

# **CRIMINAL BACKGROUND INVESTIGATION** **/FINGERPRINTING CERTIFICATION**

PROJECT TITLE: \_\_\_\_\_ CONTRACT/BID NO. \_\_\_\_\_

between the Pacific Grove Unified School District ("PGUSD") and \_\_\_\_\_  
("Contractor" or "Bidder").

The undersigned does hereby certify to the governing board of the PGUSD as follows:

That I am a representative of the Contractor currently under contract with the PGUSD; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

- ☐ The Contractor is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(k) with respect to all Contractor's employees who may have contact with PGUSD pupils in the course of providing services pursuant to the Contract, and hereby agrees to the PGUSD's preparation and submission of fingerprints such that the California Department of Justice may determine that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. No work shall commence until such a determination by DOJ has been made.

As an authorized PGUSD official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the PGUSD and undertake to prepare and submit Contractor's fingerprints as if he or she was an employee of the PGUSD.

PGUSD Representative's Name and Title: \_\_\_\_\_

PGUSD Representative's Signature: \_\_\_\_\_

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

- ☐ The Contractor, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who may have contact with PGUSD pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with PGUSD pupils during the course and scope of the Contract is attached hereto; and/or
- ☐ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and PGUSD pupils at all times; and/or
- ☐ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained, or as described below, will ascertain, has not been convicted of a

violent or serious felony. The name and title of the employee who will be supervising Contractor's and its subcontractors' employees is:

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

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

**NOTE:** If the Contractor is a sole proprietor, and elects the above option, Contractor must have the above-named employee's fingerprints prepared and submitted by the PGUSD, in accordance with Education Code section 45125.1(k). No work shall commence until such determination by DOJ has been made.

As an authorized PGUSD official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the PGUSD and undertake to prepare and submit Contractor's fingerprints as if he or she was an employee of the PGUSD.

PGUSD Representative's Name and Title: \_\_\_\_\_

PGUSD Representative's Signature: \_\_\_\_\_

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

- ☐ *The Work on the Contract is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Contract shall come in contact with the PGUSD pupils or (ii) Contractor's employees or any subcontractor or supplier of any tier of the Contract will have only limited contact, if any, with PGUSD pupils and the PGUSD will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor under the Contract.*

*As an authorized PGUSD official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the PGUSD.*

PGUSD Representative's Name and Title: \_\_\_\_\_

PGUSD Representative's Signature: \_\_\_\_\_

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

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

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

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

Company: \_\_\_\_\_

END OF DOCUMENT

## CHANGE ORDER FORM

Pacific Grove Unified School District  
435 Hillcrest Ave  
Pacific Grove CA 93950

CHANGE ORDER NO.: \_\_\_\_\_

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

Bid No.: \_\_\_\_\_ DSA File No.: \_\_\_\_\_

DSA Appl. No.: \_\_\_\_\_

The following parties agree to the terms of this Change Order:

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

[Name / Address] [Name / Address]

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

Architect: \_\_\_\_\_ Project Inspector: \_\_\_\_\_

[Name / Address] [Name / Address]

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

Reference	Description	Cost	Days Ext.
PCO #	_____	\$	
Requested by:	_____		
Performed by:	_____		
Reason:			
PCO #	_____	\$	
Requested by:	_____		
Performed by:	_____		
Reason:			
PCO #	_____	\$	
Requested by:	_____		
Performed by:	_____		
Reason:			

Contract time will be adjusted as follows:	Original Contract Amount:	\$
Previous Completion Date: _____	Amount of Previously Approved Change Order(s):	\$
Calendar Days Extension: _____ (zero unless otherwise indicated)	Amount of this Change Order:	\$
Current Completion Date: _____	Contract Amount:	\$

The undersigned Contractor approves the foregoing as to the changes, if any, to the Contract Price specified for each item, and as to the extension of time allowed, if any, for completion of the entire work as stated therein, and agrees to furnish all labor, materials and services and perform all work necessary to complete any additional work specified for the consideration stated therein. Submission of sums which have no basis in fact or which the Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650, et seq.

This change order is subject to approval by the governing board of the PGUSD and must be signed by the PGUSD. Until such time as this change order is approved by the PGUSD's governing board and executed by a duly authorized PGUSD representative, this change order is not effective and not binding.

