwithstanding any prior prequalification approval, a Bidder who is subject to a final non-appealable wage theft adjudication so defined does not meet the SCCOE's minimum qualification as a Bidder, is not qualified to Bid and cannot submit a responsive Bid.

Failure to comply with any of the above may result in a determination of non-responsiveness.

I declare under penalty of perjury under California law that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)**  
**(Note: Bidders must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

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

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

which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to  
or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, pursuant to law and the Contract, the Principal is required, before entering upon the  
performance of the work, to file a good and sufficient bond with the body by which the Contract is  
awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which  
reference is made in the Civil Code of California, including section 9100, and the Labor Code of  
California, including section 1741.

**NOW, THEREFORE**, the Principal and \_\_\_\_\_, ("Surety") are held and  
firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal  
sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the total  
amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we  
bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by  
these presents.

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

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all  
persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil  
Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

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

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

**Principal**

**Surety**

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

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

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

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

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

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

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

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

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

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

END OF DOCUMENT

**PERFORMANCE BOND (100% of Contract Price)**  
**(Note: Bidders must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

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

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

which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to  
or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

**NOW, THEREFORE**, the Principal and \_\_\_\_\_ ("Surety") are held and  
firmly bound unto the SCCOE in the penal sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well  
and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns  
jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the SCCOE all damages the SCCOE incurs as a result of the Principal's failure to perform  
all the Work required to complete the Project.

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

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

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

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**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

\_\_\_\_\_

\_\_\_\_\_

**Attention:** \_\_\_\_\_

**Telephone No.:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**Fax No.:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

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

**Principal**

**Surety**

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

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

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

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

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

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

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

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

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

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

END OF DOCUMENT

\_\_\_\_\_

## SHORT FORM CONSTRUCTION CONTRACT

This CONTRACT made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between **Santa Clara County Office of Education (SCCOE)**, sometimes hereinafter called "SCCOE," and **[TO BE INSERTED]**, hereinafter referred to as "Contractor." SCCOE and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

**WITNESSETH:** That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. Contract Documents. The complete contract includes all the Contract Documents, to wit:
  - A. Contract;
  - B. Bond(s) executed in connection herewith;
  - C. Scope of Work set forth in Exhibit "A" dated \_\_\_\_\_;
  - D. Certificate(s) of Insurance; and
  - E. All official papers and documents relating to the work to be performed hereunder which are not included in Exhibit "A" (i.e., technical drawings, etc.).
2. Scope of Work. Contractor agrees to perform the work and to furnish all tools, equipment, apparatus, facilities, labor and material necessary to perform and complete in a good workmanlike manner, all parts of the work as called for in a manner designated in and in strict conformance with the scope of work set forth in Exhibit "A," attached hereto and incorporated herein ("Scope of Work") and the Contract Documents. It is understood and agreed that said tools, equipment, apparatus, facilities, labor and material shall be furnished and said work performed and completed as required in said Scope of Work under the direction and supervision of, and subject to the approval of the SCCOE's authorized representative. Contractor's Work shall also be consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the SCCOE, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the SCCOE to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the SCCOE, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.
3. Compensation. As consideration for performance of the Work required herein, SCCOE agrees to pay Contractor on a time and materials basis as set forth herein, a not-to-exceed amount of **[TO BE INSERTED] (\$[TO BE INSERTED])** ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the SCCOE.
  - A. Subject to paragraph 3(B) below, the SCCOE shall pay for such services on a time and materials basis in accordance with the Schedule of Charges set forth in Exhibit "B."
  - B. Periodic payments shall be made by the SCCOE to Contractor within thirty (30) days of SCCOE's receipt of an application for payment from Contractor for services rendered. Payments to Contractor for work performed will be made on a monthly billing basis. The application shall include all information required by the SCCOE and shall be in a format approved by the SCCOE. This application shall be supported by evidence which is required by this Contract and such other documentation as the SCCOE may require. The Contractor shall certify that the Work for which payment is requested has been done and that any materials listed are stored where indicated. SCCOE shall review and pay the payment request in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code.

