

**AGREEMENT FOR VENDOR SERVICES  
TO BE PROVIDED TO  
BEVERLY HILLS UNIFIED SCHOOL DISTRICT**

**1. Parties and Date.**

This Agreement ("AGREEMENT") is made and entered this **4th** day of **April, 2018**, by and between the BEVERLY HILLS UNIFIED SCHOOL DISTRICT ("DISTRICT") and VERTICAL ACCESS, INC., the undersigned provider of vendor services ("CONTRACTOR") (collectively referred to as the "Parties" and each individually as "Party").

**2. Recitals.**

2.1 The CONTRACTOR shall furnish all labor, materials, equipment, tools, and transportation necessary to perform and complete all work required as described in the Scope of Services attached hereto as Exhibit "A" ("Services"). Work will include RELOCATION OF EXISTING K-RAILS AT BEVERLY HILLS HIGH SCHOOL BUILDING B1 (hereinafter referred to as the "PROJECT") currently installed at the building's east and west elevations. The CONTRACTOR is expected to move (3) K-rail sections out 5', to create an increased gap of 13', allowing for greater access for future work. Vendor services may include, but are not limited to, construction services that are not required to be competitively bid under the California Public Contract Code, and unless otherwise provided in this Agreement, the CONTRACTOR shall also provide and pay for all construction equipment and machinery, water, heat, air conditioning, utilities, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.2 DISTRICT wishes to contract with CONTRACTOR to perform these Services in accordance with the terms of this Agreement at the General Terms and Conditions set forth in Exhibit "B".

**3. Terms.**

3.1 Services. CONTRACTOR shall furnish to the DISTRICT the Services set forth in the Scope of Services attached as Exhibit "A".

3.2 Compensation. DISTRICT shall compensate CONTRACTOR for Services rendered in a total amount not to exceed TWENTY-TWO THOUSAND AND 00/100 Dollars (\$22,000.00).

3.3 Date for Completion. The Services shall be completed within Fourteen (14) calendar days from receipt of the Notice to Proceed from the DISTRICT. It is expressly understood that time is of the essence.

3.4 Insurance as Condition of Commencing Services. CONTRACTOR shall not commence Services under this Agreement until the insurance required under Paragraph 25 of the General Terms and Conditions (Exhibit "B") has been obtained, and satisfactory proof of such insurance has been submitted to, and approved by, the DISTRICT.

3.5 Bonds as Condition of Commencing Services. If required, prior to commencing any portion of the Work, the CONTRACTOR shall furnish separate payment and performance bonds (Exhibits "C" and "D") for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Agreement and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties. All bonds shall be provided on the forms attached to this Agreement within five (5) days of the DISTRICT's award to the CONTRACTOR.

To the extent, if any, that the Agreement Price is increased in accordance with the Agreement, the CONTRACTOR shall, upon request of the DISTRICT, cause the amount of the bonds to be increased

accordingly and shall promptly deliver satisfactory evidence of such increase to the DISTRICT. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the Agreement Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the CONTRACTOR will release the surety. If the CONTRACTOR fails to furnish the required bonds, the DISTRICT may terminate the Agreement for cause. 3.6 Payment for Services. Payment for Services shall be made in lump sum upon final completion of Services and the DISTRICT's written acceptance of the Services, which payment shall not be unreasonably withheld.

3.7 District Acceptance of Services. Acceptance by DISTRICT of Services rendered for purposes of payment will be the responsibility of Jeff Pylman at the following telephone number: (310) 551-5100 ext. 2390.

3.8 General Terms and Conditions. The General Terms and Conditions set forth in Exhibit "B" are hereby incorporated by reference. By executing this Agreement, CONTRACTOR agrees to comply with this Agreement and the General Terms and Conditions for a period of one (1) year from the date of final written approval by the DISTRICT.