It is expressly understood that the compensation and time, if any, granted herein represent a full accord and satisfaction for any and all time and cost impacts of the items herein, and Contractor waives any and all further compensation or time extension based on the items herein. The value of the extra work or changes expressly includes any and all of the Contractor's costs and expenses, and its subcontractors, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project. Any costs, expenses, damages, or time extensions not included are deemed waived.

**Signatures:**

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

\_\_\_\_\_  
[Name] Date [Name] Date

Architect: \_\_\_\_\_ Project Inspector: \_\_\_\_\_

END OF DOCUMENT



## **CERTIFICATION REGARDING DRUG & TOBACCO FREE WORKPLACE REQUIREMENTS**

The Contractor certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited within the District and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about—
  - a. The dangers of drug abuse in the workplace;
  - b. The contractor's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs, and
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Publishing a statement notifying employees that no Tobacco Products are to be used on District campuses.
  - a. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.
  - b. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
  - c. any component, part, or accessory of (a) or (b), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

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

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

# **IMPORTED MATERIALS CERTIFICATION**

PROJECT TITLE: \_\_\_\_\_ CONTRACT/BID NO. \_\_\_\_\_

between the Pacific Grove Unified School District ("PGUSD") and \_\_\_\_\_  
("Contractor" or "Bidder").

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site and shall be provided to the PGUSD at least ten (10) days before delivery. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

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

Type of Entity ☐ Corporation ☐ General Partnership  
☐ Limited Partnership ☐ Limited Liability Company  
☐ Sole Proprietorship ☐ Other

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

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

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

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

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

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

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

Company: \_\_\_\_\_

END OF DOCUMENT

**PAYMENT BOND**  
**CONTRACTOR'S LABOR & MATERIAL BOND**  
**(100% OF CONTRACT PRICE)**

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

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Pacific Grove Unified School District, ("PGUSD") 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 Title: \_\_\_\_\_

("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 one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

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 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 its subcontractors, or their heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code 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 section 9100 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.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

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

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

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

Telephone 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: Contractor must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Pacific Grove Unified School District, ("PGUSD") 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 Title: \_\_\_\_\_

("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 Board of the PGUSD 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:

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

Or, at the PGUSD's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the PGUSD of the lowest responsible bidder, arrange for a contract between such bidder and the PGUSD and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the PGUSD under the Contract and any modifications thereto, less the amount previously paid by the PGUSD to the Principal, less any withholdings by the PGUSD allowed under the Contract. PGUSD shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bound Principal, 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 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 PGUSD, 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.

Surety expressly agrees that the PGUSD may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the PGUSD declares the Principal to be in default and notifies Surety of the PGUSD's objection to Principal's further participation in the completion of the Work.

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 and replacements and totally protect the PGUSD 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 PGUSD's rights or the Contractor 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 or the specifications accompanying the same shall in any way affect its obligation on this bond. The Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any overpayment or underpayment by the PGUSD that is based upon estimates approved by the Architect. The Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

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

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

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

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

Telephone 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

**PROPOSED CHANGE ORDER FORM**

Pacific Grove Unified School District  
435 Hillcrest Ave  
Pacific Grove CA 93950

PCO NO.: \_\_\_\_\_

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

Bid No.: \_\_\_\_\_ DSA File No.: \_\_\_\_\_

RFI #: \_\_\_\_\_ DSA Appl. No.: \_\_\_\_\_

The contractor hereby submits for PGUSD's review and evaluation this Proposed Change Order ("PCO"), submitted in accordance with and subject to the terms of the Contract Documents, including Sections 17.7 and 17.8 of the General Conditions. Any spaces left blank below are deemed no change to cost or time.

Contractor understands and acknowledges that documentation supporting Contractor's PCO must be attached and included for PGUSD review and evaluation. The contractor further understands and acknowledges that failure to include documentation sufficient to, in PGUSD's discretion, support some or all of the PCO, shall result in a rejected PCO.