- C. Labor and Material Releases. Contractor shall furnish SCCOE with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by SCCOE.
4. Retention. For contracts greater than Five Thousand dollars (\$5,000), Public Contract Code section 9203 requires progress payments and retention based on the percentage of actual work completed plus a like percentage of the value of material delivered and unused. Therefore, SCCOE will withhold as retention five percent (5%) of all billings and the Total Contract Price until final completion for projects exceeding \$5,000 and acceptance of the project. SCCOE, at its sole discretion, shall release retention proceeds withheld from any payment within sixty (60) days after the date of "completion" of the work as defined in the Public Contract Code section 7107. If a dispute arises between the contractor and SCCOE, SCCOE may withhold an amount from the final payment not to exceed one hundred and fifty percent (150%) of the disputed amount, as well as any other amounts permissible under this Agreement and/or California law.
5. Other Retentions. In addition to Contract retentions, the SCCOE may deduct from each progress payment an amount necessary to protect SCCOE from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the SCCOE in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by SCCOE during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the SCCOE, incurred by the SCCOE for which Contractor is liable under the Contract; and (11) any other sums which the SCCOE is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the SCCOE to deduct any of these sums from a progress payment shall not constitute a waiver of the SCCOE's right to such sums.
6. Substitution of Securities. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by SCCOE to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the SCCOE, with the State or federally chartered bank as the escrow agent, who shall return such securities to the Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the SCCOE, which provides that no portion of the securities shall be paid to the Contractor until the SCCOE has certified to the escrow agent, in writing, that the contract has been satisfactorily completed. SCCOE shall certify that the contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under this section shall be limited to those listed in Section 16430 of the Government Code, bank or savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by the Contractor.
7. Time for Completion/Liquidated Damages. Work shall commence on \_\_\_\_\_, 20\_\_\_\_ and shall be completed by Contractor and usable by the SCCOE on or before \_\_\_\_\_, 20\_\_\_\_. If the Work is not completed and usable by the SCCOE, it is understood that the SCCOE will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the SCCOE as fixed and liquidated damages, and not as a penalty, the sum of **[SCCOE TO DETERMINE AMOUNT DEPENDING ON PROJECT] (\$[TO BE INSERTED])** for each and every calendar day of delay beyond the time prescribed in the Agreement for finishing the Work. In the event this is not paid, the Contractor agrees that the SCCOE may deduct that amount from any money due or that may become due the Contractor under the Contract.
8. **[SCCOE TO REVIEW INSURANCE REQUIREMENTS].** Insurance. Without limiting Contractor's indemnification, it is agreed that Contractor shall secure and maintain in force during the term of this Contract a Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:

- 1) Per occurrence (combined single limit) \$1,000,000.00
- 2) Project Specific Aggregate (for this project only) \$2,000,000.00
- 3) Products/Completed Operations (included in Comm. Gen. Liability)

The SCCOE shall be named as an additional insured on the policies by endorsements. The policy shall provide that it is primary, such that insurance maintained by the SCCOE, if any, shall be excess and not co-primary. A copy of the declarations page of Contractor's insurance policies shall be attached to this Contract as proof of insurance. Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the SCCOE's prior written consent, and, the SCCOE shall be named as an additional insured and be furnished thirty (30) days' written notice prior to cancellation. The Contractor shall not allow any subcontractor employee or agent to commence work on this Contract, or any subcontract until the insurance required of the Contractor and subcontractor or agent has been obtained.

