



**FACILITIES DEPARTMENT
321 NORTH IOWA STREET
FALLBROOK, CA 92028
(760) 731-5452**

BID PACKAGE DOCUMENTS

385-19-20

**Roller Shades at
POTTER JR HIGH SCHOOL**

BID OPENING:

March 4, 2020 – 10:00 AM

TO BE HELD AT:

**FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT'S
FACILITIES DEPARTMENT
321 NORTH IOWA STREET
FALLBROOK, CA 92028**

DOCUMENT 00010

CONTENTS

DOCUMENT	DESCRIPTION	PAGE
00020	Notice to Bidders.....	3-4
00030	Scope of Work/Specifications.....	5-9
00100	Instructions to Bidders.....	10-20
00200	Contractor's Certification Regarding Workers' Compensation.....	21
00300	*Bid Form.....	22-25
00410	*Bid Bond	26-27
00420	*Department of Industrial Relations Certification.....	28
00430	*List of Subcontractors Form.....	29
00460	*Information Required of Bidders.....	30-36
00470	Asbestos-Free Materials Certification.....	37
00480	*Non-Collusion Affidavit.....	38
00500	Agreement Sample.....	39-41
00600	Performance Bond.....	42
00610	Payment Bond.....	43
00620	Contractor & Subcontractor Fingerprinting Certification	44-45
00630	Drug- Free Workplace Certification.....	46-47
00640	Alcohol Beverage & Tobacco-Free Campus Policy.....	48
00720	Special Conditions.....	49-53

*Denotes pages that must be completed and returned with the sealed bid by 10:00 AM on March 4, 2020. Please contact Kirsten Martin at 760-731-5452 if additional information is needed.

DOCUMENT 00020**NOTICE TO CONTRACTORS CALLING FOR BIDS**

NOTICE IS HEREBY GIVEN that the Governing Board of the Fallbrook Union Elementary School District is inviting qualified and experienced contractors to submit sealed bids for the project described below

BID # 385-19-20 Roller Shades At POTTER JR HIGH SCHOOL

PLACE FOR SUBMITTING BIDS: Bids must be delivered to the District at the following location:
Fallbrook UESD, Facilities Department, 321 N Iowa St, Fallbrook, CA 92028

BID DEADLINE: Bids must be delivered to and received by the District at the location specified above as the place for submitting bids not later than the date and time specified below, at which time the District will publicly open and read all bids. Any bid received by the District after the Bid Deadline shall be returned to the bidder unopened. Bids must be received by the District no later than the following Bid Deadline:

Date: March 4, 2019 Time: 10:00 AM

OBTAINING OFFICIAL BID DOCUMENTS: Prospective bidders may secure a set of electronic bid documents as of [February 7, 2020](#) for the project at the District's website: www.fuesd.org or be obtained at the Mandatory Pre-Bid meeting. The District is not responsible for the completeness of bid documents from any other source. Notification of addendums will only be made to contractors that have attended the mandatory pre bid meeting.

REQUIREMENTS FOR BID: Bids must be submitted on the Bid Form provided by the District and included in the bid documents. Each bid must strictly conform with and be responsive to this Notice Inviting Bids, the Instructions for Bidders, and other Contract Documents. The District reserves the right to reject any and all bids or to waive any irregularities or informalities in any bids or in the bidding. Except as provided in Public Contract Code Section 5100 *et seq.*, no bidder may withdraw a bid for a period of sixty (60) calendar days after the opening of bids.

ADDITIVE AND DEDUCTIVE ALTERNATES: If the District requires that bids include additive or deductive alternates, the Bid Form will describe the specific alternates required. The award of the contract for the Project will be based upon the lowest responsive bid. After selecting the low bidder, the District will select the alternates and unit price work it will include in the contract award. The District also may add to the Contract, up to 2 months after award of contract, any alternates or unit price work not initially included in the contract award, and at the prices bid.

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

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

BID #385-19-20**Contractor License Requirement: D-52, Window Coverings**

MANDATORY PRE-BID CONFERENCE AND SITE VISIT: The District will conduct a pre-bid conference and site visits on **February 20, 2020 at 10:00 AM** for the purpose of acquainting all prospective bidders with the bid documents and the work site. Attendance is mandatory, and any bidder that does not attend will be disqualified from work on the Project. The pre-bid meeting will begin at **Potter Jr High School, 1743 Reche Rd, Fallbrook, CA 92028**.

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

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

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

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

ADDITIONAL REQUIREMENTS: Minority, women, and disabled veteran contractors are encouraged to submit bids. This bid is not subject to Disabled Veteran Business Enterprise requirements.

For further information, contact: Kirsten Martin, 760-731-5452

Dated this 5th day of February, 2020

Clerk of the Governing Board
Lisa Masten
FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT,
Of San Diego County, California

Publication: The Daily Transcript

Publication Dates: **February 7th and February 14th, 2020**

DOCUMENT 00030

SCOPE OF WORK

Roller Shades AT POTTER JR HIGH SCHOOL

BID #385-19-20

Windows to receive roller shades to be determined during site walk.

SECTION 12 24 13 – ROLLER WINDOW SHADES

PART 1 GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section Includes:
 - 1. Manually operated roller shades with single rollers, chain driven.
- B. Related Sections:
 - 1. Section 06 10 53 “Miscellaneous Rough Carpentry”.
 - 2. Section 09 51 13 - Acoustical Panel Ceilings.
 - 3. Division 26 sections for electrical service and connections for motors, motor controls, internal communication, low voltage wiring and data transfer, and connection to Internet.

1.3 REFERENCES

- A. ASTM G 21 - Standard Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi.
- B. NFPA 70 - National Electrical Code.
- C. NFPA 701 - Fire Tests for Flame-Resistant Textiles and Films.
- D. UL 325 - ANSI/CAN/UL Standard for Door, Drapery, Gate, Louver, and Window Operators and Systems.

1.4 SUBMITTALS

- A. Product Data: Manufacturer's data sheets on each product to be used, including:
 - 1. Preparation instructions and recommendations.
 - 2. Styles, material descriptions, dimensions of individual components, profiles, features, finishes and operating instructions.
 - 3. Storage and handling requirements and recommendations.

4. Mounting details and installation methods.

- B. Shop Drawings: Plans, elevations, sections, product details, installation details, operational clearances, and relationship to adjacent work.
- C. Window Treatment Schedule: For all roller shades. Use same room designations as indicated on the Drawings and include opening sizes and key to typical mounting details.
- D. Selection Samples: For each finish product specified, one set of shade cloth options and aluminum finish color samples representing manufacturer's full range of available colors and patterns.
- E. Verification Samples: For each finish product specified, one complete set of shade components, unassembled, demonstrating compliance with specified requirements. Shadecloth sample and aluminum finish sample as selected. Mark face of material to indicate interior faces.
- F. Maintenance Data: Methods for maintaining roller shades, precautions regarding cleaning materials and methods, instructions for operating hardware and controls.
- G. Warranty: Provide manufacturer's warranty documents as specified in this Section.

1.5 QUALITY ASSURANCE

- A. Manufacturer Qualifications: Obtain roller shades system through one source from a single manufacturer with a minimum of ten years experience and minimum of five projects of similar scope and size in manufacturing products comparable to those specified in this section.
- B. Installer for Roller Shade System - Qualifications: Installer trained and certified by the manufacturer with a minimum of ten years experience in installing products comparable to those specified in this section.
- C. Fire-Test-Response Characteristics: Passes NFPA 701 small and large-scale vertical burn. Materials tested shall be identical to products proposed for use.
- D. ShadeCloth Anti-Microbial Characteristics: 'No Growth' per ASTM G 21 results for fungi ATCC9642, ATCC 9644, ATCC9645.
- E. Mock-Up: Provide a mock-up of one roller shade assembly for evaluation of mounting, appearance and accessories.
 - 1. Locate mock-up in window designated by District.
 - 2. Do not proceed with remaining work until, mock-up is accepted by District.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver shades in factory-labeled packages, marked with manufacturer and product name, fire-test-response characteristics, and location of installation using same room designations indicated on Drawings and in the Window Treatment Schedule.

1.7 WARRANTY

- A. Roller Shade Hardware and Chain Warranty: Manufacturer's standard non-depreciating twenty-five year limited warranty.
- B. Standard Shadecloth: Manufacturer's standard twenty-five year warranty.
- C. Roller Shade Installation: One year from date of Substantial Completion, not including scaffolding, lifts or other means to reach inaccessible areas, which are deemed owners responsibility.

PART 2 PRODUCTS

2.1 MANUFACTURERS

- A. Basis-of-Design Manufacturer: **MechoShade Systems, Inc.**,
- B. Equal or better

2.2 SHADECLOTH

- A. Visually Transparent Single-Fabric Shadecloth: MechoSystems, **ThermoVeil** group, single thickness, opaque non-raveling 0.035-inch (0.762 mm) thick vinyl fabric, woven from 0.018-inch (0.457 mm) diameter extruded vinyl yarn comprising of 25 percent polyester and 75 percent reinforced vinyl, in colors selected from manufacturer's available range:
 - 1. Dense Basket Weave, 1500 series: 3 percent open, 2 by 2 dense basket-weave pattern. VLT_range 5 to 11 percent.
 - 2. Color: Selected from manufacturer's standard colors. COLOR: TBD

2.3 SHADE BANDS

- A. Shade Bands: Construction of shade band includes the fabric, the enclosed hem weight, shade roller tube, and the attachment of the shade band to the roller tube. Sewn hems and open hem pockets shall not be acceptable.
 - 1. Concealed Hembar: Shall be continuous extruded aluminum for entire width of shade band and with the following characteristics:
 - a. Hembar shall be heat sealed on all sides.
 - b. Open ends shall not be accepted.
 - 2. Shade band and Shade Roller Attachment:
 - a. Use extruded aluminum shade roller tube of a diameter and wall thickness required to support shade fabric without excessive deflection.
 - b. Provide for positive mechanical attachment of shade band to roller tube; shade band shall be made removable / replaceable with a "snap-on" snap-off" Spline mounting, without having to remove shade roller from shade brackets or insert shadeband from the side.
 - c. Mounting Spline shall not require use of adhesives, adhesive tapes, staples, and/or rivets.
 - d. Any method of attaching shade band to roller tube that requires the use of: adhesive, adhesive tapes, staples, and/or rivets, does not meet the performance requirements of this specification and shall not be accepted.

2.4 ROLLER SHADE COMPONENTS AND REQUIREMENTS

- A. Access and Material Requirements:
 - 1. Provide shade hardware allowing for the removal of shade roller tube from brackets without removing hardware from opening and without requiring end or center supports to be removed.
 - 2. Provide shade hardware that allows for removal and re-mounting of the shade bands without having to remove the shade tube, drive or operating support brackets.
- B. Manual Operated Chain Drive Hardware and Brackets:
 - 1. Provide for universal, regular and offset drive capability which enables the drive chain to always fall in front of the fabric plane.
 - 2. Provide hardware capable for installation of a removable fascia, for both regular and/or reverse roll, which shall be installed without exposed fastening devices of any kind.
 - 3. Provide shade hardware system that allows for removable regular and/or reverse roll fascias to be mounted continuously across two or more shade bands without requiring exposed fasteners of any kind.

4. Provide shade hardware system that allows for operation of multiple shade bands (multi-banded shades) by a single chain operator, subject to manufacturer's design criteria. Connectors shall be offset to assure alignment from the first to the last shade band
 5. Provide shade hardware system that allows multi-banded, manually-operated shades to be capable of smooth operation when the axis is offset a maximum of 6 degrees on each side of the plane perpendicular to the radial line of the curve, for a 12 degrees total offset.
 6. Provide positive mechanical engagement of the drive mechanism to the shade roller tube. Friction-fit connectors for the drive mechanism connection to the shade roller tube are not acceptable.
 7. Provide shade hardware constructed of minimum 16 ga. 0.060 in. (1.52 mm) thick plated steel or heavier as required to support 150 percent of the full weight of each shade.
- C. Drive Chain: #10 qualified stainless steel chain rated to 100 lb. (45 kg) minimum breaking strength. Nickel plate chain shall not be acceptable.

2.5 ACCESSORIES

- A. Fascia:
1. Continuous removable extruded aluminum fascia that attaches to shade mounting brackets without the use of adhesives, magnetic strips, or exposed fasteners.
 2. Fascia shall be able to be installed across two or more shade bands in one piece.
 3. Fascia shall fully conceal brackets, shade roller and fabric on the tube.
 4. Provide bracket / fascia end caps where mounting conditions expose outside of roller shade brackets.
 5. Fascia shall include a channel for application of flexible material (shlegel) to closing off any light leakage between the fascia and a window frame, mullion, ceiling and/or any other horizontal surface.
 6. Fascia shall attach directly to the roller shade bracket without the need to install additional mounting hardware. Exposed fasteners shall not be allowed.
 7. Fascia shall positively lock in a top-down installation method to help prevent accidental detachment.

PART 3 EXECUTION

3.1 PREPARATION

- A. Remove and dispose of existing window coverings on all windows to receive new coverings.
- B. Clean surfaces thoroughly prior to installation.
- C. Prepare surfaces using the methods recommended by the manufacturer for achieving the best result for the substrate under the project conditions.

3.2 RESPONSIBILITIES FOR INSTALLATION

- A. Install roller shades level, plumb, square, and true according to manufacturer's written instructions, and located so shade band is not closer than 2 inches (50 mm) to interior face of glass. Allow proper clearances for window operation hardware.
- B. General Contractor Responsibilities:
1. Provide power panels and circuits of sufficient size to accommodate roller shade manufacturer's requirements, as indicated on the mechanical and electrical drawings and manufacturer's shop drawings.
 2. Adjust and balance roller shades to operate smoothly, easily, safely, and free from binding or

malfunction throughout entire operational range.