3.9 Documents Constituting Agreement. The documents indicated below collectively constitute the entire Agreement, and shall be attached and maintained with a copy of this Agreement:

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<input checked="" type="checkbox"/> Work Specs/Scope of Work Statement	<input type="checkbox"/> Addendum Containing Specific Terms & Conditions
<input checked="" type="checkbox"/> Insurance Forms Listing District as Additional Insured	<input checked="" type="checkbox"/> Non-Collusion Affidavit
<input checked="" type="checkbox"/> Proposal Document and/or Quote Sheet	<input checked="" type="checkbox"/> Purchase Order No. _____
	<input type="checkbox"/> Bonds, if requested

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3.10 Labor Code Insurance Requirements. Pursuant to Section 1861 of the Labor Code, by signing this Agreement, the CONTRACTOR certifies that:

*"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."*

3.11 Federal Tax Identification Number. CONTRACTOR acknowledges that, under federal law, non-corporate recipients of \$600.00 or more are required to furnish a valid taxpayer identification number to the payer, and that a penalty may be imposed for failure to do so. In order to comply with these requirements, CONTRACTOR shall provide DISTRICT with its federal tax identification number or Social Security Number, whichever is applicable. By signing this Agreement, CONTRACTOR certifies that the number shown below his/her signature is CONTRACTOR's correct federal taxpayer identification number.

3.12 Mediation. Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.13 Entire Agreement/Amendments. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. The words Agreement and Contract may be used interchangeably. All exhibits referenced

herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance in the text hereof. The parties agree that the terms of this Agreement shall be controlling over any of the terms contained within Exhibit "A" attached hereto.

3.14 This Agreement may not be amended except by a writing signed by the DISTRICT and CONTRACTOR. No waiver, alternation or modification of the provisions of this Agreement shall be effective unless signed by both Parties.

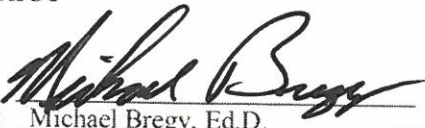
3.15 Severability. If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

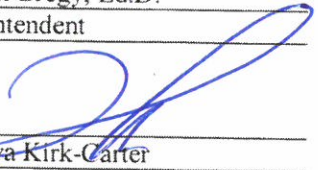
3.16 Exhibits and Recitals. All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

3.17 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one agreement.


**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement by their authorized officers as of the day and year first written above. By signing below, CONTRACTOR certifies under penalty of perjury that the number shown below is CONTRACTOR's correct federal taxpayer identification number.

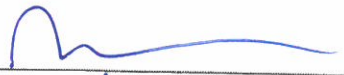
**BEVERLY HILLS UNIFIED SCHOOL  
DISTRICT**

By:   
Name: Michael Bregy, Ed.D.  
Title: Superintendent

Attest:   
By:   
Name: LaTanya Kirk-Carter  
Title: Asst Super Business Services

**CONTRACTOR**

By:   
Name: Casey Wondoborn  
Title: CFO

Attest:   
By:   
Name: Michael Martinez  
Title: CFO

Federal ID#: 20-3360077

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

Vertical Access Proposal dated 30 March 2018





TO: Beverly Hills Unified School District (BHUSD) PROJECT: BHHS-Wall Brace Relocation  
 255 S. Laskey Drive 241 S. Moreno Drive  
 Beverly Hills, CA 90212  
 OFFICE: 310-551-5100 DATE: 3/30/18  
 CELL: REPLY TO: Michael D Martinez  
 EMAIL: sford@bhUSD.org CELL #: 310-259-7666  
 ATTENTION: Stacy Ford PLAN DATE: PROPOSAL: 2017-3243 R2

#### SCAFFOLD PROPOSAL/ CONTRACT

#### SCOPE OF WORK:

Vertical Access, Inc. (VAI) is pleased to propose to Beverly Hills Unified School District (BHUSD) (Customer), the shifting out of the existing east & west elevation K-Rail by an additional 5', this will create a 13' gap between the exterior elevations and new interior side of (3) K-Rail sections. VAI will shift all K-Rail & Braces that are highlighted in Green on attached drawing. VAI will open up each entrance (4-total) at a minimum of 6' W to allow machinery to pass in and out of building. VAI anticipates 7-working days to complete this work. VAI will utilize a 10K reach lift to shift K-Rail, so VAI will require as much room as possible (20' out to shift K-Rails back).