- 9. Hold Harmless for Payroll Issues. Contractor hereby agrees to accept exclusive liability for, and shall hold SCCOE, SCCOE's officers, directors, employees and agents harmless from, all payroll taxes for contributions to unemployment insurance or old age pensions, or annuities, measured by wages, salaries or other remuneration paid to employees of said Contractor or Subcontractors.
- 10. Subcontractors. Contractor shall use due diligence in the requirement and confirmation of insurance coverage similar to the foregoing on behalf of his subcontractors.
- 11. Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 **[INCREASE IF NECESSARY - OTHERWISE LEAVE AS IS AND DELETE THIS NOTE]** per occurrence. This insurance shall name the SCCOE, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section.
- 12. Pursuant to Section 1861 of the Labor Code, by signing this Contract and initialing hereunder the Contractor certifies that:
  - A. I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.
  - B. Contractor's Initials: \_\_\_\_\_
- 13. **[IF CONTRACT IS GREATER THAN \$25K PAYMENT BOND IS REQUIRED; IF CONTRACT IS LESS THAN \$25K, SCCOE TO DETERMINE WHETHER BONDS ARE NECESSARY.]** Bonds. The Contractor shall be required at the time of the execution of the Contract to furnish Payment and Faithful Performance Bonds in amounts not less than one hundred percent (100%) of the Total Contract Price. These bonds shall be secured from a surety company satisfactory to SCCOE, shall be submitted on the SCCOE's prescribed bond forms, and the Contractor thereon shall pay the premiums. **[IF BONDS ARE REQUIRED, SCCOE SHOULD USE ITS STANDARD BOND FORM.]** The bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Diego that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California. Failure to submit acceptable bonds will be cause of rejection of the contract. Said bonds shall be furnished within ten (10) days after award of the Contract and before commencement of construction.

14. Assignment of Contract. Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract, or of his/her right, title of interest in or to the same or any part thereof without previous consent in writing from SCCOE's authorized representative.
15. Suspension/Termination of Contract.
  - A. SCCOE has the right to terminate or abandon any portion or all of the work under this Contract by giving ten (10) calendar days written notice to Contractor. In such event, SCCOE shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. SCCOE shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Work for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by SCCOE and Contractor of the portion of such task completed but not paid prior to said termination. SCCOE shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.
  - B. Contractor may terminate its obligation to provide further services under this Contract upon thirty (30) calendar days' written notice to SCCOE only in the event of substantial failure by SCCOE to perform in accordance with the terms of this Contract through no fault of Contractor.
16. Subcontracts. Subcontractors employed by Contractor on the execution of the Work covered in this Contract shall be only those given prior written permission from SCCOE, and otherwise comply with Sections 4100 to 4113 inclusive of the Public Contract Code of California, as applicable.
17. Control and Payment of Subordinates; Contractual Relationship. SCCOE retains Contractor on an independent contractor basis and Contractor is not an employee of SCCOE. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.
18. Permits and Licenses. Contractor shall comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of public health and safety, obtaining all necessary permits and licenses for the construction of the project, pay all fees and post all deposits or bonds required by law. For the work to be performed hereunder, Contractor shall possess the following classification of State contractor's license throughout the duration of the Contract: **[INSERT CONTRACTOR LICENSE REQUIRED IN 10-POINT TYPE]**. During the performance of the work, Contractor shall take over all the necessary precautions and place proper guards for the prevention of accidents.
19. Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for SCCOE's review and approval 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 such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
20. Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify SCCOE of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by SCCOE; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, SCCOE shall promptly investigate the conditions