3.3 INSTALLATION OF ROLLER SHADES

- A. Install shades such that the shade band is not closer than 2 inches (50 mm) to the interior face of the glass. Allow proper clearances for window operation hardware.
- B. Adjust, align and balance roller shades to operate smoothly, easily, safely, and free from binding or malfunction throughout entire operational range.

3.4 CLEANING AND PROTECTION

- A. Clean roller shade surfaces after installation, according to manufacturer's written instructions.
- B. Protect installed products until completion of project.
- C. Touch-up, repair or replace damaged products before Substantial Completion.

END OF SECTION

DOCUMENT 00100**INSTRUCTIONS TO BIDDERS**

WARNING: READ THESE INSTRUCTIONS FOR BIDDERS AND OTHER CONTRACT DOCUMENTS CAREFULLY. DO NOT ASSUME THAT THE DOCUMENTS ARE THE SAME AS SIMILAR DOCUMENTS YOU MAY HAVE SEEN, EVEN IF PREVIOUSLY PROVIDED BY THE DISTRICT.

1. Review of Plans and Specifications

Each bidder, at its own expense and prior to submitting its bid, shall thoroughly review and become familiar with all of the plans and specifications for the Project. A bidder is required to review the plans and specifications only in its capacity as a contractor, not as a licensed design professional. Each bidder must report to the District any errors or omissions in the plans and specifications revealed through such review.

2. Examination of Site and Contract Documents

Each bidder, at its own expense and prior to submitting its bid, shall visit the site of the Project and become fully acquainted with the conditions relating to the construction and labor so that the bidder fully understands the facilities, difficulties, and restrictions attending the execution of the work under the contract. Subject to District approval and evidence satisfactory to the District of adequate insurance coverage, any bidder that has attended the Mandatory Pre-Bid Meeting specified in the Notice Inviting Bids, at its sole cost, may subsequently conduct additional site visits or inspections. These Instructions for Bidders do not constitute a comprehensive statement of all requirements applicable to the Project; therefore, each bidder shall thoroughly examine and become familiar with the drawings and specifications, form of agreement, forms of required bonds, insurance endorsements and other "Contract Documents" defined in the Form of Agreement. A bidder's failure to obtain and/or thoroughly examine and become familiar with the drawing, specification, form, instrument, addendum or other contract document, or to visit the site and become acquainted with conditions there existing, shall not relieve the bidder from any obligations with respect to its bid or the contract. The submission of a bid shall be taken as a representation and warranty by the bidder that it has complied with the requirements of the Section. At no time after submitting a bid may the bidder dispute, complain, or assert that there were any misunderstandings with regard to the nature or amount of work to be done in connection with the Project.

3. Interpretation of Plans and Documents

If a bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies in or omissions from the drawings and specifications, the bidder may submit to Kirsten Martin – Accounting Specialist; a written request for an interpretation or correction thereof. Such submittal may be submitted by faxing to (760) 723-6712 or emailing to kmartin@fuesd.org. The person submitting the request will be responsible for its prompt delivery. Prior to the opening of bids, interpretations or corrections of the Contract Documents will be made only by addendum duly issued. Copies of each addendum will be mailed or delivered to each contractor that has obtained a copy of the bid documents. No person is authorized to make any oral interpretation of any provision

in the Contract Documents, and no oral interpretation shall be binding on the District. If discrepancies in or conflicts between the drawings and specifications are not addressed in any addenda, the bidder shall include in its bid the methods of construction and/or materials resulting in the higher bid amounts.

4. Ethics in Bidding

The District expects the bidders to maintain high ethical standards in engaging in the competitive bidding process. Prior to the award of a contract for the Project, no bidder shall disclose the amount of any prospective subcontractor's bid or proposal, or any element thereof, to any other prospective subcontractor. Bidders shall not engage in or permit the unethical and unfair practices commonly known as bid shopping (e.g., the bidder uses a subcontractor's proposal in attempts to obtain a lower-cost proposal from another subcontractor) and bid peddling (e.g., a subcontractor attempts to obtain a job by offering to work for less than the amount specified in another subcontractor's proposal). If the District determines prior to opening of bids that any bidder has violated any of the foregoing requirements or any other prohibitions set forth in the Subletting and Subcontracting Fair Practices Act (Public Contracting Code Section 4100 *et seq.*), the District may reject any bidder's bid as non-responsive and report the bidder's actions to the State Contractors License Board.

5. Contractor Licensing

Each bidder must be properly licensed in the State of California and "in good standing" at the time of submitting its bid to the District. Failure to satisfy this requirement shall result in the bidder being deemed non-responsive and the bidder will be disqualified from work on the Project. Each bidder must clearly specify its California contractor's license number where indicated on the bid form. The bidder to which the District awards a contract for the Project must maintain the required license(s) specified in the Notice Inviting Bids throughout the duration of the Project.

6. Listing Subcontractors

As required pursuant to the Subletting and Subcontracting Fair Practices Act, each bidder shall submit with its bid a list of the names, license numbers, DIR registration numbers, and locations of the places of business of each subcontractor that will perform work or labor or render service to the bidder in or about the Project, or that, under subcontract to the bidder, will specially fabricate and install a portion of the work, in an amount in excess of one-half of 1 percent of the total amount of the bidder's bid. A bidder may not list more than one subcontractor for any one portion of the work. A bidder that fails to list a subcontractor for any portion of the work represents that it is fully qualified to and shall perform such work using its own forces. If the bid documents require the bidder to submit alternate bids and the bidder intends to use different or additional subcontractors for the alternates, the bidder must submit a separate list of subcontractors for each such alternate. A bidder shall submit the lists of subcontractors only on the form included in the bid documents.

7. Use of Bid Form is Mandatory

Each bid must be submitted on the Bid Form included in the bid documents. Changes in or additions to the Bid Form, recapitulations of the work for which the bid is submitted, alternative proposals, and other modifications of the Bid Form or any of the documents to be submitted with the bid are prohibited unless specifically called for in the Contract Documents.

8. Preparing the Bid

Bidders must fully and properly complete all information required to be included on the Bid Form. Amounts must be stated in both words and numerals where indicated. Prices, wording and notations must be in ink or typewritten. The signatures and/or initials of each person signing the bid and other documents to be submitted with the bid must be in permanent, preferably blue, ink.

9. Correcting the Bid

Bids may contain an erasure, interlineation, or other correction only if the correction does not result in any inconsistency or ambiguity and the correction is authenticated by affixing in the margin immediately opposite the correction the initials of the person or persons signing the bid. In the event of inconsistency between words and numerals, words shall govern over numerals.

(a) Mandatory Forms to Include in Bid

Each bidder shall complete and submit with its Bid Form each of the forms specified on the bid form, which are included in the bid documents. A bidder's failure to properly complete and submit any such mandatory form may render the bidder's bid non-responsive to the Notice Inviting Bids.

10. Signing the Bid and Other Required Forms

The Bid Form, bonds, subcontractor lists, contractor's certificates, attachments to the Agreement Form, guarantees and other documents requiring an original signature of the bidder must be signed in permanent, preferably blue, ink by a person or persons duly authorized to sign the document. The District may reject as non-responsive any Bid Form containing a stamped or mechanically-printed signature. Depending on whether the bidder is an individual or the type of business entity, signatures must comply with the following:

- (a) **Corporations:** If bidder is a corporation, each document shall set forth the legal name of the corporation and shall be signed by both the bidder's President and the bidder's Secretary or Assistant Secretary. Alternatively, the signature of other authorized officers or agents may be affixed to the document if the bidder has included with its bid a certified copy of the resolution of the corporate board of directors authorizing such officers or agents to sign the document. Such documents shall include the title of each such signatory below the signature and shall bear the corporate seal.
- (b) **Limited Liability Companies:** If bidder is a limited liability company, each document shall set forth the true name of the company and the names of all members of the company, and all such members shall sign the document. Alternatively, the document may be signed by a managing member of the company if the bidder has included in its bid a certified copy of a statement of the limited liability company acknowledging the signatory as a managing member with authority to sign the document.
- (c) **Partnerships:** If bidder is a partnership of any type, each document shall set forth the true name of the partnership and the names of all persons comprising

the partnership, and all such persons shall sign the document. Alternatively, the document may be signed by a general partner of the partnership if the bidder has included in its bid a certified copy of a statement of the partnership acknowledging the signatory as a general partner with authority to sign the document.

- (d) **Sole Proprietorships:** If the bidder is a sole proprietorship, each document must set forth the true name of the sole proprietorship and its owner, and such owner must sign the document. Alternatively, an agent of the owner may sign a document if the bidder has included in the bid a certified copy of a current and valid power-of-attorney authorizing the agent to sign the document.
- (e) **Fictitious Names and Joint Ventures:** If the bidder is an entity using a fictitious business name or a joint venture of two or more other parties, documents must satisfy the requirements set forth above for signatures on behalf of corporations and partnerships, as applicable. The signature on any document signed on behalf of any entity using a fictitious business name must so indicate in the signature block. Documents submitted by parties acting as joint venturers must so indicate in the signature block and must be signed by or on behalf of each and every joint venturer.

11. **Sealing and Marking the Bid**

The completed Bid Form and all additional documents and other materials to be submitted with the bid in accordance with the Contract Documents shall be enclosed in a sealed envelope. The bidder shall plainly and clearly mark the outside of the envelope with the bidder's name, address, telephone number, bidder's contractor's license number and the bid package for which the bid is submitted. No other information shall be apparent on the outside of the envelope. The District may reject any bid if the outside of the envelope is improperly or incompletely marked.

12. **Delivering the Bid**

For purposes of the Notice Inviting Bids and these Instructions for Bidders, any reference to the "Bid Deadline" shall mean the date and time specified as the Bid Deadline in the Notice Inviting Bids and any authorized extension thereto. Bids must be delivered to and received by the District at the location specified as the place for submitting bids and by the Bid Deadline. The clock located in the Facilities Department and designated as the official clock for bidding purposes shall be used in determining whether bids have been timely delivered and received by the District. Each bidder is solely responsible for ensuring that its bid is timely delivered to and received by the District. At no time will District telephones or facsimile machines be available for use by bidders. Any bid received by the District after the Bid Deadline will be returned to the bidder unopened.

13. **Submitting Bids for Multiple Bid Categories**

If the District is seeking bids for other bid categories related to the Project, bidders may submit bids for more than one bid category. However, the bid for each bid category must be complete unto itself and shall not be dependent on the award, price or some other conditional provision relative to any other separate bid category. No combination bids of any type will be accepted unless expressly permitted in the bid documents.

14. **Interest in More Than One Bid and Unqualified Bidders**

No person or entity shall submit or have any interest in more than one prime bid for the same work except to the extent the bid documents expressly call for alternate bids. The District will not accept more than one bid for the same work from any person or entity, under the same or different names. A reasonable belief by the District that any person or entity has an interest in more than one bid or has submitted more than one bid for the same work on the Project may result in the District rejecting all bids in which the bidder has an interest. A person or entity that has submitted a sub-bid or proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-bid or proposal to other bidders, but the person, firm or corporation is prohibited from submitting a prime bid for the same bid category. The District will not accept any combination bids unless expressly permitted in the bid documents. No person or business entity that has participated in the preparation of any contract specifications shall be permitted to bid on the Project, and any such bid received by the District shall be deemed non-responsive.

15. Modifying a Bid

Prior to the Bid Deadline, a bidder may modify its bid by submitting the written modification to the District, in a sealed envelope, which must be received by the District not later than the Bid Deadline. The envelope shall be marked in the same manner as provided in these Instructions For Bidders for the original bid, but shall also include the words "Bid Modification" on the outside of the envelope. The District may reject any modified bid if the modification is not received by the District prior to the Bid Deadline or if it creates an ambiguity or inconsistency, including, without limitation, if the modified bid is unintelligible. In lieu of submitting a modification, a bidder may withdraw its original bid in accordance with these Instructions For Bidders and submit a new bid for the Project, in which case the outside of the sealed envelope shall be marked with the words "Superseding Bid" in addition to the other required information. The bidder must submit any modification or superseding bid in writing to the District via personal or other delivery. The District will not accept oral modifications or superseding bids, and will not accept any modifications or superseding bids sent via facsimile or electronic transmission. Any modification or superseding bid must be delivered to and received by the District prior to the Bid Deadline.

16. Withdrawing a Bid

A bidder may withdraw its bid at any time prior to the Bid Deadline, either personally or by written request received by the District prior to the Bid Deadline. In such event, the District shall return the withdrawing bidder's bid security upon request. Except as provided in Public Contract Code Section 5100 *et seq.*, in no event may a bidder withdraw its bid during the period after opening of bids that is specified in the Notice Inviting Bids.

17. Requesting Substitution of Specified Item

- (a) For purposes of this provision the term "substitution" shall mean the substitution of any material, process or article that is substantially equal or better in every respect to that so indicated or specified in the specifications.
- (b) Whenever in specifications any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by words "or equal." Bidders may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or

better in every respect to that so indicated or specified. However, the District has adopted certain uniform standards for certain materials, processes and articles. If any material, process or article offered for substitution by bidders is not, in the opinion of the Architect and the District, substantially equal or better in every respect to that specified, bidders shall furnish the material, process or article specified. The burden of proof as to the equality of any material, process or article shall rest with the bidders.