	<b><u>WORK PERFORMED OTHER THAN BY CONTRACTOR</u></b>	<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
a.	<b><u>Material</u></b> (attach suppliers' invoice or itemized quantity and unit cost plus sales tax)		
b.	<b><u>Add Labor</u></b> (attach itemized hours and rates, fully encumbered)		
c.	<b><u>Add Equipment</u></b> (attach suppliers' invoice)		
d.	<b><u>Subtotal</u></b>		
e.	<b><u>Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed ten percent (10%) of Item (d)</u></b>		
f.	<b><u>Subtotal</u></b>		
g.	<b><u>Add Overhead and Profit for Contractor, not to exceed five percent (5%) of Item (f)</u></b>		
h.	<b><u>Subtotal</u></b>		
i.	<b><u>Add Bond and Insurance, not to exceed one and a half percent (1.5%) of Item (h)</u></b>		
j.	<b><u>TOTAL</u></b>		
k.	<b><u>Time</u></b> (zero unless indicated; "TBD" not permitted)	____ Calendar Days	

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

	<b><u>WORK PERFORMED BY CONTRACTOR</u></b>	<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
a.	<b><u>Material</u></b> (attach itemized quantity and unit cost plus sales tax)		
b.	<b><u>Add Labor</u></b> (attach itemized hours and rates, fully encumbered)		
c.	<b><u>Add Equipment</u></b> (attach suppliers' invoice)		
d.	<b><u>Subtotal</u></b>		
e.	<b><u>Add Overhead and Profit for Contractor</u></b> , not to exceed fifteen percent (15%) of Item (d)		
f.	<b><u>Subtotal</u></b>		
g.	<b><u>Add Bond and Insurance</u></b> , not to exceed one and a half percent (1.5%) of Item (f)		
h.	<b><u>TOTAL</u></b>		
i.	<b><u>Time</u></b> (zero unless indicated; "TBD" not permitted)	<b>_____ Calendar Days</b>	

The undersigned Contractor approves the foregoing as to the changes, if any, to the Contract Price specified for each item, and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 *et seq.* It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the PGUSD.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. The contractor is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

**SUBMITTED BY:**

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

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

Company: \_\_\_\_\_

END OF DOCUMENT

# **SAMPLE CONSTRUCTION CONTRACT**

## **LUMP SUM – FIXED PRICE**

THIS CONSTRUCTION CONTRACT (this "Agreement") is entered into on this (Date):  
March 07, 2022

Between the Owner: **PACIFIC GROVE UNIFIED SCHOOL**  
**DISTRICT**  
435 Hillcrest Ave Pacific Grove CA 93950

And the Contractor:

### **RECITALS**

**A.** Owner desires to contract with Contractor for the PGUSD [Project Title and Address] Project FY\_\_\_\_ - \_\_\_\_ (the "Project"), Located:

Pacific Grove Unified School District  
[PROJECT TITLE AND ADDRESS]

**B.** Contractor desires to construct the Project on the terms and conditions contained herein. NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties agree as following.

### **Section 1. Definitions.**

**Work.** As used herein the "Work" shall mean all labor and materials, or both, necessary to perform the Project, to full completion, and shall consist of the components described in the ***Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture***. The Work shall be done and the materials furnished in accordance with the information provided in the ***Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture***, and as discussed in all correspondence prior to bid time and at the job walk.

### **Section 2. Obligations of Contractor.**

Contractor agrees to furnish and transport all necessary labor, permits, materials, tools, implements, supplies, building materials and component parts, and appliances required to perform and finish the Work to industry standards and all applicable codes, free of any and all liens and claims of laborers, materialmen, suppliers, and subcontractors,

free from any and all defects or deficiencies. Contractor shall further endeavor to use its best faith efforts to complete the Project timely, and continually keep Owner apprised of the status of the Project.

### **Section 3. The Work.**

**(a)** Contractor has reviewed the Scope of Work (*Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture.*), and represents that: (i) if the Work is performed in accordance therewith, the Work shall have been constructed in accordance with all applicable state, county, and municipal laws, codes, and regulations, including, but not limited to, all applicable building codes; and (ii) the Plans and Specifications are sufficiently complete and detailed to permit Contractor to perform the entire Work on the basis of the Notice to Bidders and Jobsite Walk for the Fixed Price Cost. No changes in the scope of work or Fixed Price shall be made unless in a change order signed by both parties. (iii) contractor will be responsible for locating all utilities (above and below ground) with a licensed locating service prior to commencing work on the site. The contractor will be provided with information from the owner locating said utilities to the best of the owner's knowledge.