to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute

21. Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, SCCOE shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of SCCOE to provide for removal or relocation of such utility facilities.
22. Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management SCCOE (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify SCCOE against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.
23. Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify SCCOE in writing and shall furnish all labor and material releases required by this Contract. SCCOE shall thereupon inspect the Work. If the Work is not acceptable to the SCCOE, the SCCOE shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the SCCOE. Once the Work is acceptable to SCCOE, SCCOE shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which SCCOE may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code
24. Changes in the Scope of Work. In the event SCCOE orders changes in the Work, the Total Contract Price and the Contract Time will be adjusted accordingly. If a change is of an item not covered by the Contract, SCCOE and Contractor shall mutually agree upon the value of the work based on labor, materials and equipment involved. Regardless of ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. All changes in work shall be in writing and Contractor shall be responsible for any and all work done without SCCOE's prior written approval.
25. Brand Name or Equal. Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better for any material, process or article is identified by grade, patent or proprietary name or by name of manufacturer. Contractor bears the burden of proof as to the equality of any material, process or article and SCCOE may require Contractor to furnish the material, and article or process specified if it decides that Contractor has not met his or her burden.
26. Discrepancies and Omissions. Any discrepancies or omissions found in the Scope of Work shall be reported to SCCOE immediately. SCCOE will clarify discrepancies or omissions, in writing, within a reasonable time.
27. Wage Theft Prevention. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the SCCOE may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the SCCOE, may be in material breach of its contract with the SCCOE if the violation is not fully disclosed and/or satisfied per SCCOE guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

28. Labor Code Provisions. It shall be mandatory upon the Contractor herein and upon all subcontractors under Contractor to comply with all provisions of the Labor Code of the State of California relative to contracts for public works.

A. Prevailing Wages. SCCOE has copies of the general prevailing wage rate per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract which shall be posted at each job site and will be on file at the principal office of the SCCOE. Contractor shall, as a penalty to SCCOE, forfeit not more than the maximum applicable statutory rate for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by Contractor or by any subcontractors under Contractor. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor.

B. Eight Hour Law. Eight hours labor shall constitute a legal day's hours per day, and forty hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to SCCOE the maximum statutory rate for each calendar day during which such worker is required, or permitted to work more than eight hours in any one day or forty hours in any one calendar week in violation of the provisions of said Labor Code.

C. Payroll Records. 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 journey man, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to SCCOE, forfeit not more than the maximum statutory rate for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner.

Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on the Contractor. In addition, the Contractor shall also comply with all applicable DIR requirements for submission of certified payroll records for prevailing wage enforcement

D. Ineligible Contractors/Subcontractors/Debarment. A Contractor or subcontractor may not perform work who is ineligible pursuant to Labor Code Sections 1777.1 and 1777.7.

E. Apprentice. Attention is called to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under Contractor.

F. Contractor/Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, **if the Project is a public works project in excess of \$25,000 or a maintenance project in excess of \$15,000**, the Contractor and all subcontractors that bid on, are listed in a bid or proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations ("DIR"). No bid/proposal will be accepted nor any contract entered into without proof of the Contractor's and all subcontractors' current registration with the DIR to perform public work. The Contractor shall also, at all times, be required to ensure compliance with the DIR by all of its subcontractors of all tiers. Contractor shall keep and maintain records documenting the DIR registration information for all such subcontractors and shall make such information available to the SCCOE upon request.

29. Assignment of Anti-Trust Claims. Contractor offers and agrees to assign to the SCCOE all rights, title and interest in and to all causes of action as it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of Business and Professions Code), and any other applicable laws, arising from purchase of goods, services, or materials, pursuant to this Contract. This assignment shall become effective at the time that SCCOE tenders final payment to Contractor, without further acknowledgment by the parties.
30. Procedure for Resolving Disputes. The parties to this Contract are subject to the provisions of Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code, which requires compliance with the procedures set forth therein to resolve any claim by the Contractor of \$375,000 or less regarding an extension of time, a change order, extra work, or any other disputed amount. If after the procedures set forth in Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code are completed and a civil action is filed, the action shall be subject to the mediation and arbitration provisions required by Section 20104.4 of the Public Contract Code.
31. Notice of Third-Party Claims. Pursuant to Public Contract Code Section 9201, the SCCOE shall provide the Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. The SCCOE is entitled to recover its reasonable costs incurred in providing such notification.
32. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless SCCOE against any and all claims involving any type of property damage or personal injury, including death, that may be asserted by any person or type of entity, arising out of or in connection with the performance of work, both on and off the job site, and will pay all costs and expenses, including attorney fees in connection therewith; provided however, Contractor shall not be liable for the sole established negligence or willful misconduct of the SCCOE. Contractor will defend, with counsel of the SCCOE's choosing, any action filed in connection with any of said claims, damages, penalties, obligations or liabilities Contractor will promptly pay any judgment rendered against Contractor or SCCOE arising out of or in connection with such work, operation or activities of Contractor hereunder and Contractor agrees to save and hold SCCOE harmless therefrom. SCCOE may retain to the extent it deems necessary, the money due to Contractor under and by virtue of the Contract until disposition has been made of such actions or claims for damages as specified herein above. Contractor shall reimburse SCCOE and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the SCCOE, its directors, officials officers, employees, agents, or volunteers.
33. Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the SCCOE of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the SCCOE in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the SCCOE may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the SCCOE, regardless of whether or not such warranties and guarantees have been transferred or assigned to the SCCOE by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the SCCOE. In the event that Contractor fails to perform its obligations