- (c) Bidders shall submit requests together with substantiating data for substitution of any "or equal" material, process or article no later than ten (10) calendar days prior to the bid opening. Provisions authorizing submission of "or equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. Furthermore, if a proposed "or equal" substitution request is rejected, a bidder shall be responsible for including the specified material, process or article in its bid. The District shall not be responsible for any costs of bidders associated with "or equal" substitution requests. The District has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted.
- (d) For purposes of subdivision (c) above, data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from the bidder stating that the substituted "or equal" material, process or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substitution "or equal" material, process or article and substantiates that it is an "or equal" to the material process or article specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the "or equal" material, process or article will reduce or increase the Contract price. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the needed substantiating data, including the signed affidavit, to the District in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The District and Architect are not obligated to review multiple substitution submittals for the same product or item due to the bidder's failure to submit a complete package initially.
- (e) Time limitations in this Article must be complied with strictly and in no case will an extension of time for completion be granted because of bidder's failure to request the substitution of an alternative item at the times and manner set forth herein in subdivision (c). Further, the bidder shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.
- (f) In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

SUBMISSION OF A SUBSTITUTION REQUEST AND SUBSTANTIATING DATA SHALL IN NO WAY OBLIGATE THE DISTRICT TO REVIEW THE REQUEST OR DATA PRIOR TO AWARD OF A CONTRACT FOR THE PROJECT. IF THE DISTRICT AWARDS A CONTRACT FOR THE PROJECT TO A BIDDER AND SUBSEQUENTLY REJECTS A

SUBSTITUTION PROPOSED BY SUCH BIDDER, THE BIDDER MUST PROVIDE THE SPECIFIED ITEM IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AT NO ADDITIONAL COST TO THE DISTRICT.

18. District Waiver of Bid Irregularities

The District, in accordance with applicable law, may waive any minor irregularity or informality in any bid or in the bidding.

19. District Rejection of Irregular Bids

The District will reject as non-responsive to the Notice Inviting Bids any bids containing irregularities that are not minor irregularities, including, by way of example and not as a limitation, bids that are materially incomplete, bids submitted on forms that have been materially altered, and bids that include any additions or conditional or alternate bids not called for or permitted in the bid documents. In addition, the District may reject as non-responsive to the Notice Inviting Bids any bid in which the bid amounts are obviously unbalanced or inconsistent. The District may, but is not required to, seek information from any bidder that may resolve an ambiguity in the bidder's bid.

20. District Rejection of Non-Responsive Bids

If a bid fails to conform to requirements set forth in the Notice Inviting Bids, these Instructions For Bidders, or any of the other Contract Documents (including, without limitation, if the District determines that the bid is unintelligible, internally inconsistent, or ambiguous), the District may reject the bid as not responsive to the Notice Inviting Bids. The District may, but is not required to, seek information from any bidder that may resolve an ambiguity in the bidder's bid.

21. Bidder Evidence of Responsibility

If bidders were not required to pre-qualify prior to being allowed to bid on the Project, the following information will be required to accompany bids submitted to the District:

Each bid shall be supported by a statement of the bidder's experience as of recent date on the form entitled "INFORMATION REQUIRED OF BIDDER," bound herein. District may also consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the District. In this regard, the District may conduct such investigations as the District deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the bidder, proposed subcontractors, and other persons and organizations to do the work in accordance with the Contract Documents to the District's satisfaction within the prescribed time; the District reserves the right to reject the bid of any bidder who does not pass any such evaluation to the satisfaction of the District.

22. District Award of Contract

In its discretion, the Governing Board may award a contract for the Project to a responsive bidder, or the Governing Board may reject all bids and may (but is not required to) rebid the Project. If

the Governing Board awards a contract for the Project, the award will be to the responsible and responsive bidder with the lowest bid from among the bidders responsive to the Notice Inviting Bids. If two or more responsive and responsible bidders have submitted the same low bid, the District shall determine the lowest bidder by means of a coin toss or some other random method.

If alternate bids are called for, the Contract may be awarded at the election of the governing board to the lowest responsible bidder on the base bid, or on the base bid and any alternate or combination of alternates, as specifically established in the Notice to Contractors Calling for Bids. The time required for completion of the alternate Bid items has been factored into the Contract duration and no additional Contract Time will be awarded for any of the alternate Bid items. The District may elect to include one or more of the alternate Bid items, or to otherwise remove certain work from the Project scope of work, accordingly each Bidder must ensure that each Bid item contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Bidder.

23. The bidder to which the District awards a contract for the Project shall **be sent a Notice of Award and shall have ten (10)** calendar days after notification of the award to execute and deliver to the District the contract and all other documents required in accordance with the Contract Documents. If the bidder fails to execute and provide all such documents within that period, the bidder will forfeit the bid security submitted with its bid in accordance with the Notice Inviting Bids. In such event, the District may award the contract to the next lowest responsible and responsive bidder or release all bidders.

24. Filing Bid Protests

A bidder may protest the bidding process, another bid and/or the intended award of a contract for the Project only by filing a written protest with the District's Facilities Accounting Specialist in accordance with the procedures set forth in this Section. The District will not consider any verbal protests (e.g., by telephone) or any protests sent by electronic mail (e-mail). In order for a protest to be valid and be considered by the District the protest must:

- (a) be filed not later than 4:00 p.m. on the fifth business day following the opening of bids;
- (b) clearly identify the bidder on whose behalf the protest is being filed, together with the name, address and telephone number of the person representing the bidder for purposes of the protest;
- (c) clearly identify the specific bidding process, bid, or award of contract being protested;
- (d) clearly identify and describe in detail the specific basis or bases for the protest and all facts relevant thereto and in support thereof;
- (e) clearly identify all references to the specific portions of all documents relevant to the protest;
- (f) clearly identify and describe in detail all arguments in support of the protest, including, not as a limitation, citations to all legal authorities; and

- (g) be submitted with all documentation that is relevant to and supports the basis or bases underlying the protest.

If a protest filed by a bidder does not comply with each and every one of the foregoing requirements, the District will reject the protest as invalid. If the protest is valid, the District's Facilities Accounting Specialist, or other designated District staff member, shall review the basis of the protest and all relevant information. The Facilities Accounting Specialist will provide a written decision to the protestor. The protestor may then appeal the decision of the Accounting Specialist to the Associate Superintendent of Business Services. The District will provide a written decision to the protestor, which the decision shall be final.

COMPLIANCE WITH THE FOREGOING REQUIREMENTS IS MANDATORY. Each bidder that desires to protest must file a protest in accordance with the foregoing requirements, and no bidder may rely on a protest by another bidder as a means of satisfying such requirements. Compliance with the foregoing requirements is the sole and exclusive means of protesting the bidding process, any bid, and/or the intended award of a contract for the Project, and failure to so comply shall be deemed and construed as a waiver of any and all rights the bidder may have to pursue a claim, demand or action based on the bidding, any bids, and/or any contract awarded for the Project.

25. Public Works Project

The Project is a "public work" and "public project" within the meaning of, and, therefore, is subject to, various provisions of the Public Contract Code, Labor Code, Civil Code, and other legal requirements applicable to public works and public projects. The Contract Documents include various provisions relating to public works and public projects as provided by law, and each bidder must thoroughly review and become familiar with the Contract Documents as described above in these Instructions For Bidders. However, the provisions of the Contract Documents are not comprehensive statements of all requirements of law applicable to public works and public projects, and each bidder so acknowledges by submitting a bid for the Project. In addition, by submitting a bid for the Project, each bidder represents and warrants that it is familiar and knowledgeable with respect to all requirements of law applicable to public works and public projects generally and to the Project specifically.

26. Subcontractor Eligibility and Licensing

The bidder to which the District awards a contract for the Project shall in no event permit a subcontractor to perform any work in connection with the Project if that subcontractor is ineligible to work on a public works or public project. Each subcontractor that the bidder intends shall perform any work in connection with the Project must be licensed in accordance with law prior to commencing any work on the Project.

27. Prevailing Wages

The bidder to which the District awards a contract for the Project, and each of that bidder's subcontractors of any tier, shall be required to pay not less than the general prevailing rates of per-diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract ("Prevailing Wages"). The successful bidder must retain copies of certified payrolls for a minimum of five years from the date of completion and submit

upon request of the District or its authorized agent.

A copy of the per-diem rates of Prevailing Wages shall be posted at the site of the Project. Rates are available at <http://www.dir.ca.gov/dlsr/pwd/index.htm>

28. Public Works Contractor Registration Certification

If the bids for this Project are due on or after March 1, 2015, then pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a Contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the Bid non-responsive. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors Form.

29. Apprenticeable Trades and Crafts

Not later than two calendar days after receiving notice of the award of the contract for the Project, the bidder to which the District awards the contract must provide written notice to the District in regard to whether, as described in Labor Code Section 1777.5, workers in any apprenticeable trade or craft will be employed on the Project.

30. Fingerprinting Requirements

By law it is the District's responsibility to determine whether a contractor must provide fingerprint certification. Pursuant to Education Code Section 45125.2, the District considers the totality of the circumstances in order to determine if fingerprinting of employees of a contractor working on a school site is required. Factors to be considered include the length of time the contractor's employees are on school grounds, whether students are in proximity with the location where the contractor's employees are working, and whether the contractor's employees are working alone or with others. **A determination regarding whether fingerprint certification is required is contained in the Special Conditions.** This form is included with the bid package and must be signed under penalty of perjury and dated.

31. Anti-Discrimination

It is a policy of the District that, in connection with any work performed under contract, there shall be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. No bidder shall discriminate in violation of applicable law in preparing and submitting its bid for the Project. The bidder to which the District awards a contract for the Project will be required to comply with applicable federal and California laws prohibiting such discrimination and to require like compliance by any subcontractors employed on the Project by such bidder.

32. Project Duration and Liquidated Damages

The bidder to which the District awards a contract for the Project must complete the Project in accordance with the Contract Documents and within the time period specified in the Special

Conditions. Failure of such bidder to fully complete the Project within such time period, or to complete any portion thereof in accordance with any applicable schedule for the Project, may result in the District assessing liquidated damages against the Contractor as provided in the General Conditions.

33. Construction Manager

If the District uses a Construction Manager for the Project, the Construction Manager will be identified in the Special Conditions and the role of the Construction Manager will be as specified in detail in the General Conditions and is subject to provisions of the agreement between the District and the Construction Manager. The Construction Manager will be the District's representative during construction and close-out of the Project and will assist the District in the administration of the contract for the Project. In addition, the Construction Manager may assist the District with the bidding process for the Project. Communications from the District to bidders prior to award of a contract for the Project may be directed through the Construction Manager.

34. Project Architect

The Architect for the Project is identified in the Special Conditions, and the role of the Architect will be as specified in detail in the General Conditions and is subject to the provisions of the agreement between the District and the Architect. The Architect will be the District's representative during construction and close-out of the Project in accordance with Title 24 of the California Code of Regulations and provisions of the agreement between the District and the Architect. Communications from the District to bidders prior to award of a contract for the Project may be directed through the Architect.

DOCUMENT 00200**CONTRACTOR'S CERTIFICATION REGARDING
WORKERS' COMPENSATION**

Labor Code section 3700 in relevant part provides:

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

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Name

Title

Company

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

DOCUMENT 00300**BID FORM**

Company

TO: Fallbrook Union Elementary School District, acting by and through its Board of Education, herein called the "District":

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

BID NO. – 385-19-20
PROJECT TITLE: Roller Shades
POTTER JR HIGH SCHOOL

all in strict conformity with the drawings and specifications and other Contract Documents, including addenda nos. _____, _____, _____, and _____, on file at the office of the said District, for the following:

TOTAL BID PRICE INCLUDES ALLOWANCES FROM THE SPECIAL CONDITIONS

DESCRIPTION	BID PRICE (IN WRITTEN FORM)	BID PRICE (IN NUMBERS)
POTTER JR HIGH		
Contingency	TWO THOUSAND DOLLARS AND NO CENTS	\$2,0000.00
Grand Total		

Bids shall be valid for 60 calendar days after the Bid opening date.

In case of discrepancy between the written price and the numerical price, the written price shall prevail. Said sums include all applicable taxes and costs.

It is understood that the District reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.

2. Attached is the required bid security in the amount of not less than 10% of the Bid: \$
 _____ Bid Bond, certified check, cashier's check or cash
 (circle one).
3. Non-collusion Affidavit is attached hereto.
4. The required list of proposed subcontractors is attached hereto.
5. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District a contract in the form attached hereto in accordance with the bid as accepted. The undersigned will submit the executed Contract, Performance Bond and Payment Bond for Public Works, and Insurance Certificates as specified, all within ten (10) consecutive calendar days after Award of Contract (which date shall be the day following the Board of Education approval of the award). The work under the Contract shall be commenced by the undersigned bidder, if awarded the Contract, on the date to be stated in the District's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents. The Contractor shall not start work on the Project until all paperwork required herein is timely and correctly submitted to the District. No time extensions shall be granted to Contractor for Contractor's failure to comply with these provisions.
6. Notice of Acceptance or requests for additional information should be addressed to the undersigned at the address stated below:

7. The names of all persons interested in the foregoing proposal as principals are as follows:

(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co partnership, state true name of firm, also names of all individual copartners comprising the firm; if bidder or other interested person is an individual, state first and last names in full).

8. Bidder certifies that he is licensed in accordance with the law providing for the registration of Contractors, License No. _____, Expiration Date _____, Class of License _____. If the bidder is a joint venture, each member of the joint venture must include the above information.
9. Bidder certifies that a good faith effort was made to include DVBE firms as subcontractors and suppliers in the bid.
10. Pursuant to Section 7103.5 of the Public Contract Code submitting a bid to the District, the bidder offers and agrees that if the bid is accepted, it will assign to 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 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
- 11.

Proper Name of Bidder

Address

Signature of Bidder

Date

Note: If bidder is a corporation or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, the bidder's signature shall be placed above. If bidder is a corporation, affix corporation seal.

I, _____, the _____ of the bidder, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the bidder in connection with this bid and all of the representations made herein are true and correct. Executed on this _____ day of _____, at _____ County, California.