**(b)** If at any time or times during the process of the Work, Owner desires to add to, alter, deviate from, or make omissions from the Work to be performed under the *Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture.* Owner shall be at liberty to do so and the same shall in no way affect or make void this Agreement. Any such alterations to the scope of work, or deviations from *Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture,* shall be made only in a writing signed by both parties. Any verbal changes in the scope of Work defined within the *Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture* shall be of no force nor effect. This Agreement shall be considered completed when: (i) the Work is finished in strict accordance with the *Notice to Bidders, Jobsite Walk, Contract Documents, And Drawings as provided by HGHB Architecture* as amended by any written change order

(ii) the Owner approves of the Work;

(iii) a notice of completion has been recorded; and (iv) the Contractor has received final payment.

### **Section 4. Contract Time.**

Contractor agrees to commence the Work or as mutually agreed after receiving written notification to proceed from Owner, and shall complete the Work in no event later than **[time allotted]** from the Notice to Proceed (the "Completion Date"). Contractor shall carry out the Work at all times with the greatest possible dispatch and diligence. If Contractor has not completed the Work by the Completion Date, then Owner may

terminate this Agreement, Contractor shall immediately terminate its Work, Owner may withhold payment to the Contractor to complete the Work and the Project with another contractor, and in the event withholding such funds is insufficient to complete the Work and the Project, the Contractor will refund to the Owner such funds necessary to complete the Work and the Project within **[time allotted for work]** of receipt of written demand.

## **Section 5. Fixed Price.**

1. Owner agrees, in consideration of Contractor's performance of this Agreement, to pay Contractor the **Fixed Price of [spell out amount] Dollars (\$0.0)**. (This sum shall constitute payment in full for all costs incurred by Contractor under this Agreement in performing and completing the Work, including, but not limited to, the costs incurred for insurance, overhead, subcontractor's materials, supplies, bonds (if any are required by Owner), permits and compliance with all building codes and laws, and Social Security, unemployment, sales, use, and all other taxes and costs.

### **A contingency / tracking log to be maintained during the project.**

2. Progress payments on account of the Fixed Price cost shall be made as follows. Please note that Contractor must submit an invoice to the PGUSD for all progress payments as listed below:

(a) Applications for payment as set forth according to the schedule below:

1. **\$1,000.00 - Upon Execution of Contract.**  
**(\$1,000 or 10% of the contract, whichever is less)**
  2. **35% (+/-) - Material Acquisition and Mobilization.**
  3. **45% - Progress Payments**
  4. **10% - Upon Final Inspection and Sign Off of Punch List.**

(b) The balance of ten percent (10%) of the contract price shall not become due until completion and final acceptance of the Work. As a condition precedent to Owner's obligation to make any progress payment, Contractor shall provide Owner with the following documents upon Owner's written request: (i) a conditional mechanics' lien release from each laborer, material supplier, and other subcontractor who provided labor, materials, or supplies for the component(s) of the Work covered by such progress payment. (c) As an additional condition precedent to Contractor's right to receive final payment, Contractor shall discharge and release the Work from any and all claims or liens that may have accrued from the performance of this Agreement and the final building inspection by Owner and the applicable governmental agency shall have been completed and accepted, and shall provide Owner with the following documents upon Owner's written request: (i) an unconditional mechanics' lien release from each

such claimant who provided a conditional mechanics' lien release for the payment due (if any) to such claimant from the immediately preceding progress payment once the funds clear the contractors account. (ii) a recorded notice of completion; and (iii) "as built" drawings.

**3.** If at any time during the progress of the Work or before the final payment is made, any lien or claim or lien is filed, or notification to withhold money for labor or material furnished by Contractor under this Agreement is served on Owner, and Owner has performed its obligations under this Agreement, then Owner shall have the right to: (i) withhold from any payment due to Contractor an amount sufficient to discharge any and all such liens or claims; (ii) pay the lien holder directly and offset any such amount against the Fixed Price Cost; and (iii) bond around the lien at Contractor's sole cost and expense.