under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the SCCOE, the SCCOE shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the SCCOE for any expenses incurred hereunder upon demand.

34. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and life saving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site
35. Applicable Law and Venue. This Contract shall be governed by the laws of the State of California as effective and in force on the date of this Contract. This Contract shall be deemed to have been made in San Diego County, California, regardless of the order of the signatures of the Parties affixed hereto.
36. Modifications. No terms or conditions contained in any writing, purchase order, acknowledgment, or form shall be of any effect unless agreed to in a written amendment or modification to this Contract which has been executed by the designated representative of both parties.
37. Waiver. No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver is in writing.
38. Notice. All notices shall be given to the other party at the address set forth herein. Notice shall be effective upon receipt or five (5) days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged by the receiving party.

Contractor  
[TO BE INSERTED]

**Santa Clara County Office of Education**  
**1290 Ridder Park Drive**  
**San Jose, CA. 95131**

Attn: [INSERT CONTACT NAME]

Attn: [INSERT CONTACT NAME]

39. Drafting of Contract. The Parties agree that this Contract shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this Contract. The Parties represent that they have consulted legal counsel prior to the execution of this Contract and have executed this Contract with full knowledge of its meaning and effect.
40. Assignment or Delegation. Consultant may not assign or sub-contract its rights or obligations under this Contract without the consent of SCCOE, which may be withheld for any reason.
41. Severability. It is intended that each paragraph of this Contract shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Contract is unaffected.

42. Laws and Regulations; Provisions Required by Law Deemed Inserted. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If the Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the SCCOE in writing. Any necessary changes shall be made by written change order. Each and every provision or 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, then upon application of either party this Contract shall be amended to make the insertion or correction. All references to statutes, rules or regulations shall include all amendments, replacements and enactments on the subject which are in effect as of the date of this Contract, as well as any later changes which do not materially and substantially alter the rights or obligations of the parties.
43. Fingerprinting Requirements. Unless exempted, Contractor shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the SCCOE's pupils. The Contractor shall also ensure that its consultants, as well as all subcontractors on the Project, comply with the requirements of Section 45125.1. To this end, the Contractor and its consultants and subcontractors must provide for the completion of the SCCOE's standard certification form prior to any of the Contractor's employees, or those of any other consultants, coming into contact with the SCCOE's pupils.

**SCHOOL SAFETY ACT – COMMUNICATIONS WITH PUPILS**

\_\_\_\_\_ In accordance with Education Code Section 45125.1, the SCCOE has determined that fingerprinting and certification will be required of the employees of the contractor who provide services under this contract (please complete certification form, Attachment A).

\_\_\_\_\_ In accordance with Education Code Section 45125.2, the SCCOE has determined that an exemption exists under requirements of 45125.1, and that workers may have other than limited contact with students. Therefore, the Contractor is required to provide or agree to one or more of the following: (to be determined by SCCOE)

\_\_\_\_\_ Installation of physical barrier at the work site to limit contact with pupils.