Proper Name of Bidder _____

By _____
 Signature of Bidder _____

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

Business Address: _____

Place of Residence: _____

Telephone: (_____) _____ Fax: (_____) _____

DOCUMENT 00410**BID BOND**

The makers of this bond are, _____ as Principal, and _____, as Surety and are held and firmly bound unto the District, hereinafter called the District, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to DISTRICT for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated _____, 20____, for the Roller Shades project.

If the Principal does not withdraw its bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the District as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporation.

(Corporate Seal)

Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

STATE OF CALIFORNIA

DISTRICT OF _____

On this _____ day of _____, in the year 20____, before me,
_____, a Notary Public in and for said state, personally appeared
_____, known to me to be the person whose name is
subscribed to the within instrument as the Attorney-In-Fact of the (Surety) acknowledged to
me that he subscribed the name of the _____ (Surety) thereto and
his own name as Attorney-In-Fact.

Notary Public in and for said State

(SEAL)

Commission expires: _____

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

DOCUMENT 00420**CERTIFICATION OF CONTRACTOR AND
SUBCONTRACTOR DIVISION OF INDUSTRIAL RELATIONS REGISTRATION**

Pursuant to Public Contract Code Section 1725.5, a contractor or subcontractor must be registered with the Department of Industrial Relations in order to bid on, to be listed in a bid proposal or to engage in the performance of any defined public work contract.

I _____, _____ certify that
(Name) (Title)

_____ is currently registered as a contractor with the
(Contractor Name)

Department of Industrial Relations (DIR):

Contractor's DIR Registration Number: _____
Expiration Date: June 30, 20____

Contractor further acknowledges:

1. Contractor shall maintain DIR registered status for the duration of the project without a gap in registration.
2. Contractor shall note in its invitation to bid the DIR's registration requirement for all subcontractors and their subcontractors.
3. Contractor shall ensure that all subcontractors are registered at the time of the bid opening and maintain registered status for the duration of the project.
4. Contractor is to furnish DIR Registration Number for all subcontractors on the project within 24 hours of the bid opening.
5. Contractor shall substitute any subcontractor with a DIR registered contractor if listed subcontractor is unable to perform the work.

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

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

Signature

Date

DOCUMENT 00430**LIST OF SUBCONTRACTORS FORM**

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

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Work to be done by Subcontractor	Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number

DOCUMENT 00460**INFORMATION REQUIRED OF BIDDERS****A. INFORMATION ABOUT BIDDER**

[**Indicate not applicable ("N/A") where appropriate.**]

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: _____

2.0 Type, if Entity: _____

3.0 Bidder Address: _____

Facsimile Number

Telephone Number

4.0 How many years has Bidder's organization been in business as a Contractor?

5.0 How many years has Bidder's organization been in business under its present name? _____

5.1 Under what other or former names has Bidder's organization operated?

6.0 If Bidder's organization is a corporation, answer the following:

6.1 Date of Incorporation: _____

6.2 State of Incorporation: _____

6.3 President's Name: _____

6.4 Vice-President's Name(s): _____

6.5 Secretary's Name: _____

6.6 Treasurer's Name: _____

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: _____

7.2 Name and address of all partners (state whether general or limited partnership):

8.0 If other than a corporation or partnership, describe organization and name principals: _____

9.0 List other states in which Bidder's organization is legally qualified to do business.

10.0 What type of work does the Bidder normally perform with its own forces?

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

14.0 List Trade References:

15.0 List Bank References (Bank and Branch Address):

16.0 Name of Bonding Company and Name and Address of Agent:

C. LIST OF COMPLETED PROJECTS - LAST THREE YEARS

[**Duplicate Page if needed for listing additional completed projects.**]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

[illegible]

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE***Personnel:***

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

2. Summarize each person's specialized education:

3. List each person's years of construction experience relevant to the project:

4. Summarize such experience:

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the District.

Additional Bidder's Statements:

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

E. VERIFICATION AND EXECUTION

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

DOCUMENT 00470**ASBESTOS-FREE MATERIALS CERTIFICATION**

The undersigned declares that he or she is the person who executed the bid for the _____ (hereinafter referred to as the "Project"), and submitted it to the Fallbrook Union Elementary School District (hereinafter referred to as the "District") on behalf of _____ (hereinafter referred to as the "Contractor").

To the best of my knowledge, information and belief, in completing the Contractor's Work for the Project, no material furnished, installed or incorporated into the Project will contain, or in itself be composed of, any materials listed by the federal or state EPA or federal or state health agencies as a hazardous material.

Any disputes involving the question of whether or not material installed with asbestos-containing equipment is settled by electron microscopy; the cost of any such tests shall be paid by the Contractor.

All work or materials installed by the Contractor which is found to contain asbestos, or work or material installed with asbestos-containing equipment, will be immediately rejected and this work shall be removed and replaced by the Contractor at no additional cost to the District.

Decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

The ASBESTOS REMOVAL CONTRACTOR shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the Asbestos Consultant who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the Construction Manager/Architect or the District who shall have sole discretion and final determination in this matter.

The work will be not accepted until asbestos contamination is reduced to levels deemed acceptable by the Asbestos Consultant.

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

Executed on this _____ day of _____, 20____ at _____.

By: _____

Signature

Print Name

Title

Name of Contractor (Print or Type)

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public in and for the State of California

My Commission Expires: _____

DOCUMENT 00480**NON-COLLUSION AFFIDAVIT**

(To be executed by Bidder and submitted with bid)

State of California

County of _____

I, _____, being first duly sworn, deposes and says that he is _____ of _____ the party making the attached 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 of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; 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.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 20____ at _____, California.

Signature of Bidder _____

Print Name and Title _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public In and for said County and State

DOCUMENT 00500**SAMPLE AGREEMENT**

This Agreement is made this ____ day of _____, 20____ by and between the Fallbrook Union Elementary School District ("District"), a California public school district, and _____ ("Contractor"). The District and the Contractor may be referred to herein individually as a "Party" and collectively as the "Parties". In consideration of the rights and obligations attendant to this Agreement, the Parties agree as follows:

Section 1. Scope of Work. The Contractor shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work necessary for full completion of all construction and services required in accordance with the "Contract Documents" defined and specified in Section 4 of this Agreement. The Contract Documents collectively set forth the complete understandings and agreements of the Parties (the "Contract") with respect to the construction project to which this Agreement applies ("Project"). The Project may be a portion of an overall project, i.e., the Contractor may be one of the multiple prime contractors for such overall project. The Project to which the Agreement applies is described as follows:

Roller Shades at POTTER JR HIGH SCHOOL

Section 2. Time for Completion. The Contractor shall mobilize and commence work on the Project on the date specified in the Notice to Proceed with construction issued by the District ("Notice to Proceed"). The District may defer issuance of a Notice to Proceed as provided in the "General Conditions" forming a part of the Contract. The Contractor shall complete the Project within the period, as specified in the District's notice to proceed; the work shall be completed within Thirty-one (31) calendar days from and after the date stated in such notice. By entering into the Agreement, the Contractor acknowledges that duration and the total construction period are sufficient and reasonable for the size and scope of the Project.

Section 3. Contract Price. As full consideration for the full and faithful performance of the Contract by the Contractor, the District shall pay to the Contractor the total amount stipulated in the Contractors' bid for the Project of:

XXXXXXXXXXXXXXXXXXXXXXX Dollars and XXXXXX Cents (\$XX,XXX.XX) ("Contract Price")

The Contract Price is subject to increase and/or decreases as provided in the Contract Documents. The District shall pay the Contract Price to the Contractor in accordance with the General Conditions.

Section 4. Component Parts of the Contract. The Contract is composed of all of the documents specified below in the Section ("Contract Documents"). Each of which is hereby incorporated as an operative and effective part of the Contract. The Parties intend that the

Contract Documents are and shall be complimentary and an integrated whole, Any requirement set forth in one Contract Document, but not in one or more of the others, shall be interrupted as if set forth in or applicable to all. The Contract consists of the following Contract Documents:

Notice to Bidders
 Instruction to Bidders
 Agreement
 Performance Bond
 Payment Bond
 DIR Certification
 List of Subcontractors
 Non-Collusion Affidavit
 Workers' Compensation Certificate
 Information Required of Bidders
 General Liability Endorsement
 Automobile Liability Endorsement
 Contactor's Certificate Regarding Drug-Free Workplace
 Contractor's Certificate Regarding Alcohol and Tobacco
 Fingerprinting Certification
 General Conditions
 Special Conditions
 Specifications
 Drawings
 Site Plans
 Addenda No. _____, _____, _____, _____, and _____, as issued.

Section 5. Provisions Required by Law. Each and every provision required by law to be included in the Contract is hereby deemed to be so included, and the Contract shall be construed and enforced as if all such provisions are so included. If, for any reason, any provision is not included or incorporated into the Contract Documents in accordance with law, or is not correctly included or incorporated, then, upon request of either the District or the Contractor, they shall amend the Contract Documents to include or incorporate, or to correctly include or incorporate, such provision.

Section 6. Third Party Beneficiaries. Except to the extent provided by law (e.g. requirements for payment of prevailing wages to workers on the Project), no party other than the Parties may claim or assert any right or benefit arising from the Agreement or the Contract of which this Agreement is a part. Each provision of the Contract Documents shall be deemed and construed to benefit only the District and/or the Contractor unless and only to the extent the provision is included in the Contract specifically as a result of any law intended to benefit that third party ("Required Provision"). Provisions included in the Contract Documents that relate to or permissibly expand on any Required Provision, but are not necessary for compliance with the law providing for the Required Provision, are to be construed as being included in the Contract for the convenience of the Parties, and shall in no event be construed as benefiting any third party or as providing a basis for any claim, demand, action or other proceeding by a third party relating to the Contract.

Section 7. Governing Law and Venue. The Contract of which this Agreement is a part shall be governed by the laws of the State of California. Any action, arbitration or other proceeding arising from the Contract shall be initiated and conducted only in the County of San Diego, California.

Section 8. Entire Agreement. The Contract as defined in Section 1 of the Agreement, and as may be amended in accordance with the Contract Documents, constitutes the entire understanding and agreement of the Parties with respect to the Scope of Work described in Section 1 of this Agreement. The Contract supersedes and replaces all other oral or written agreements, understandings, negotiations, or discussions.

Section 9. Due Authority of Signatories. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has been duly authorized by such Party to sign, and thereby bind such Party to, this Agreement.

In witness whereof, each Party has executed this Agreement by and through signature of it's duly- authorized representative as set forth below.

_____	_____
CONTRACTOR	Fallbrook Union Elementary School District DISTRICT
_____	_____
NAME	Raymond N. Proctor NAME
_____	_____
SIGNATURE	SIGNATURE
_____	_____
TITLE	Assoc. Superintendent of Business Services TITLE

(Corporate Seal)

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

Contractors' State License Board

9821 Business Park Drive
Sacramento CA 95827
(916)255-3900; <http://www2.cscb.ca.gov/>

(Business & Professions Code, section 7030)

DOCUMENT 00600

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Fallbrook Union Elementary School District (hereinafter designated as "Public Entity"), by action taken or a resolution passed _____ has been awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

Roller Shades AT POTTER JR HIGH SCHOOL

(the "Project"); and

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

NOW THEREFORE, we, the Principal and, as _____ Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, 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.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Public Entity, its 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.

And the said 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 anywise affect its obligation on this bond, and 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 the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

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

PRINCIPAL _____

By: _____

[Attach required acknowledgments]

SURETY _____

By: _____
Attorney-in-Fact

DOCUMENT 00610**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Fallbrook Union Elementary School District (hereinafter designated as "Public Entity"), by action taken or a resolution passed on _____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

Roller Shades AT POTTER JR HIGH SCHOOL

(the "Project"); and

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, 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.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay (1) any of the persons named in Section 3181 of the California Civil Code, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Public Entity in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

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

Principal _____

By _____

[Attach required acknowledgments]

Surety _____

By Attorney-in-Fact

DOCUMENT 00620**CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS**

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____, 20____ by and between Fallbrook Union Elementary School District ("District") and _____ ("Contractor"), Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code Section 45125.1 and that none of its employees that may come in contact with District's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative

Date

CONTRACTOR EXEMPTION

Pursuant to Education Code Sections 45125.1 and 45125.2, the Fallbrook Union Elementary School District ("District") has determined that _____ ("Contractor") is exempt from the criminal background check certification requirements for the Contract dated _____, 20____ by and between the District and Contractor ("Contract") because:

- The Contractor's employees will have limited contact with District students during the course of the Contract;
- Emergency or exceptional circumstances exist; or
- With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:

_____.

School District Official

Date

DOCUMENT 00620**CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS**

SUBCONTRACTOR'S CERTIFICATION

The Fallbrook Union Elementary School District ("District") entered into a Contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract"). This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"). Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code Section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code Section 667.5(c) or a serious felony listed in Penal Code Section 1192.7(c).

Subcontractor's Representative

Date

SUBCONTRACTOR'S EXEMPTION

The Fallbrook Union Elementary School District ("District") entered into a Contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract"). Pursuant to Education Code Sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"), is exempt from the criminal background check certification requirements for the Contract because:

- The Subcontractor's employees will have limited contact with District students during the course of the Contract;
- Emergency or exceptional circumstances exist; or
- With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:

_____.

School District Official

Date

DOCUMENT 00630**DRUG-FREE WORKPLACE CERTIFICATION**

This Drug-Free Workplace Certification form is part of the Contract made by and between the **Fallbrook Union Elementary School District** (hereinafter referred to as the "District") and _____ (hereinafter referred to as the "Contractor") for the Roller Shades at POTTER JR HIGH SCHOOL; Bid # 385-19-20 (hereinafter referred to as the "Project"). This form is required from all successful bidders pursuant to the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in their workplace and specifying actions which will be taken against employees for violations of the prohibition;
- B. Establishing a drug-free awareness program to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The person's or organization's policy of maintaining a drug-free workplace;
 - 3. The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations.
- C. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision "A," and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of the Drug-Free Workplace Act as it now exists or may hereinafter be amended. Particularly, I shall abide by Government Code Section 8355 when performing the Contract for the Project by:

- A. Publishing a statement notifying employees concerning the prohibition of controlled substance at my workplace;
- B. Establishing a drug-free awareness program; and

C. Requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355(a) and agree to abide by the terms of that statement.

I also understand that if the District determines that I have either: (a) made a false certification herein; or (b) violated this certification by failing to carry out the requirements of Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that if I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the Act.