QUOTE TOTALS: \$22,000.00

SCHEDULE OF VALUES		
Labor to Shift East & West K-Rails Away an Additional 5'	\$22,000.00	
Inspection by PE (4-Hours x \$250.00 each-Portal to Portal), if Required (Add)		

#### QUALIFICATIONS:

- \* Initial Engineering (EO-Prof Liability @ \$1M) & PE Stamped drawings will be an additional charge, see above.
- \* Bid is based on work being performed on straight time hours, 7AM-3:30PM (M-F).
- \* Scheduling of erection/tear down requires at least a 48-hour notification to VAI office personnel.
- \* Bid excludes cost of site-specific safety orientation, badging, and/or drug testing.
- \* VAI does not include the installation of inside guard & mid rails. If required based on distance from wall, an additional charge will apply.
- \* Pricing is based on United Brotherhood of Carpenters (Carpenters' Union) wages, Prevailing Wage.
- \* Additional OT Rental will be automatically billed once scaffolding goes into overtime. As such, the daily rental rate will be pro-rated based on the actual amount of scaffolding remaining on job at time of billing.
- \* This Proposal is subject to acceptance within 60 days. Billing rate subject to increased based on Union increase and COL increases.
- \* VAI to utilize 10K reach lift to move all K-Rail.
- \* Customer shall be responsible for patching of scaffold ties, bumps, and attachments at completion of the job.
- \* VAI will be compensated for all delays beyond the control of VAI and/or for any work performed beyond the original scope of this Proposal/Contract.
- \* VAI shall work from truck at all elevations and have no more than a 25' pack of material at anytime. Additional charges may be assessed if these requirements are not possible or allowed.

#### EXTRA WORK PERFORMED ON A T&M BASIS:

All additional work shall be performed on a time and material basis. All hours shall be billed pursuant to the Carpenters' Union, 4-hour minimum per day per man or a dry-run charge of 2-hours each, plus trucking. Billing rate to increase by \$2.75 every year on July 1st. Private work rates @ \$94.30/hour (straight time), \$128.70/hour (overtime), & \$158.50/hour (double-time). Prevailing wage rates @ \$97.30/hour (straight time), \$131.70/hour (overtime), & \$161.70/hour (double-time). Standard straight time (eight (8) hours or less in a single day). Overtime will be billed for hours 8-12/hours per day. Double time hours (in excess of twelve (12) hours in a single day and for anytime on Sundays or holidays). All hours shall be billed on a portal-to-portal basis. There is also a 22' stake bed truck trip charge at \$275.00 (1-60 miles) minimum based on distance. All additional material rent shall be added to extra work tickets. Hourly wages do not include per diems, hotels, travel, or other associated expenses. These charges will be added to billing. Any T&M/extra work orders signed by any Customer representative shall be binding and billable after extra work is completed. Any T&M/extra work will be performed as an accommodation for Customer. A formal change order must be sent to VAI within 48-hours to cover additional work performed and signed for on the extra work ticket.

#### PAYMENT TERMS:

Invoices in connection with delivery, labor (installation and/or tear down), rental, and return trucking of this equipment will be issued to Customer on a monthly basis or when work is completed. All invoices are payable in full and payment is not contingent upon Customer receiving funds from any other party. VAI will not allow retention to be withheld. Scaffolding is a service and as such, is exempt from retention. VAI does not agree to any "Paid If/When Paid" terms and as such, the Customer's contract with the owner of the project (Owner) or general contractor for the project (GC) shall have no bearing on VAI's payment terms or contract. VAI will not agree blindly to any contract terms between Customer and the Owner or GC. If VAI is required to enter into a customer contract agreement, this Proposal/Contract, as listed in its entirety, shall be added to any such agreement as an addendum or attachment with full inclusion of the terms of this Proposal/Contract. In the event Customer issues a work order, purchase order, or other written or verbal approval to start the work listed in the Scope of Work in this Proposal/Contract, then it is understood that Customer accepts this VAI Proposal/Contract in its entirety. Terms are Net 30 days. Invoices not paid within 60 days of the invoice date shall be subject to an interest rate of 1 1/2% per month on any unpaid balance.