**4.** Owner reserves the right to make payments to Contractor in the form of checks payable jointly to Contractor and to any of its subcontractors or suppliers if Owner reasonably suspects that Contractor is not making payment to any such subcontractors or suppliers, or to protect Owner from any liens or encumbrances.

**5.** Owner may withhold any progress payment or final payment, or nullify any certification for payment previously issued, to the extent necessary to protect Owner from loss due to: (i) claims filed (including litigation, mechanic's liens, stop notices ("Claims")); (ii) reasonable evidence indicating probable filing of Claims; (iii) failure of Contractor to make timely payments to subcontractors or material suppliers; (iv) any material breach of this Agreement; (v) any reasonable doubt that the Agreement can be completed for the balance then unpaid; or (vi) defective or deficient work.

**6.** Final payment is due within thirty days of satisfaction of all completion conditions referenced above.

## **Section 6. Warranty.**

All Work that is not completed to plans and specifications, applicable codes, and industry standards shall be immediately repaired, removed, and replaced with Work of a quality approved by the Owner, without additional compensation to the Contractor. The Contractor guarantees that the Work done under this Agreement will be free from faulty materials or workmanship and will comply with all applicable laws. Upon receiving notification from Owner, Contractor agrees to remedy, repair, or replace, immediately, without cost to Owner and to Owner's satisfaction, all defects, damages, or imperfections appearing in the Work (including labor and materials) within a period of one (1) year after the date of final completion and acceptance by the applicable

governmental agency and Owner of the Work. Payments to Contractor shall not relieve Contractor of these obligations. Contractor will keep clean on a weekly basis the jobsite and grounds around the jobsite, and keep it in a safe, orderly, and neat condition. At the completion of the Work, the entire jobsite will be left in a broom-clean condition. Contractor shall assign all material and parts warranties to the Owner, and shall deliver to the Owner evidence of any such warranties as well as all product information and specifications. Contractor warrants that it is licensed by the Contractors State Licensing Board, and currently in good standing.

## **Section 7. Insurance/Bonds/Indemnity**

**7.0** Before commencement of any Work under this Agreement, Contractor shall obtain and maintain in full force and affect the following:

A **Performance Bond** in the amount of one hundred percent (100%) of the Contract Sum to insure Owner during construction, and for one year after completion and during any warranty or guarantee period, against faulty or improper materials or workmanship and to assure Owner of full and prompt performance of the Contract.

A **Payment Bond (Labor and Material)** in the amount of one hundred percent (100%) of the Contract Sum in accordance with the laws of the State of California to secure payment of any and all claims for labor and materials used or consumed in performance of this Contract.

- 1.** Comprehensive General Liability insurance that names Owner as an additional insured and that protects Contractor and Owner against any liability that Contractor may incur:  
(a) Because of bodily injuries to or the death of one person other than an employee of Contractor and consequential damages arising therefrom to the extent of not less than *\$2,000,000.00* and on account of bodily injuries to or the death of more than one such person, subject to the same limit for each. (b) Because of damage to or destruction of any property, to the extent of not less than *2,000,000.00* for each incident and aggregate.
- 2.** Worker's Compensation insurance in statutory form and amount and employer's liability insurance covering Contractor's liability to the extent of not less than *\$2,000,000.00* for damages because of bodily injuries to or death of such person or persons.
- 3.** The insurance described in Paragraph 7.1 above also shall provide contractual liability coverage satisfactory to Owner with respect to liability assumed by Contractor under the indemnity provisions in this Agreement. Written proof of compliance with

these requirements shall be filed with and approved by Owner before commencement of Work. The insurance provided in Section 7.1 shall name Owner, as an additional insured, and Contractor shall cause to be issued certificates and endorsements evidencing such coverage prior to the commencement of construction. The insurance to be maintained by the Contractor shall at all times be primary to the insurance maintained by Owner.