I acknowledge that I am aware of the provisions of Government Code Section 8350 et seq., and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Executed on this ____ day of _____, 20____ at _____.

Name of Contractor (Print or Type)

By _____
Signature

Print Name

Title

Subscribed and sworn before me this ____ day of _____, 20____

Notary Public in and for the State of California

My Commission Expires: _____

DOCUMENT 00640**CONTRACTOR'S CERTIFICATE REGARDING ALCOHOL BEVERAGE
AND TOBACCO-FREE CAMPUS POLICY**

The Contractor agrees that it will abide by and implement the District's Alcohol Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on District-owned or leased buildings, on District property and in District vehicles. The Contractor shall ensure that all subcontractors and employees working for Contractor will be notified of such policy. Failure to follow District's policy will result in the dismissal of subcontractor or employee.

Date: _____

Contractor_____
Signature

DOCUMENT 00720**SPECIAL CONDITIONS**

- A. **Time of Performance.** The work shall be commenced on the date stated in the District's Notice to Proceed (which date will be not less than five (5) consecutive calendar days after Award of Contract following the Board of Education approval of the award) nor more than ninety (90) consecutive calendar days, from and after the date of execution of the Contract and shall be completed within Thirty-one (31) consecutive calendar days from and after the date stated in such notice. District and Contractor each hereby stipulate that the stated performance period is accepted as reasonable and that no other performance period shall be acceptable unless accepted in writing (See Article 2 of Contract and Article 6 of General Conditions.)

START DATE: July 1, 2020

COMPLETION DATE: July 31, 2020

- B. **Liquidated Damages.** If work under this Contract is not ready for the intended use within the specified time period, the agreed liquidated damages established in Article 6 of the General Conditions are as follows:

\$250.00 Per day for each calendar date completion is delayed.

- C. **Documents Furnished.** The number of copies of drawings and specifications to be furnished to Contractor free of charge, per Article 3 of the General Conditions, one set.
- D. **Insurance.** As provided in General Conditions, Contractor shall procure and maintain California Admitted insurance and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

Comprehensive General Liability Insurance

With a combined single limit per occurrence of not less than..... \$1,000,000.00

OR

Commercial General Liability Insurance

(Including automobile insurance) which provides limits of not less than:

- (a) Per occurrence (combined single limit)..... \$1,000,000.00
- (b) Project Specific Aggregate (for this Project only) \$1,000,000.00
- (c) Products/Completed Operations..... \$1,000,000.00
- (d) Personal & Advertising Injury limit \$1,000,000.00

AND

Automobile Liability Insurance

In the amount of not less than per occurrence for bodily injury and property damage
\$1,000,000.00

Builders Risk (Fire; "All Risk") Per Article 31 & 32 of General Conditions in the amount of not less than 100% of the Replacement Cost.

Workers' Compensation, General Liability, Automobile and Builders Risk 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 that arises from work performed by the Consultant.

Insurance Covering Special Hazards: Following special hazards shall be covered by riders or riders to above-mentioned commercial liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance, in amounts as follows:

\$1,000,000.00 Automotive and truck where operated in amounts as stated above.

\$4,000,000.00 Material hoist where used in amounts as stated above.

- E. **Executed Copies.** The number of executed copies of the Contract, the Performance Bond, and the Payment Bond for Public Works required is Three (3).
- F. **License Classification.** Each bidder shall be a licensed Contractor pursuant to the Business and Professions Code and shall be licensed in the following classification:

D-52, Window Coverings

- G. **Substitutions.** All requests for Substitutions, submitted in accordance with Article 44, Substitutions, of the General Conditions, shall be submitted using the "Request for Substitution" form included herein as a part of these Special Conditions, including the affidavit certifying that the proposed substitution is.
 1. In full compliance with requirements of the Contract Documents and applicable code requirements;
 2. Meets or exceeds the standard of quality of the item specified;
 3. The same warranty will be provided as for the specified item; and
 4. The Contractor waives all claims for additional costs or time that may result from use of an approved substitution.

Submit three (3) copies of the "Request for Substitution" form a minimum of ten (10) days before the bid opening. The form shall be accompanied by complete technical data including drawings, performance specifications, samples, and test reports, and any other information as may be requested by the Architect. Send request(s) to Kirsten Martin by fax at (760) 723-6712 or by email to kmartin@fuesd.org.

The decision of the Architect regarding any proposed substitution will be in writing, and the Architects decision shall be final. Should a proposed substitution be accepted, such acceptance shall not relieve the Contractor from complying with requirements of the Drawings and Specifications.

- H. **Fingerprinting.** Pursuant to the provisions of Article 25 of the General Conditions, the District determination of fingerprinting requirement application follows:

The District has considered the totality of the circumstances concerning the project and has determined that the Contractor and Contractor's employees are not subject to the requirements of Education Code section 45125.1 subdivision c, the District has determined that this contract is not subject to Education Code Section 45125.1 (a), because the Contractor's employees, including the employees of any subcontractor, will have only limited contact with pupils on the site. It has been determined that the work will be performed on a day or days when school is not in session, (holidays, breaks, weekend, or non-teaching days).

- I. **Allowances.** Include the following allowance amounts in this bid. The following allowances will be used only at the discretion of the District. \$2,0000.00. If additional work is requested by the District, the price for such work will be negotiated in accordance with Article 50, Changes and Extra Work, of the General Conditions. Allowance amounts not used by the District will be deducted from the contract amount by Change Order. Include allowance amount in bid.

\$2,000.00 Total

- J. **Self-Performance.** The contractor must perform at least ten percent (10%) of the work with its own forces, installing materials that will become a permanent part of the work. Ten percent (10%) of the work means 10% of the total value of the contract work in place, excluding the costs of Bonds, insurances, mobilizations, other general conditions, and supervision. Procurement of materials for use by subcontractors will not count toward the 10%. Own forces means direct employees of the contractor. Identify the work you will be performing with your own forces in the subcontractor listing form, Document 00430, and submit within 48 hours after bid opening.
- K. **Bid Protests.** Bidders must submit bid protests within five (5) calendar days of the bid opening date or such protests shall be rejected as untimely. If the last day to submit a bid protest falls on a weekend or holiday, the bid protest deadline shall be extended to the next business day. Bid protests must be in writing and contain the name and address of the bidder, the name(s) of the bidder whose bid(s) are the subject of the bid protest, the legal and factual basis for the protest, and any supporting documentation related to the protest. Bid protest(s) must be submitted to: Kirsten Martin, 321 N Iowa St, Fallbrook, CA 92028, FAX (760) 723-6712, E-Mail kmartin@fuesd.org
- L. **Notice.** Provide Forty Eight (48) Hour notice to District before cutting off any power or water.

REQUEST FOR SUBSTITUTION

Fallbrook Union Elementary School District

Bid No.: _____

c/o Facilities Department

321 N Iowa St

Fallbrook, CA 92028

Project Name: _____

We hereby submit for consideration, the following material, product, thing, or service for substitution of the specified or indicated item:

SECTION	PARAGRAPH	SPECIFIED ITEM
_____	_____	_____

Proposed Substitution: _____

The following materials are attached where applicable:

1. Complete dimensional information and technical data, including laboratory tests.
2. Complete information on changes to drawings and/or specifications which are required for proper installation of the proposed substitution.
3. All samples and substantiating data necessary to substantiate equal quality, capacity, and serviceability to specified or indicated item. Clearly mark manufacturer's literature to indicate equality in performance. Differences in quality of materials and construction shall be indicated.

FILL IN BLANKS BELOW:

A. What is (are) the reason(s) for the proposed substitution:

____ Availability

____ Cost

____ Quality

____ Previous Experience

____ Workability

____ Schedule

____ Other: _____

B. Does the substitution affect dimensions shown on Drawings: Yes____ No____

If yes, clearly indicate changes: _____

C. What effect does the substitute have on other trades: _____

D. What effect does this substitution have on applicable code requirements: _____

E. Differences between proposed substitution and specified or indicated item: _____

What is your previous experience with this proposed substitution?:

Fallbrook Union Elementary School District

Bid No.: _____

c/o Facilities Department

321 N Iowa St

Fallbrook, CA 92028

Project Name: _____

The undersigned Contractor certifies:

1. Proposed substitution is equivalent to the specified item in every way, and meets or exceeds quality level of specified item.
2. Same warranty provided for substitution item as for specified item.
3. Installation of substituted item will be coordinated and any/all required changes to other work will be performed for no additional cost

Submitted By:

Signature

Date

Name (Print)

Title

Firm

Telephone #

Address

City, State

Zip Code

Architect/Engineer Review:

_____ No Exception Taken

_____ Make Corrections Noted

_____ Revise and Resubmit

_____ Rejected

_____ Not Reviewed

By: _____ Date _____

Remarks: _____

**DOCUMENT 00700
GENERAL CONDITIONS**

TABLE OF CONTENTS

ARTICLE NO.	DESCRIPTION	PAGE
Article 1.	DEFINITIONS	3
Article 2.	DRAWINGS AND SPECIFICATIONS	4
Article 3.	COPIES FURNISHED	6
Article 4.	OWNERSHIP OF DRAWING	6
Article 5.	DETAIL DRAWINGS AND INSTRUCTIONS.....	6
Article 6.	TIME FOR COMPLETION AND LIQUIDATED DAMAGES	7
Article 7.	REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES	9
Article 8.	PROGRESS SCHEDULE	11
Article 9.	CONTRACT SECURITY	11
Article 10.	ASSIGNMENT	12
Article 11.	CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY	12
Article 12.	PROHIBITED INTERESTS	12
Article 13.	SEPARATE CONTRACTS	12
Article 14.	SUBCONTRACTING	13
Article 15.	DISTRICT'S RIGHT TO TERMINATE CONTRACT	13
Article 16.	GUARANTEE	16
Article 17.	NOTICE AND SERVICE THEREOF	16
Article 18.	WORKERS.....	17
Article 19.	LABOR COMPLIANCE PROGRAM	17
Article 20.	PREVAILING RATES OF WAGES	18
Article 21.	PAYROLL RECORDS.....	19
Article 22.	EMPLOYMENT OF APPRENTICES	19
Article 23.	HOURS OF WORK	20
Article 24.	DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS.....	20
Article 25.	FINGERPRINTING REQUIREMENTS	20
Article 26.	NON-DISCRIMINATION.....	21
Article 27.	OWNER CONTROLLED INSURANCE PROGRAM	21
Article 28.	WORKERS' COMPENSATION INSURANCE	21
Article 29.	EMPLOYER'S LIABILITY INSURANCE	22
Article 30.	COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE	22
Article 31.	AUTOMOBILE LIABILITY INSURANCE	23
Article 32.	BUILDER'S RISK [FIRE; "ALL RISK"]	23
Article 33.	PROOF OF CARRIAGE OF INSURANCE	23
Article 34.	INDEMNIFICATION	26
Article 35.	PERSONAL LIABILITY.....	27
Article 36.	LAWS AND REGULATIONS	27
Article 37.	PERMITS AND LICENSES	27
Article 38.	INSPECTION FEES FOR PERMANENT UTILITIES	27
Article 39.	EASEMENTS	27
Article 40.	SURVEYS	28
Article 41.	EXCISE TAXES	28
Article 42.	PATENTS, ROYALTIES, AND INDEMNITIES.....	28
Article 43.	MATERIALS.....	28
Article 44.	SUBSTITUTIONS.....	29
Article 45.	SHOP DRAWINGS	30
Article 46.	SUBMITTALS.....	31

Article 47. COST BREAKDOWN AND PERIODICAL ESTIMATES	31
Article 48. PAYMENTS	31
Article 49. PAYMENTS WITHHELD	33
Article 50. CHANGES AND EXTRA WORK	34
Article 51. DEDUCTIONS FOR UNCORRECTED WORK	36
Article 52. PAYMENTS BY CONTRACTOR	36
Article 53. CONTRACTOR'S SUPERVISION	36
Article 54. DISTRICT'S INSPECTOR	36
Article 55. INSPECTOR'S FIELD OFFICE	37
Article 56. DOCUMENTS ON WORK	37
Article 57. RECORD ("AS BUILT") DRAWINGS	38
Article 58. UTILITY USAGE	38
Article 59. SANITARY FACILITIES	38
Article 60. TRENCHES	39
Article 61. REGIONAL NOTIFICATION CENTER - EXCAVATIONS	40
Article 62. PROTECTION OF WORK AND PROPERTY	40
Article 63. LAYOUT AND FIELD ENGINEERING	42
Article 64. REMOVAL OF HAZARDOUS MATERIALS	42
Article 65. CUTTING AND PATCHING	42
Article 66. CLEANING UP	42
Article 67. CORRECTION OF WORK BEFORE FINAL PAYMENT	43
Article 68. ACCESS TO WORK	43
Article 69. OCCUPANCY	43
Article 70. TESTS AND INSPECTIONS	43
Article 71. SOILS INVESTIGATIONS	44
Article 72. CONSTRUCTION MANAGER'S AND ARCHITECT'S STATUS	44
Article 73. DECISIONS OF CONSTRUCTION MANAGER AND ARCHITECT	45
Article 74. PROVISIONS REQUIRED BY LAW DEEMED INSERTED	45
Article 75. LABOR/EMPLOYMENT SAFETY	45
Article 76. ASSIGNMENT OF ANTITRUST ACTIONS	46
Article 77. NOTICE OF THIRD PARTY CLAIMS	46
Article 78. SUBSTITUTION OF SECURITY	46
Article 79. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION	46
Article 80. RESOLUTION OF CONSTRUCTION CLAIMS	47
Article 81. INTEGRATION	51
Article 82. COMPLIANCE WITH DTSC GUIDELINES—IMPORTED SOILS	52
Article 83. DRUG-FREE WORKPLACE, NO ASBESTOS CERTIFICATION	52
Article 84. NOTICE OF TAXABLE POSSESSORY INTEREST	53
Article 85. MISCELLANEOUS	53