\_\_\_\_\_ Surveillance of employees of the Contractor by school personnel.

\_\_\_\_\_ Continual supervision and monitoring of all employees of the Contractor by an employee of the Contractor whom the DOJ has ascertained has not been convicted of a violent or serious felony.

Supervisor's Name: \_\_\_\_\_

**Soc. Sec. No. (last 4 digits or full CDL #)** \_\_\_\_\_

\_\_\_\_\_ In accordance with Education Code Section 45125.1, subdivision c, the SCCOE has determined that this contract is not subject to Education Code Section 45125.1 (a), because the contractor's employees, including the employees of any subcontractor, will have only "limited contact" with pupils on the site. Justifications is as follows:

\_\_\_\_\_ Work will be performed on a day or days when school is not in session (holidays, weekend or non-teaching days – may not include after school hours).

\_\_\_\_\_ Other, describe

\_\_\_\_\_

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

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

Signature of SCCOE Official responsible for assuring selected conditions are met in accordance with Education Code Section 45125.2, if applicable.

Contractor understands that SCCOE department staff may monitor and evaluate adherence to these conditions during the performance of their work.

44. Drug/Smoke-Free Workplace. The SCCOE and all SCCOE projects are “drug-free” and “smoke-free” workplaces and, as such, require that the Contractor be subject to the requirements mandated by California Government Code Sections 8350, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Contractor to police and oversee its personnel on the Project. If the Contractor fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the SCCOE, the SCCOE may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Contract and may pursue all other rights and remedies it may have against the Contractor at law and/or in equity.
45. Compliance With State Storm Water Permit:
- A. Contractor shall be required to comply with all aspects of the State Water Resources Control Board (“State Board”) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (“Permit”), as may be amended, for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.
  - B. Contractor shall be responsible for all costs associated with filing the Notice of Intent (“NOI”) and for obtaining coverage under the Permit. This includes preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) for the Project site, and coordinating all submittals with the SCCOE’s Legally Responsible Person as that term is defined in the Permit. Before any NOI, SWPPP, or other Permit related document may be submitted to the State Board or implemented on the Project site, it must first be reviewed and approved by the SCCOE. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
  - C. The SCCOE retains the right to procure and maintain coverage under the Permit for the Project site if the Contractor fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is satisfactory to the SCCOE. Any costs incurred by the SCCOE in procuring and maintaining coverage under the Permit, or drafting an NOI or SWPPP shall be paid by the Contractor.
  - D. Contractor shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. Contractor shall provide copies of all reports and monitoring information to the SCCOE Representative. If the Contractor has failed or is unable to maintain compliance with the Permit, the SCCOE reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Permit shall be the SCCOE’s sole determination. Any costs incurred by the SCCOE in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.
  - E. In bidding on this Contract, it shall be Contractor’s responsibility to evaluate and include in the contract amount the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to the SCCOE, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.
  - F. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, the SCCOE, drainage SCCOE, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
  - G. Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

H. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless SCCOE, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which SCCOE, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the SCCOE, its officials, officers, agents, employees or authorized volunteers. SCCOE may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.

46. Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same Agreement.

47. Exhibits and Recitals. All Exhibits and Recitals referenced in this Contract and attached hereto are hereby incorporated by this reference into this Contract.

48. Time of Essence. Time is of the essence for each and every provision of this Contract.

**IN WITNESS WHEREOF**, this Contract is executed by the SCCOE's authorized representative.

**[TO BE INSERTED]**

**Santa Clara County Office of Education**

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

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

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

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

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

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

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

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

Fed. Tax I.D. # \_\_\_\_\_

**EXHIBIT "A"**

**SCOPE OF WORK**

**[INSERT SCOPE OF WORK]**



**EXHIBIT "B"**

**SCHEDULE OF CHARGES**

**[INSERT SCHEDULE OF CHARGES]**