**4.** To the maximum extent permitted by law, Contractor shall indemnify, defend, and save harmless Owner and hold Owner, harmless from any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action, judgments, and other costs and expenses, including attorneys' fees and court costs ("Claim"), including but not limited to Claims involving personal injuries or property damage, which Owner may suffer or incur as a consequence of (i) Contractor's failure to perform any of Contractor's obligations as and when required hereunder, including any failure of any representation or warranty of Contractor to be true and correct and any errors, omissions or negligent acts committed by Contractor, its agents, subcontractors, or employees, (ii) any Claim or cause of action to the effect that Owner is in any way responsible or liable for any act or omission of Contractor, (iii) any act or omission by Contractor or any person or entity hired or employed by Contractor to perform any services relating to the subject matter of this Agreement; (iv) any Claim in any manner arising out of Contractor's performance of the Work; or (v) any breach of this Agreement by Contractor. Contractor shall pay any indebtedness arising under this indemnity to Owner immediately upon demand by Owner together with interest thereon from the date such indebtedness arises until paid at the rate equal to the greater of ten percent (10%) per annum or the highest lawful rate. Contractor's duty to indemnify Owner shall survive the termination of this Agreement. The foregoing indemnity shall not apply if the Owner's sole gross negligence or willful misconduct is the cause of the Claim.

## **Section 8. Work Stoppage**

If Contractor at any time during the progress of the Work refuses or neglects, without the fault of Owner, to supply sufficient materials or workers to continue or complete the Work for a period of more than ten (7) days, not due to conditions beyond control of the contractor are not the cause, after having been notified in writing by Owner to furnish them, Owner shall have the power to terminate this Agreement and/or furnish and provide such materials and workers as are necessary to finish the Work, and the reasonable expense thereof shall be deducted from the amount of the contract price as determined in this Agreement.

## **Section 9. Termination.**

## **1. Termination by the Owner for Cause**

- a.** the Owner may terminate the Contract if the Contractor repeatedly refuses or fails to supply enough properly skilled workers or proper materials; fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or otherwise is guilty of substantial breach of a provision of the Contract Document
- b.** When any of the above reasons exists, the Owner, may determine that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- c.** When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.
- d.** If the unpaid balance of the Contract Sum exceeds the reasonable costs of finishing the Work. If such reasonable costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

### **9.2 Termination by the Owner for Convenience**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### **9.3 Termination by the Contractor**

If the Owner fails to make payment as provided in Section 5.2 for a period of 7 days, the Contractor may, upon seven additional days' written notice to the Owner and or the Architect, terminate the Contract and recover from the Owner payment for Work

executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

#### **Section 10. Independent Contractor.**

Contractor agrees to perform the Work as an independent contractor and not as the agent, employee, or servant of Owner. Contractor has and hereby retains the right to exercise full control and supervision of the Work and full control over the employment, direction, method of performing, compensation, and discharge of all persons assisting in the Work. Contractor agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters. Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and subcontractors during this Agreement.

#### **Section 11. Assignment.**

Contractor shall not assign this Agreement or any interest in it or any money due or to become due under it voluntarily, involuntarily, or by operation of law without Owner's prior written consent. In the event of any such purported assignment without Owner's prior written consent,

Owner shall have the right, in addition to all other rights provided by law, to terminate this Agreement by giving written notice to Contractor.

#### **Section 12. Miscellaneous.**

Contractor shall at all times operate in good faith to coordinate job site installation and the work of other trades at the Project and to complete the Work in a time efficient manner and in a manner which will minimize disturbance, noise and inconvenience to the surrounding residents. Time is of the essence of this Agreement.

This Agreement shall be governed by the laws of the State of California.

#### **Section 13. Mediation.**

Any dispute arising of this Agreement shall first be submitted to mediation in an informal attempt to resolve such dispute. The mediation shall be conducted by a mediator experienced in the area of construction and construction contracts. Any party who first files any claim, including a complaint, without first seeking in good faith to participate in mediation, shall not be entitled to recover its attorney's fees pursuant to Section 14 of this Agreement, regardless of whether such party is the "prevailing party" in any such action.

#### **Section 14. Attorney Fees.**

If any suit or action is brought to enforce or construe any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses arising out of such litigation, including attorneys' fees and court costs, from the non-prevailing party.

**CONTRACTOR: [Name]**

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

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

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

**OWNER(S) / AGENT(S): Pacific Grove Unified School District**

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

Print Name: Joshua Jorn

Title: Assistant Superintendent of Business Services

Attachments:

Exhibit A: Schedule of Value

Exhibit B: Performance and Material Bonds