DOCUMENT 00700**GENERAL CONDITIONS****Article 1. DEFINITIONS**

- a. Acceptable, Acceptance or words of similar import are used, it shall be understood that the acceptance of the Construction Manager, Architect and/or the District is intended.
- b. Approval means written authorization by Construction Manager, Architect and/or District for specific applications within the Contract.
- c. Architect means the Architect employed by District to provide architecture and related services for the Project.
- d. Construction Manager means the Construction Manager employed by the District to provide construction management and related services for the Project.
- e. Contract, Contract Documents include all Contract Documents including: Notice to Contractors Calling for Bids, Information for Bidders/Pre-Qualification Documents, Bid Form, Designation of Subcontractors, Certificate Regarding Workers' Compensation, Non-Collusive Bidding Declaration, Designation of DVBE Subcontractors, Drug-Free Workplace Certification, Recycled Content Certification, Asbestos-Free Materials Certification, Contractor Fingerprinting Requirements, Information Required of Bidders, Performance Bond, Payment Bond, Insurance Policies/OCIP Documents, General Conditions, Special Conditions, Supplementary General Conditions, if any, Drawings, Plans, Specifications, the Contract, and all modifications, addenda, and amendments.
- f. Day as used herein shall mean calendar day unless otherwise specifically designated.
- g. District and Contractor are those mentioned as such in the Contract. For convenience and brevity, these terms, as well as terms identifying other persons involved in the Contract are treated throughout the Contract Documents as if they are of singular number and masculine gender. The terms District and Owner are used interchangeably. The terms Contractor, Trade Contractor and Prime Contractor are all references to the other. These terms are used interchangeably in the course of the Contract Documents.
- h. District's Representative or Representative means any representative of the District authorized in writing to act on behalf of the District, including but not limited to the District's Architect, Inspector and/or Construction Manager.
- i. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the Construction Manager, Architect, and/or District is required.
- j. Includes and Including do not limit the work to the items following those words.
- k. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the Construction Manager, Architect, and/or District is intended, unless stated otherwise.

- l. Locality in which the work is performed means the county in which the public work is done.
- m. Perform shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- n. Project is the undertaking planned by District and Contractor as provided in the Contract Documents.
- o. Provide shall include "provide complete in place," that is, "furnish, install, test and make ready for use."
- p. Required and words of similar meaning are used, it shall mean "as required to properly complete the work" as required by the Construction Manager, Architect and/or District, unless stated otherwise.
- q. Subcontractor as used herein, includes those having a direct contract with Contractor and one who furnishes material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.
- r. Surety is the person, firm, or corporation, admitted as a California admitted surety, that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works. Surety must be an admitted surety insurer pursuant to Code of Civil Procedure Section 995.120.
- s. The Work means the entire improvement proposed by the District to be constructed in whole, or in part, pursuant to the Contract Documents.
- t. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.
- u. Worker includes laborer, worker, or mechanic, and any supervisors thereto.

Article 2. DRAWINGS AND SPECIFICATIONS

- a. **Contract Documents.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to provide the District with complete and fully operational facilities as indicated and specified including all labor and materials, equipment, and transportation necessary for the proper execution of the Work. Materials or work described in words, which as applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, the Contractor shall promptly notify the Construction Manager in writing and any necessary changes shall be adjusted as provided in contracts for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or

costly result:

- 1) Special Conditions shall take precedence over General Conditions.
 - 2) Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event of conflict between the Technical Specifications and the General Conditions, the General Conditions shall take precedence.
 - 3) In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher quantity and the most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.
 - 4) With regard to drawings:
 - (a) Figures govern over scaled dimensions;
 - (b) Larger scale drawings and details govern over smaller scale drawings;
 - (c) Addenda/change order drawings govern over Contract drawings;
 - (d) Contract drawings govern over standard drawings.
 - 5) Work not particularly shown or specified shall be the same as similar parts that are shown or specified.
- c. Misunderstanding of drawings and specifications shall be clarified by the Architect, whose decisions shall be final, and which shall be communicated to the Contractor by the Construction Manager.
 - d. Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.
 - e. **Compliance with Applicable Laws.** Drawings and specifications are intended to comply with all laws, ordinances, rules and regulations of authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules and regulations shall be considered as part of said Contract Documents within the limits specified. The Contractor shall bear all expenses correcting work done contrary to said laws, ordinances, rules and regulations and if the Contractor (1) performed same without first consulting the Construction Manager for securing the Architect's instructions regarding said work or (2) disregarded the Architect's instructions regarding said work.
 - f. **Provisions of Law Deemed Inserted.** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake, omission or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.
 - g. **Addenda and Deferred Approvals.** Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the

extent specified. In accordance with Titles 21 and 24 of the California Code of Regulations, addenda shall be approved by the Department of State Architect ("DSA"). The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Titles 21 and 24 of the California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

- h. **District's Authority.** The District retains the authority to issue the ultimate decision in the event the Construction Manager and Architect cannot reach a consensus regarding any clarification requested, any necessary changes to the conflicting drawings and specifications, any requested instructions or any similar issue presented under this Article 2.
- i. **Organization of Work.** Organization of the specification into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

Article 3. COPIES FURNISHED

Contractor will be furnished, free of charge, copies of the drawings and specifications as set forth in the Special Conditions. Additional copies may be obtained at cost of reproduction.

Article 4. OWNERSHIP OF DRAWING

All drawings, specifications, and copies thereof furnished by the District are District property. They are not to be used by Contractor or Subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one signed Contract set, all documents shall be returned to the District on request at completion of work.

Article 5. DETAIL DRAWINGS AND INSTRUCTIONS

- a. **Examination of Drawings and Specifications.** Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify District and both the Construction Manager and Architect of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents and employees performs, permits, or causes the performance of any Work under the Contract Documents which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price, as set forth in Article 3 of the Contract, or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.
- b. **Additional Instructions.** Within ten (10) calendar days of notification of any ambiguity,

conflict or lack of information, the Construction Manager will provide Architect's prepared additional instructions, by means of drawings or other written direction, necessary for proper execution of work. All such drawings and instruments shall be consistent with the Contract Documents, true developments thereof, and reasonable inferable there from. Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions. Any necessary additional details furnished by the Construction Manager and/or the Architect to more fully explain the work shall be considered as part of the Contract Documents.

- c. **Scale Drawings.** Should any details need to be more elaborate, in the opinion of the Contractor, than scale drawings and specifications warrant, written notice thereof shall be given to the Construction Manager within five (5) working days of the receipt of same. In case no notice is given to the Construction Manager within five (5) working days, it will be assumed the details are a reasonable development of the scale drawings. In case notice is given, then the Construction Manager and Architect, together, will consider the claim and if found justified, the drawings will be modified by the Architect, or Construction Manager shall recommend to the District a change order for the extra work involved within a reasonable amount of time.
- d. **Quality of Parts, Construction and Finish.** All parts of the described and shown construction shall be of the best quality of their respective kinds and the Contractor is hereby advised to use all diligence to inform himself fully as to the required construction and finish, and in no case to proceed with the different parts of the work without obtaining first from both the Construction Manager and Architect such directions and/or drawings as may be necessary for the proper performance of the work.
- e. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the drawings and/or specifications, in materials, quality, form or finish, or in the amount or value of the materials and labor used, the Construction Manager, shall be at liberty at any time, before or after completion of the work, to order such improper work removed, remade and replaced, and all work distributed by these changes shall be made good at the Contractor's expense, or the Construction Manager, after consultation with the Architect, shall receive from the Contractor, for the District (or District shall deduct from amount due Contractor), a sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications, it being optional with the Construction Manager and Architect to pursue either course.

Article 6. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. **Time for Completion/Liquidated Damages.** Work shall be commenced on or before the date stated in the District's Notice to the Contractor to Proceed and shall be completed by Contractor in the time specified in the Special Conditions. The District is under no obligation to consider early completion of the Project and the Contract completion date shall not be amended by the District's acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances receive additional compensation from the District for indirect, general, administrative or other forms of overhead costs for the period between the time of earlier completion proposed by the Contractor and the official Contract completion date. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It 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 stipulated in the Special Conditions for each calendar day of delay until work is completed and accepted. Contractor and his surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith. Regardless of the schedule submitted by Contractor, no delay claims shall be accepted by the District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.

- b. **Inclement Weather.** Contractor shall abide by Construction Manager's determination of what constitutes inclement weather based upon the Inspector or geotechnical engineer's recommendation. A bad weather day is a day when the weather causes unsafe work conditions or is unsuitable for work that should not be performed during inclement weather (i.e., exterior finishes), and shall include consideration when rain days exceed the normal frequency and amount based on the closest weather station data averaged over the past three years, for the period of this Contract and when Contractor can show that such rain days impact the critical path. Time extensions shall only be granted when the work that is stopped during inclement weather is on the critical path of the Project schedule. Contractor shall be expected to perform all work he can possibly complete during inclement weather (i.e., interior work).
- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by him or acts of another Contractor in performance of a contract with the District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. Contractor shall within five (5) calendar days of the beginning of any such delay (unless the District grants a further period of time prior to date of final settlement of the Contract) notify the District in writing of causes of delay; thereupon the District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The District's findings of fact thereon shall be final and conclusive on parties hereto. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the Project should be requested by the Contractor as they occur and without delay. Regardless of the schedule submitted by Contractor, no delay claims shall be accepted by the District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.
- d. **No Damages for Delay.** The District's liability to Contractor for delays for which the District is responsible shall be limited to an extension of time for delays unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the parties when the Contract was awarded. Contractor agrees that the Construction Manager shall determine the actual costs to Contractor of any delay for which Contractor may claim damages from the District. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and ongoing insurance costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the judicious handling of forces, equipment, or plant.

Article 7. REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES

- a. The District has endeavored to determine the existence of utilities at the site of the Work from the records of the owners of known utilities in the vicinity of the Work. The positions of these utilities as derived from such records are shown on the plans.
- b. No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify the District's Representative as to any utility discovered by him in a different position than shown on the plans or which is not shown on the plans.

1) MAIN OR TRUNKLINE FACILITIES

- (a) Notwithstanding the above, pursuant to Section 4215 of the Government Code, as it may be amended from time to time, the District has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for bids, District shall assume the responsibility for their timely removal, relocation, or protection.
- (b) The Contractor shall be compensated by the District for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing, relocating, protecting or temporarily maintaining such main or trunkline utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in the Project necessarily idled during such work. In this regard, Contractor will be required to do such work in accordance with Article 50 herein.
- (c) Alternatively, District may make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, or temporarily maintain the utility, in accordance with Article 50 or District may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.
- (d) The Contractor shall not be assessed a forfeiture for delay in completion of the Project when such delay is caused by the failure of the District or the owner of the utility to provide for the removal, relocation, protection or temporary maintenance of all such main or trunkline facilities not indicated with reasonable accuracy.
- (e) Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.
- (f) Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation

of existing utility facilities.

- (g) If the Contractor while performing the Contract discovers utility facilities not identified by the District in the Contract plans or specifications, he shall immediately notify the District and utility in writing.
- (h) The owner of the public utility shall have the sole discretion to perform repairs or relocation work or hire the Contractor to do such repairs or relocation work at a reasonable price.

2) **OTHER UTILITIES**

In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the work, the work on the utility shall be performed and paid for as follows:

- (a) When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the work to be done by the Contractor.
- (b) When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility. The Work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the work to be done by the Contractor.
- (c) When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, the District will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with Article 50 or will make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with Article 50 herein.
- (d) No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.
- (e) The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the

purpose of making changes in their property made necessary by the work and for the purpose of maintaining and making repairs to their property.

Article 8. PROGRESS SCHEDULE

- a. **Estimated Schedule.** Within fourteen (14) calendar days after the effective date of the Notice to Proceed, Contractor shall prepare an estimated progress schedule for the first 90 calendar days of the Contract work period and shall submit same to District's Construction Manager/Administrator for acceptance. The schedule shall identify resources as specified in Division 1 of the contract documents. The schedule shall include milestones and shall include the "critical path" of construction. Within 30 calendar days of the effective date of the Notice to Proceed, Contractor shall prepare a detailed CPM progress schedule with the attributes and parameters as specified in Division 1 of the contract documents. Such schedule shall be submitted to District's Construction Manager/Administrator for acceptance. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for the specified standard of quality and timely completion of the Work. The District's acceptance of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required within the specified Contract time period, notwithstanding the District's acceptance of the schedule. If the required schedule is not received by the time the first payment request is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the District.
- b. **Schedule Contents.** The schedules shall allow enough time for inclement weather. Such schedules shall indicate graphically the beginning and completion dates of all phases of construction, shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration to match the Contract time. All required schedules shall be periodically updated to reflect changes in the status of the job, including any delays. At a minimum, the Contractor shall be required to provide monthly schedule updates.
- c. **State Testing.** In no event shall Contractor conduct any work on the Project on dates on which State Testing of Pupils is conducted. District or District's Representative will provide Contractor with a schedule of test dates concurrent with the District's issuance of a Notice to Proceed for the Contract Work, or as soon as such test dates are made available to the District.