3/30/18

Vertical Access, Inc  
 10035 Greenleaf Avenue, Santa Fe Springs, CA 90670  
 (T) 562-777-0091 (F) 562-321-2640  
 CA License 869223

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### **INSTALLATION & TEARDOWN CONDITIONS:**

All furnished equipment/material by VAI, as described herein is subject to these stated conditions:

VAI will follow the Fall Protection Plan (1671.1 Title 8 in Article 24) during the erection, repair, extra work, and tear down phases of work. VAI does not include provisions for tie-off in any manner during any phase of scaffolding work. If tie-offs are required by either Customer, Owner, or GC, they shall respectively provide OSHA compliant tie-off points capable of supporting (#5,000lbs) per point. Customer shall provide clear scaffold work areas. All other workers (trades) shall not be allowed to work in the scaffold work area during scaffolding erection and or tear down phases of work. Customer shall be held responsible for any lost time and additional trip charges. VAI will include toe-boards above entrances and exits only; all other areas shall be an additional charge. If toe-boards are required in other areas, an \$8.00 per toe-board charge shall be added to billing (includes installation, rental, and teardown).

### **HAZARDOUS MATERIAL EXPOSURE: ~~RE APPLIES~~**

If any/all scaffold equipment erected or rented by VAI has become exposed to hazardous materials such as: Asbestos (ACM), Lead (LBP), Mold, etc. the customer agrees to clean and/or decontaminate equipment prior to scheduling the return or dismantling of scaffolding. VAI may require verification certifying that the equipment is clean and free of any hazards. Rental will continue until verification is received by VAI. Any damages to wall braces to be billed as required.

### **4'x4' Plywood Trash Chute: (NIC)**

Chute scaffold to be attached to each floor level.

VAI will install 1/2" plywood that is new or in fair to good shape.

VAI to cut access hole at top level only, customer to make access debris hole as work proceeds down.

Any damage to chute during use shall be repaired by VAI on a T&M basis. Customer/Contractor shall assume all risk & agree to indemnify

VAI from all claims, losses, fines, or any liability resulting from repairs made by others.

If required, steel plated (1/4" x 4' W x 8' L) ramps at bottom of chute are an additional charge (unless otherwise stated).

### **36" W OSHA Compliant Stair Tower: (NIC)**

Stair Tower rated at 25PSF at all levels.

VAI will install Stair Tower within 5' away from exterior wall elevation.

VAI will require a 14' W x 8' L clear area to set stair tower.

### **SCAFFOLD TERMS AND CONDITIONS**

1. It is understood and agreed that you, the Customer shall:

A. Maintain and use the equipment furnished by VAI in conformity with safe practices, applicable standards, the Safety Rules and Instructions issued by VAI, and in compliance with the requirements of OSHA and all other applicable legal requirements.

B. Determine the strength and adequacy of any surfaces (ground floor or elevated roof) or structures upon which the scaffold is to be placed and ensure that all surfaces or structures shall support the intended scaffold loads. If re-shoring or cribbing is required, an additional

C. Assure that the butts and ties, which VAI installs to secure the scaffolding to the building or structure are maintained in place. If ties or butts are removed for any reason, Customer will replace them with adequate substitute ties and butts so that the scaffold is at all times properly secured.

D. Not permit the scaffold to be moved, dismantled, re-erected, or altered except as otherwise specified herein, nor allow the scaffolding to be covered or enclosed without prior written consent by VAI.

E. Acknowledge that once the scaffolding is erected and is initially inspected by VAI's "competent person" it becomes the responsibility of Customer and is deemed acceptable by Customer. Customer shall perform daily inspections prior to each use, and before each shift. Customer agrees to notify VAI immediately if there are any alterations or changes from the original set. If repairs to the scaffold are needed, they shall be done on a T&M basis, by VAI prior to further use.

F. Require that any other person, company, or entity, including the Owner, GC, or any other subcontractor, have an authorized representative read and sign the Vertical Access, Inc. Scaffold Equipment Release, Indemnification and Hold Harmless Acknowledgment & Agreement attached hereto as Exhibit "A" before they are allowed to access and/or work on any scaffold provided by VAI pursuant to this Proposal/Contract.

2. VAI will make every effort to deliver, erect, and dismantle this equipment as required on reasonable notice, but shall not be held liable for loss or damage arising from late delivery, delayed erection or dismantling, or other non-fulfillment of contract terms by reason of acts of God, fires, labor disturbances, strikes, delays in transportation, accidents, civil or military authority, or any other cause whatsoever unavoidable or beyond VAI's control.

3. Customer hereby acknowledges and agrees that any legal or contractual default on its part with respect to the performance of its obligations hereunder, including, but not limited to, payment, shall give VAI the right without further responsibility, in addition to any other legal remedies available to VAI, to enter upon the premises where its equipment is located and repossess the equipment without any obligation on the part of VAI to resort to legal process.

4. To the extent that any term or provision of the Proposal/Contract is deemed void or not in compliance with the applicable law, that term or provision alone will be void, while all other terms or provisions will be enforceable to the fullest extent of the law. This Proposal/Contract may be executed in counterparts, which, collectively, shall constitute one original.

5. Customer shall, except for sole negligence by VAI, indemnify, defend, and hold VAI harmless from liability, loss, or expense including, but not limited to, reasonable attorney's fees, on account of injuries to persons, including death or damage to property, provided such injuries, death, or damages can be attributable in whole or in part to either Customer's negligence, willful act(s), or failure to comply with the aforementioned requirements, including any negligence or such failure on the part of Customer's agents or subcontractors, or anyone Customer allows to use, alter, improve, or repair the scaffold or structure(s) to which the scaffold is connected, including by the Owner and/or GC. This indemnification shall be interpreted and applied to the fullest extent permitted by applicable law. If the scaffold is altered by anyone other than VAI, Customer agrees to indemnify and hold harmless VAI from claims, losses, fines, and all other damages resulting from the alteration of the scaffolding from its original setup.

6. VAI shall be reimbursed for all attorney's fees, collection costs, and any other costs associated with a lawsuit or collection process, arising out of or related to this Proposal/Contract.

7. VAI will provide an insurance certificate with the following per project coverage: 1/29/2017 thru 1/29/2018

Workers' Compensation insurance at \$1,000,000.00 per occurrence;

Automobile at \$1,000,000.00

General Liability at \$1,000,000.00 Aggregate at \$2,000,000.00 Excess at \$3,000,000.00. Total Aggregate at \$5,000,000.00

OCIP/CCIP deduction already taken out of base quote totals.

**\*\* Waiver of Subrogation Endorsements (Additional Charges Apply) will only be provided with the following language agreed to between VAI and Customer: The Waiver of Subrogation will not apply to damages or injuries to Vertical Access employees and/or property caused by Customer, or its agents.**

Thank you for the opportunity to quote this project. To execute this contract simply complete the information below, sign and return via fax # 562-321-2640 or email scanned back to mmartinez@vaivest.com as soon as possible.

Yours Truly,

ACCEPTED BY: **Beverly Hills Unified School District (BHUSD)**

VERTICAL ACCESS, INC.