Article 9. CONTRACT SECURITY

Unless otherwise specified in Special Conditions, Contractor shall furnish a surety bond in an amount equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Both the Payment and Performance Bonds must be executed by an admitted Surety, as defined in California Code of Civil Procedure Section 995.120. The Payment and Performance Bonds must be accompanied by the original or a certified copy of the unrevoked power of attorney or other appropriate instrument entitling or

authorizing the person who executed the bond to do so. In addition, to the extent required by law, the Payment and Performance Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Diego that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California. Aforesaid bonds shall be in form set forth in these Contract Documents. Upon request of Contractor, the District will consider and accepting multiple sureties on such bonds.

Article 10. ASSIGNMENT

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the District. Any assignment without the written consent of the District shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.

Article 11. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the District in order that proper steps may be taken to have the change reflected on the Contract.

Article 12. PROHIBITED INTERESTS

No official of the District, and no District Representative who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, Construction Manager, Architect, attorney, engineer or Inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof.

Article 13. SEPARATE CONTRACTS

- a. The District reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his work with theirs.
- b. If any part of Contractor's work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to the Construction Manager any defects in such work that renders it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute his acceptance of other contractor's work as fit and proper for reception of his work, except as to defects which

may develop in the other contractor's work after execution of contractor's work.

- c. To insure proper execution of his subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Construction Manager any discrepancy between executed work and the Contract Documents.
- d. Contractor shall ascertain to his own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the District in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the District or District's Representative shall decide which Contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The District shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of the District or District's Representative respecting the order of precedence in performance of contracts.

Article 14. SUBCONTRACTING

- a. Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of this Contract, Contractor shall be as fully responsible to the District for the acts and omissions of his subcontractor and of persons either directly or indirectly employed by his subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained in these Contract Documents shall create any contractual relation between any subcontractor and the District. The District shall be deemed to be the third party beneficiary of the contract between the Contractor and the subcontractor.
- b. The District's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract
- c. Substitution or addition of subcontractors shall be permitted only as authorized in Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the California Public Contract Code.

Article 15. DISTRICT'S RIGHT TO TERMINATE CONTRACT

- a. The District may, without prejudice to any other right or remedy, serve written notice upon Contractor and his surety of its intention to terminate this Contract if the Contractor (i) refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said work within such time, or (iii) if the Contractor should file a bankruptcy petition or be adjudged a bankrupt, or (iv) if he should make a general assignment for the benefit of his creditors, or (v) if a receiver should be appointed on account of his insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers

or proper materials to complete the work in time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of the District or those of District's Representatives, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if he or his subcontractors should violate any of the provisions of this Contract. The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) calendar days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until work is finished. In event of any such termination, the District shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this Contract, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give the District written notice of its intention to take over and perform this Contract and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, the District may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and his surety shall be liable to the District for any excess cost or other damages occasioned the District thereby. If the District takes over the work as herein above provided, the District may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore. If Surety does not perform the Project work itself, the Surety shall consult with the District regarding its planned choice of a contractor or contractors to complete the Project, and upon request by District, Surety shall provide District evidence of responsibility of Surety's proposed contractor or contractors. District shall be entitled to reject Surety's choice of contractor or contractors if District determines in its sole discretion that the contractor or contractors are non-responsible. If Surety provides District written notice of its intention to take over and perform this Contract, within fifteen (15) calendar days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractor's are approved by District) shall provide District a detailed Progress Schedule as specified in Article 8 above. Contractor and his surety shall be liable to the District for any excess cost or other damages occasioned the District as a result of Surety or Surety's contractor or contractor's takeover and performance.

- b. If the unpaid balance of the Contract Price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to the District. Expense incurred by the District as herein provided, and damage incurred through Contractor default, shall be certified by the Construction Manager.
- c. Should the District determine that environmental considerations mandate that the underlying Project should not go forward, District may notify Contractor that this Contract is terminated due to environmental considerations and District shall only be obligated to pay Contractor for the work that Contractor had performed at the time of notification of termination of this Contract for environmental considerations.

- d. **Termination For Convenience:** The District may terminate performance of the work called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.

The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the District, the extent of termination, and the Effective Date of such termination.

After receipt of Notice of Termination, and except as directed by the District, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
3. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
6. Submit to the District, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the District no later than thirty (30) calendar days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed. In the event that the District exercises its right to terminate this Contract pursuant to this provision, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, all actual reimbursable costs incurred according to the provisions of this Contract.

- e. **Termination of Contract by Contractor:** The Contractor may terminate the Contract upon ten (10) calendar days written notice to the District, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of

the Contractor, and notice to resume the Work or to terminate the Contract has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against the District except for Work performed as of the date of termination.

- f. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.
- g. Notwithstanding the foregoing provisions, this Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. Section 365 (Federal Bankruptcy Act).

Article 16. GUARANTEE

- a. Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of two (2) years after date of acceptance of work by the District. Contractor shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a two-year period from date of acceptance without expense whatsoever to the District, ordinary wear and tear, unusual abuse or neglect excepted. The District will give notice of observed defects with reasonable promptness. Contractor shall notify the District upon completion of repairs.
- b. In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, the District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.
- c. If, in the opinion of the District or District's Representative, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District or the District's Representative will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the District's request for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Contractor. Such action by the District or its Representative will not relieve the Contractor of the guarantees provided in this Article or elsewhere in this Contract.
- d. This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish the District with all appropriate guarantee or warranty certificates upon completion of the Project.

Article 17. NOTICE AND SERVICE THEREOF

- a. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by party giving such notice or by the duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given to the District, by personal delivery thereof to the Construction Manager or the District or by depositing same in United States mails, enclosed in a sealed envelope addressed to the District and for attention of the Construction Manager, postage prepaid and registered;
2. If notice is given to Contractor by personal delivery thereof to said Contractor or to his foreman at site of Project, or by depositing same in United States mails, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this Contract, postage prepaid and registered;
3. If notice is given to surety or other person by personal delivery to such surety or other person or by depositing same in United States mails, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.
4. If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

Article 18. WORKERS

- a. Contractor shall at all times enforce strict discipline and good order among his employees. Contractor shall not employ on work any unfit person or any one not skilled in work assigned to him.
- b. Any person in the employ of the Contractor whom the District or District's Representative may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of the District.

Article 19. LABOR COMPLIANCE PROGRAM

The provisions of this Article shall apply if required for this Project as set forth in the Notice to Contractors and/or Information to Bidders.

- a. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- b. The District's LCP includes, but is not limited to, provisions requiring the Contractor to comply with the prevailing rates of wages as set forth in Article 20 of these General Conditions, maintenance and submission of weekly certified payroll records as set forth in Article 21 of these General Conditions, employment of apprentices as set forth in Article 22 of these General Conditions, compliance with legal hours of work as set forth in Section Article 23 of these General Conditions, and debarment as set forth in Article 24 of these

General Conditions. The District's LCP also requires the Contractor to attend a mandatory pre-construction meeting and allow District representatives to conduct on site interviews of workers to ensure that prevailing wages are being paid. Failure to comply with these provisions or any other provisions of the District's LCP shall result in the withholding of contract payments by the District. The Contractor expressly acknowledges these provisions and agrees to comply with these provisions and any provisions in the District's LCP.

- c. The Contractor shall include provisions (a) and (b) in this Article in all subcontracts and require subcontractors to comply with these provisions at no additional cost to the District.

Article 20. PREVAILING RATES OF WAGES

- a. The Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at <http://www.dir.ca.gov/dlsr/>. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District's Facilities Department. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws and/or the District's LCP.
- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. As a further material part of this Contract, Consultant agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties.

as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

Article 21. PAYROLL RECORDS

- a. Pursuant to Labor Code Section 1776, as amended from time to time, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- b. The payroll records enumerated under Article 21(a) above shall be certified and submitted by the Contractor at a time designated by the District. The Contractor shall also provide the following:
 1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 2. A certified copy of all payroll records enumerated in Article 21(a) shall be made available for inspection or furnished upon request of the Department of Industrial Relations ("DIR").
- c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- d. Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor performing Work on the Project shall not be marked or obliterated.
- e. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the District, forfeit Twenty-five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

Article 22. EMPLOYMENT OF APPRENTICES

- a. The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the California Labor Code.

- b. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- c. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

Article 23. HOURS OF WORK

- a. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty-five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one-half times the basic rate of pay, as provided in Labor Code Section 1815.
- b. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

Article 24. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

Article 25. FINGERPRINTING REQUIREMENTS

District Determination of Fingerprinting Requirement Application is set forth in the Special Conditions.

- (a) Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students.

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code Section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by

execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code Section 45125.2 the Contractor shall, at Contractor's own expense, (a) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (b) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Contractor and Contractor's employees by a District employee.

(b) Contracts for Construction, Reconstruction Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students.

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code Section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Contractor and/or Contractor's employees on a school site: (1) Contractor and/or Contractor's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Contractor and/or Contractor's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Contractor and/or Contractor's employees shall not change locations without contacting the school office; (4) Contractor and Contractor's employees shall not use student restroom facilities; and (5) If Contractor and/or Contractor's employees find themselves alone with a student, Contractor and Contractor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

Article 26. NON-DISCRIMINATION

Pursuant to the provisions of Labor Code Section 1735, Contractor and its subcontractor shall not unlawfully discriminate in the employment of persons on this Project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, and sex.

Article 27. OWNER CONTROLLED INSURANCE PROGRAM

District reserves the right pursuant to Government Code Section 4420.5 to use an Owner Controlled Insurance Program. Information regarding utilization of an OCIP is included in the Special Conditions or pursuant to an addendum.

Article 28. WORKERS' COMPENSATION INSURANCE

The Contractor shall provide, during the life of this Contract, Workers' Compensation Insurance for all of the employees engaged in work under this Contract, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide

Workers' Compensation Insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Contractor shall file with the District certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the District, if in the form and coverage as set forth in Article 33.

Article 29. EMPLOYER'S LIABILITY INSURANCE

Contractor shall provide during the life of this Contract, Employer's Liability Insurance in the amount of, at least, one million dollars (\$1,000,000.00) per accident for bodily injury and disease. Contractor shall provide District with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of Article 33 below.

Article 30. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

- a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, such Comprehensive General Liability Insurance or Commercial General Liability and Property Damage Insurance as shall protect Contractor and the District, the District's Representatives and Agents, from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this Article, and shall be in the form and amounts as set forth in the Special Conditions hereof. The limits set forth in the Special Conditions shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.
- b. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District as a result thereof.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.
- d. All General Liability policies provided pursuant to the provisions of this Article shall comply with the provisions of Article 33 below.
- e. All General Liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation,

removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 33 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine Primary, Umbrella, and as broad as possible Excess Liability coverage to achieve the total limits indicated above. Any Umbrella or Excess Liability policy shall include the additional insured endorsement described in Article 33 below.

Article 31. AUTOMOBILE LIABILITY INSURANCE

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount set forth in the Special Conditions. Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the District. Such insurance shall comply with the provisions of Article 33 below.

Article 32. BUILDER'S RISK [FIRE; "ALL RISK"]

- a. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk [Fire; "All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The District accepts no responsibility until the Contract is formally accepted by the Governing Board for the Work. The Contractor is required to file with the District a certificate evidencing fire insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.
 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 2. Coverage shall include all materials stored on site and in transit.
 3. Coverage shall include Contractor's tools and equipment.
 4. Insurance shall include boiler, machinery and material hoist coverage.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.
- d. Such insurance shall comply with the provisions of Article 33 below.

Article 33. PROOF OF CARRIAGE OF INSURANCE

- a. Contractor shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Contract, deliver to the District certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that Contractor has obtained such coverage for the period of the Contract. Contractor shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter,

copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to the District within thirty (30) calendar days prior to the expiration of the term of any policy required herein. Contractor shall permit the District at all reasonable times to inspect any policies of insurance of Contractor which Contractor has not delivered to the District.

- b. Certificates and insurance policies shall include the following clause:

This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District stating date of cancellation, reduction or other adverse change respecting such insurance. The date of cancellation, reduction or adverse change may not be less than thirty (30) calendar days after date of mailing notice.”

- c. Any notice required to be sent pursuant to this Article shall be to the District’s address as shown in the Notice to Contractors Calling for Bids.
- d. Certificates of Insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice. All Certificates of Insurance provided by Contractor shall name the District, the Construction Manager and Architect, and Construction Manager’s and Architect’s consultants as additional insured.
- e. The coverage afforded by the additional insured endorsement described in paragraph (d) above, shall apply as primary insurance, and any other insurance maintained by the District owner, the members of the District’s Board of Education, or its officers, agents, employees and volunteers, or any self-funded program of the District, shall be in excess only and not contributing with such coverage. This coverage must be given via ISO endorsement CG 2010 (11/85 ed.) or insurer’s equivalent for coverage as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its board of trustees, directors, officers, employees, agents or authorized volunteers.
- f. Insurance carriers shall be qualified to do business in California (CA Admitted) and maintain an agent for service of process within the State. Such insurance carriers shall have not less than an “A” policy holder’s rating and a financial rating of not less than “Class VII” according to the latest Best’s Key Rating Guide unless otherwise approved by the District.
- g. After receiving written Notice of Cancellation of Insurance, Contractor shall have ten (10) calendar days to provide other policies of insurance similar to the canceled policies and acceptable insurance. If such replacement coverage is not provided, the District may secure insurance at the Contractor’s expense.
- h. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Contractor’s responsibility for payment of damages resulting from operations under this Contract.