BY:



Michael D. Martinez  
President/ CEO

BY:

Signature

BY:

Printed Name

TITLE:

DATE:

3/30/18

DATE:

Proposal #:

2017-3243 R2

PO #:

**EXHIBIT "B"**  
**GENERAL TERMS AND CONDITIONS**

1. **PROPOSAL ACCEPTANCE** Proposals for services and/or work (both referred to herein as "work") are subject to acceptance by the signing of an agreement and issuance of an appropriate purchase order at any time within sixty (60) days after the receipt of quotes unless otherwise stipulated. The District reserves the right to accept or reject any and all quotes and reserves the right to waive any informality.
2. **SITE EXAMINATION** Contractor must examine the site and certify all measurements, specifications and conditions affecting the work to be performed at the site. By submitting their quote a contractor warrants that they have made such site examination as they deem necessary as to the condition of the site, its accessibility for materials, workers and utilities and ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to such matters or for any other undiscovered conditions on the site.
3. **DRUG/TOBACCO-FREE FACILITIES** All District facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of District facilities.
4. **EQUIPMENT AND LABOR** The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized district representative indicated in the work specifications attached hereto.
5. **SUBCONTRACTORS** Contractor agrees to bind every subcontractor by terms of the Agreement as far as terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Agreement, Contractor shall be fully responsible to the District for acts and omissions of the subcontractor and of persons either directly or indirectly employed by the Contractor. Nothing contained in the Agreement documents shall create any contractual relations between any subcontractor and the District.
6. **SAFETY AND SECURITY** It shall be the responsibility of the Contractor to ascertain from the District the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present. All employees of Contractor, including those of subcontractor, working on a school site while children are present shall have been cleared by the Department of Justice as not having been convicted of serious or violent felonies as per Education Code 45125.1 and 45125.2..
7. **DEFAULT BY CONTRACTOR** When Contractor, or any subcontractor, or vendor shall fail to deliver any article or service or shall deliver any article or service which does not conform to the work specifications, the District may, upon five (5) business days prior written notice describing the default, at its option, annul and set aside the Agreement entered into with said Contractor, subcontractor or vendor either in whole or in part, and make and enter into a new Agreement in such manner as seems to the Board of Education to be to the best advantage of the District. Any failure for furnishing such articles or services by reason of the failure of the Contractor, subcontractor or vendor, as above stated, shall be a liability against the Contractor and his sureties. The Board of Education reserves the right to cancel any articles or services which the Contractor may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the Contractor provided satisfactory proof is furnished to the Board of Education, if requested.
8. **TERMINATION** The District has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Contractor. In such event, District 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 work completed and/or being abandoned. District shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.
9. **AGREEMENT CHANGES** No changes or alterations to this Agreement shall be made without specific prior written approval by the District.
10. **WORKERS** Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from the job site and shall not again be employed at site without written consent from the District.
11. **SUBSTITUTION** No substitutions of materials from those specified in the proposal or Work Specifications shall be made without the prior written approval of the District.
12. **CONTRACTOR SUPERVISION** Contractor shall provide competent supervision of personnel employed on the job site, use of equipment, and quality of workmanship.
13. **CLEAN UP** Debris shall be removed from the premises. Job site shall be in order at all times when work is not being performed and shall be maintained in a reasonably clean condition.
14. **ACCESS TO WORK** District representatives shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for access.



15. **PROTECTION OF WORK AND PROPERTY** The Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.
16. **OCCUPANCY** District reserves the right to occupy buildings at any time before formal Agreement completion and such occupancy shall not constitute final acceptance or approval of any part of the work covered by this Agreement, nor shall such occupancy extend the date specified for substantial completion of the work.
17. **ASSIGNMENT OF AGREEMENT** The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations under this Agreement without the prior written consent of the District.
18. **FORCE MAJEURE CLAUSE** The parties to the Agreement shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party (ies), provided that it is satisfactorily established that the nonperformance is not due to the fault or neglect of the party not performing.
19. **INDEMNIFICATION** To the fullest extent permitted by law, Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses; provided, however, that Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of District. Contractor shall reimburse District 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 District, its directors, officials, officers, employees, agents, or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.
20. **PAYMENT** Unless otherwise specified, the Contractor shall render invoices in triplicate for materials delivered or services performed under the Agreement/Purchase Order. The District shall make payment for materials, supplies or other services furnished under this Agreement in lump sum on completion of the work within thirty (60) days after delivery to and approval by the authorized District representative of all invoices and other documentary evidence reasonably required by the District (which approval shall not be unreasonably withheld).
21. **PERMITS AND LICENSES** The Contractor and all of his employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, such licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.
22. **CONTRACTOR NOT OFFICER, EMPLOYEE, OR AGENT OF DISTRICT** While engaged in carrying out other terms and conditions of the purchase order, the Contractor is an independent Contractor, and not an officer, employee, agent, partner, or joint venture of the District.
23. **ANTI-DISCRIMINATION** It is the policy of the Beverly Hills Unified School District Board of Education that in connection with all work performed under construction and purchasing agreements, there be no discrimination against any employee engaged in the work because of race, color, sex, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with the applicable Federal and California Laws, including, but not limited to the California Fair Employment Practice Act, beginning with Labor Code, Section 1410 and Labor Code, Section 1735. In addition, the Contractor agrees to require such compliance by all subcontractors employed on the work by him.

24. **LABOR CODE** The Contractor shall comply with the applicable provisions of the California Labor Code, Division 3, part 7, Chapter 1, Articles 1-5, including the payment of the general prevailing rates for public works projects of more than One Thousand Dollars (\$1,000). Current determinations can be found at the California Department of Industrial Relations website: [www.dir.ca.gov/DLSR/statistics\\_research.html#pwd](http://www.dir.ca.gov/DLSR/statistics_research.html#pwd)
25. **INSURANCE** Consultant shall comply with the following insurance provisions, unless one or more paragraphs are specifically waived by the District in writing.
- a) **Time for Compliance.** Contractor shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to District that the subcontractor has secured all insurance required under this Section.
  - b) **Minimum Requirements and Limits.** Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
    - i. **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional Liability*: Coverage which is appropriate to the Consultant's profession, or that of its consultants or subcontractors.
    - ii. **Minimum Limits of Insurance.** Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability*: Not less than \$1,000,000 per claim/ \$2,000,000 aggregate.
  - c) **Insurance Endorsements.** The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:
    - i. **General Liability.** The general liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.
    - ii. **Automobile Liability.** The automobile liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess

of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

- iii. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.
  - iv. Professional Liability. Consultant and its sub-consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.
  - d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to District, its directors, officials, officers, employees, agents and volunteers.
    - i. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.
    - ii. Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-: VII, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the District.
    - iii. Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by District if requested. District reserves the right to require complete, certified copies of all required insurance policies, at any time.
26. WARRANTY/QUALITY The Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defects or failures of materials for a minimum period of two (2) years from delivery or the final completion date for the work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.
27. ASSIGNMENT OF CLAIMS In submitting a quote on this public works project, or any subcontractor agreeing to supply goods, services, or materials, and entering an agreement pursuant thereto, the Contractor and/or subcontractor do offer and agree to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act, Chapter 2 (commencing with Section 116700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the public works agreement or the subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor without further acknowledgment by the parties.
28. COMPLIANCE WITH LAWS Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct or work as indicated or specified. If Contractor observes that any of the work required by this Agreement is at variance with any such laws, ordinances, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work knowing it to be in violation of such laws, ordinances, rules or regulation, and without first notifying the District of such violation, Contractor shall bear all costs arising

therefrom.

29. **TIME IS OF THE ESSENCE** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.
30. **GOVERNING LAW** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
31. **ATTORNEY'S FEES** If any action is brought by either party against the other party hereunder, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.
32. **NO ORAL MODIFICATION** Any waiver, amendment, modification, consent or acquiescence with respect to this Agreement or any provision of this Agreement or with respect to any failure to perform in accordance therewith shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby.
33. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
34. **ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA)** All Agreement (contract) Work that is performed for the Beverly Hills Unified School District by outside contractors or workers must meet all of the regulations that have been set forth in the AHERA rule. This means that all work which could disturb the integrity of any Asbestos Containing Building Material (A.C.B.M.) needs to be approved by the District. This refers to the sawing, grinding, cutting, or drilling of any A.C.B.M. in occupied areas of District buildings.
35. **ADDITIONAL TERMS FOR CONSTRUCTION SERVICES**
  - a) **State Contractor's License**. For construction work, Contractor shall possess the following classification of State contractor's license throughout the duration of the Agreement:
  - b) **Bonds**. If payment for work under this Agreement is for more than \$25,000, the Contractor will be required at the time of the execution of the Agreement to furnish Payment and Faithful Performance Bonds in amounts not less than one hundred percent (100%) of the Total Agreement Price. These bonds shall be secured from a surety company satisfactory to the District, shall be submitted on the District's prescribed bond forms, and the Contractor thereon shall pay the premiums. 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 Los Angeles 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 two(2) 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 Agreement. Said bonds shall be furnished within ten (10) days after award of the Agreement (aka contract) and before commencement of work.
  - c) **Retention**. As applicable, for Agreements 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, District will withhold as retention ten percent (10%) of all billings and the Total Agreement Price until final completion for projects exceeding \$5,000 and acceptance of the project. District, 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 District, District may withhold an amount from the final payment not to exceed one hundred fifty percent (150%) of the disputed amount, as well as any other amounts permissible under this Agreement and/or California law.
  - d) **Substitution of Securities**. As applicable, pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by District to ensure the performance under the Agreement. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the District, with the State or federally chartered bank as the escrow agent, who shall return such securities to the Contractor upon satisfactory



completion of the Agreement. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the District, which provides that no portion of the securities shall be paid to the Contractor until the District has certified to the escrow agent, in writing, that the Agreement has been satisfactorily completed. District shall certify that the Agreement 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.

- e) Time for Completion/Liquidated Damages. Work shall commence on \_\_\_\_\_, 20\_\_\_\_ and shall be completed by Contractor and usable by the District on or before \_\_\_\_\_, 20\_\_\_\_. If the Work is not completed and usable by the District, it is understood that the District 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 District as fixed and liquidated damages, and not as a penalty, the sum of \_\_\_\_\_ (\$\_\_\_\_\_) 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 District may deduct that amount from any money due or that may become due the Contractor under the Agreement.
- f) Procedure for Resolving Disputes. The parties to this Agreement 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.
- g) Compliance With State Storm Water Permit: As applicable, and at no additional cost to the District, Contractor shall be required to comply with all aspects of the State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity 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. If an existing Storm Water Permit and/or a Storm Water Pollution Prevention Plan is in place, Contractor shall comply with the requirements of the District's Permit.
- h) Non-collusion Affidavit. If bids or proposals were solicited by the District, Contractor shall sign the Non-collusion Affidavit set forth below.

<p><b>NONCOLLUSION AFFIDAVIT</b> (if bids or proposals are solicited)</p>	
<p>I, <u>Casey Wendt</u>, being first duly sworn, depose and say that he or she is, <u>CFO</u></p>	<p>of the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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 that of any other bidder, or to secure any advantage against the public body awarding the contract (aka Agreement) of anyone interested in the proposed contract (Agreement); that all statements contained in the bid are true; and further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.</p>
<p>I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>	
<p><u>[Signature]</u></p>	

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completion of the Agreement. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the District, which provides that no portion of the securities shall be paid to the Contractor until the District has certified to the escrow agent, in writing, that the Agreement has been satisfactorily completed. District shall certify that the Agreement 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.

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- h) Non-collusion Affidavit. If bids or proposals were solicited by the District, Contractor shall sign the Non-collusion Affidavit set forth below.

<p><b>NONCOLLUSION AFFIDAVIT</b> (if bids or proposals are solicited)</p> <p>I, <u>Casey Vandeborn</u> being first duly sworn, depose and say that he or she is, <u>CEO</u> of the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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 that of any other bidder, or to secure any advantage against the public body awarding the contract (aka Agreement) of anyone interested in the proposed contract (Agreement); that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.</p> <p>I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p> <p><u>Swall</u></p>	
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