- i. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Contract, and the District may, at its option, terminate the Contract for any such default by Contractor.
- j. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance Contractor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.
- k. The District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- l. All deviations from the contractual insurance requirements stated herein must be approved in writing by the District's Risk Manager.
- m. Included in any policy or policies of liability insurance provided by Contractor hereunder, except Workers' Compensation Insurance, shall be a standard waiver of rights of subrogation against the District, its Representatives, or Agents, by the insurance company issuing said policy or policies.
- n. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - 1. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
 - 2. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insured.
 - 3. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
- o. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- p. Contractor shall notify the District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. The District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

Article 34. INDEMNIFICATION

The District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the work. The Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work; provided, however, that the Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of the District, its Board members, directors, officers, employees, agents and authorized volunteers who are directly responsible to the District.

Contractor shall indemnify the District, the Construction Manager, and their Board members, directors, officers, employees, agents and authorized volunteers against and will hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm entity, corporation, political subdivision or other organization arising out of or in connection with the Work, operation or activities of Contractor, its agents, employees, subcontractors or invitees, provided for herein, whether or not there is concurrent passive or active negligence on the part of the District, the District's Representative, the Construction Manager, the Architect, or their Board members, directors, officers, employees, agents and authorized volunteers, but excluding such actions, claims, damages to persons or property penalties, obligations or liabilities arising from the sole established negligence, willful misconduct or active negligence of the District, the District's Representative, the Construction Manager, the Architect, or those who are directly responsible to them; and in connection therewith:

- a. Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorney's fees incurred in connection therewith.
- b. Contractor will promptly pay any judgment rendered against Contractor, the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations, or activities of Contractor hereunder and Contractor agrees to save and hold the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers harmless there from.
- c. In the event the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the Work, or operation or activities of Contractor hereunder, Contractor agrees to pay to the District, the District's Representative, the Construction Manager, the Architect, and their Board

members, directors, officers, employees, agents and authorized volunteers any and all costs and expenses incurred by the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers in such action or proceeding together with reasonable attorney's fees.

- d. The District may retain, to the extent it deems necessary, the money due to the Contractor under and by virtue of the Contract Documents until disposition has been made of such actions or claims for damages as specified herein above.

Article 35. PERSONAL LIABILITY

Neither the District, the District's Representative, the Engineer, Construction Manager, Architect, nor any other director, officer or authorized assistant or agent of the District, the District's Representative, or the Engineer, Construction Manager, or Architect shall be personally responsible for any liability arising under the Contract.

Article 36. LAWS AND REGULATIONS

- a. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the Construction Manager in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Construction Manager, he shall bear all costs arising there from.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 USC §12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

Article 37. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified.

Article 38. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by the District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by the District. Contractor may either request reimbursement from the District for such fees, or obtain the funds from the District prior to paying such fees.

Article 39. EASEMENTS

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the District, unless otherwise specified.

Article 40. SURVEYS

Surveys to determine location of property lines and corners will be supplied by the District. Surveys to determine locations of construction, grading, and site work shall be provided by Contractor.

Article 41. EXCISE TAXES

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a Certificate of Exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price.

Article 42. PATENTS, ROYALTIES, AND INDEMNITIES

The Contractor shall indemnify, defend and hold harmless the District and its Board Members, officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the District, unless otherwise specifically stipulated in the Contract Documents.

Article 43. MATERIALS

- a. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this Contract.
- d. No materials, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to the District free from any claims, liens, or charges. He further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or

equipment, Contractor shall advise the District as to the owner thereof. Nothing contained in this Article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of the District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

- e. Materials shall be stored on the premises in such manner so as not to interfere with the work and so that no portion of the structure shall be overloaded.
- f. Materials or work required or necessary to be tested shall be tested under supervision of, as directed by and at such places as may be convenient to the District and/or the District's Representatives. The required testing of all structural materials shall be done by an approved testing laboratory as pursuant to Article 70, herein.

Article 44. SUBSTITUTIONS

- a. For purposes of this provision the term "substitution" shall mean the substitution of any material, process or article that is substantially equal or better in every respect to that so indicated or specified in the specifications.
- b. Whenever in specifications any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by words "or equal." Bidders may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. However, the District has adopted certain uniform standards for certain materials, processes and articles. If any material, process or article offered for substitution by bidders is not, in the opinion of the Architect and the District, substantially equal or better in every respect to that specified, bidders shall furnish the material, process or article specified. The burden of proof as to the equality of any material, process or article shall rest with the bidders.
- c. Bidders shall submit requests together with substantiating data for substitution of any "or equal" material, process or article no later than ten (10) calendar days prior to the bid opening. Provisions authorizing submission of "or equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. Furthermore, if a proposed "or equal" substitution request is rejected, a bidder shall be responsible for including the specified material, process or article in its bid. The District shall not be responsible for any costs of bidders associated with "or equal" substitution requests. The District has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted.
- d. For purposes of subdivision (c) above, data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, process or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted "or equal" material, process or article and substantiates that it is an "or equal"

to the material process or article specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the "or equal" material, process or article will reduce or increase the Contract Price. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the needed substantiating data, including the signed affidavit, to the Construction Manager in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Construction Manager and Architect are not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package initially.

- e. Time limitations in this Article must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor's failure to request the substitution of an alternative item at the times and manner set forth herein in subdivision (c). Further, the Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.
- f. In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

Article 45. SHOP DRAWINGS

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his own work or in that of any other contractor, subcontractor, Construction Manager, Architect, other independent contractor or worker on the Project, five (5) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the Contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Construction Manager. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Contractor shall advise the District immediately, if Construction Manager and/or Architect have not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of Project and compliance with information given in the Contract Documents. Contractor shall make any corrections required by the Architect, and file with the Construction Manager five (5) corrected copies each, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Construction Manager's attention to such deviations at time of submission and has secured the Architect's written approval. Architect's approval of such drawings and schedules also shall not, nor shall it relieve him from responsibility for errors in shop drawings or schedules. For purposes of this Article "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Construction Manager and Architect's professional judgment to permit adequate review. In contracts in excess of \$1 million, "reasonable promptness" shall mean such reasonable promptness

as to not affect the critical path.

Article 46. SUBMITTALS

- a. Contractor shall furnish for approval, within fourteen (14) calendar days following award of Contract a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Architect to the Construction Manager within a reasonable time period so as not to cause delays on the Project.
- c. This provision shall not authorize any extension of time for performance of this Contract. Architect will check and approve such samples, only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the Construction Manager's and/or Architect's professional judgment fourteen (14) calendar days is an insufficient amount of time to permit adequate review, Construction Manager shall, within the initial fourteen (14) calendar days period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- d. If the Architect's response results in a change in the Project, then such change shall be effected by a written change order.

Article 47. COST BREAKDOWN AND PERIODICAL ESTIMATES

- a. Contractor shall furnish on forms approved by the District:
 1. Within ten (10) calendar days of award of Contract a detailed estimate giving a complete breakdown of Contract Price; and
 2. A periodical itemized estimate of work done for the purpose of making partial payments thereon;
 3. Within ten (10) calendar days of request by the District, a schedule of estimated monthly payments which shall be due him under the Contract.
- b. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from Contract Price.

Article 48. PAYMENTS

- a. Each month within thirty (30) calendar days after receipt of an undisputed and properly submitted payment request, there shall be paid to Contractor a sum equal to ninety-five percent (95%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by

the District and filed with the District before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this Contract and the District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by the District, Construction Manager and/or Architect shall remain uncomplished with.

- b. The final payment of five percent (5%) of the value of work done under this Contract, if unencumbered, shall be made within sixty (60) calendar days after the date of completion of the work, provided however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Completion means any of the following as provided by Public Contract Code Section 7107:
 - 1. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
 - 2. The acceptance by the public agency, or its agent, or the work of improvement.
 - 3. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 calendar days or more, due to factors beyond the control of the Contractor.
 - 4. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 calendar days or more, if the public agency files for record a Notice of Cessation or a Notice of Completion.
- c. This Contract is subject to the provisions of Public Contract Code Section 7107.
- d. For purposes of this Contract, the acceptance by the District means acceptance made only by an action of the governing body of the District in session. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against the District arising from this Contract. At any time after fifty percent (50%) of the work has been completed, if the District, by action of its governing body, finds that satisfactory progress is being made, the District may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as the District may find appropriate based on the Contractor's progress.
- e. **Final Payment.** The District shall, after the satisfactory completion of the work, make a final estimate of the amount of Work done hereunder and the value of said work, and the District shall pay the entire sum so found to be due after deduction there from all previous payments and all amounts to be retained under the provisions of the Contract Documents, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code Section 3262. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. The final payment shall not be due and payable until the expiration of thirty-five (35) calendar days from the date of acceptance of the work by the District, which acceptance shall be by formal action of the Board of

Education.

No certificate given or payments made under the Contract, except the final certificate or final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance of any defective work or improper materials.

- f. Whenever any part of the work is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this Article shall in no case be construed as constituting acceptance of the work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, on the Project.

Article 49. PAYMENTS WITHHELD

- a. In addition to amounts which the District may retain under any and all other Articles in this Contract including those entitled "Payments," and "Time for Completion and Liquidated Damages," the District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:
 - 1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
 - 2. Defective work not remedied.
 - 3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
 - 4. Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
 - 5. Damage to another contractor.
 - 6. Amounts which may be due the District for just claims against Contractor.
 - 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 - 8. Failure to provide update on construction schedule as required by Article 9 hereof. When the above grounds are removed, payment shall be made for amounts withheld because of them.
 - 9. Site clean up.
- b. The District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (a)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing,

the District shall be deemed the agent of Contractor and any payment so made by the District shall be considered as a payment made under contract by the District to Contractor and the District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

Article 50. CHANGES AND EXTRA WORK

- a. **Changes In Work.** The District, without invalidating the Contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the Contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.
- b. In giving instructions, Contractor agrees that the Construction Manager and Architect, together, shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the Project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from the District, and no claim for an addition to the Contract sum shall be valid unless so ordered. If the Contractor is delayed in completing the work by reason of any change made pursuant to this Article, the time for completion of the Work shall be extended by change order for a period commensurate with such delay. The Contractor shall not be subject to any claim for liquidated damages for this period of time.
- c. **Unforeseen Conditions.** Contractor shall provide the District's Construction with notice of unforeseen conditions immediately upon discovery of such conditions.
- d. Value of any such extra work, change, or deduction shall be determined at the discretion of the District, in consultation with the Construction Manager and Architect, in one or more of the following ways:
 1. By acceptable lump sum proposal from Contractor with itemization as required by the Construction Manager.
 2. By unit prices contained in Contractor's original bid and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.
 3. By the actual cost of material and labor and a percentage for overhead and profit. The following form shall be followed as applicable for additions and deductions to the Contract:

EXTRA/ (CREDIT)

- | | |
|--|-------|
| A. Material (attach itemized quantity and unit cost plus sales tax) | _____ |
| B. Labor (attach itemized hours and base rates from identified prevailing wage rate schedules) | _____ |
| C. Commercial General Liability and Property | |

Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost.

(Do not include this amount if OCIP is in place)

- | | | |
|----|---|-------|
| D. | Subtotal (Items A.-C.) | _____ |
| E. | Subcontractor's overhead and profit as defined in Article 50 (h), below,
not to exceed 15% of Item (d)
(If applicable) | _____ |
| F. | Subtotal (Items D-E) | _____ |
| G. | Contractor's Overhead and Profit, as defined in Article 50 (h), below not to exceed 5% of Item (F) for work performed by subcontractor, or 15% if performed by Contractor | _____ |
| H. | Subtotal (Items F-G) | _____ |
| I. | Bond Premium, not to exceed 1% of Item (H) | _____ |
| J. | Total (Items H-I) | _____ |
- e. Regardless of whether the cost of the change order is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back overhead mark-up and the bonding mark up for deleted items at the time of the request for changes and extra work.
- f. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Contract; or (iii) constitutes a waiver of any provision in the Contract, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN FIVE (5) WORKING DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items 50.D (3) A-J described in this Article 50 above. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such five (5) working day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Article.
- g. All costs associated with the change are to be included in the change order proposal to the Construction Manager. Costs may be in terms of time, money or both.
- h. **Overhead and Profit.** The term "overhead and profit" for the Contractor and any

subcontractors shall be considered to include insurance other than mentioned in Article 50(d) above, field and office supervisors and assistants, watchman, use of small tools, consumables, and general field and home office expenses, and no separate allowance will be made therefore.

Article 51. DEDUCTIONS FOR UNCORRECTED WORK

If the District in consultation with the Construction Manager and Architect deems it inexpedient to correct work injured or not done in accordance with the Contract, an equitable deduction from the Contract Price shall be made therefore.

Article 52. PAYMENTS BY CONTRACTOR

Contractor shall pay:

- a. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,
- b. For all materials, tools, and other expendable equipment to the extent of ninety-five percent (95%) of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at site of Project and balance of cost thereof not later than the 30th day following completion of that part of work in or on which such materials, tools, and equipment are incorporated or used, and
- c. To each of his subcontractors, not later than the 7th day following each payment to Contractor, the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein.

Article 53. CONTRACTOR'S SUPERVISION

- a. Unless personally present on the premises where work is being done, Contractor shall keep on the work, during its progress, a competent full-time job (project) superintendent satisfactory to the District's Construction Manager. The job superintendent shall not be changed except with consent of the District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.
- b. Contractor shall give efficient supervision to work, using his best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to the Construction Manager of any error, inconsistency or omission which he may discover.

Article 54. DISTRICT'S INSPECTOR

- a. One or more Inspectors employed by District in accordance with requirements of Title 21 of the California Code of Regulations will be assigned to the work. His duties are specifically defined in Title 21, Section 42 of the California Code of Regulations.
- b. Inspector shall have access to all plant operations involving work under this Contract and

shall be provided reasonable advance notice of the time and place of operations which the Inspector desires to observe. Inspector shall be provided with all necessary samples of materials and work for testing purposes. All work shall be under the observation of said Inspector. He shall have free access to any or all parts of work at any time. Contractor shall furnish Inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve Contractor from any obligation to fulfill this Contract. Inspector, after consultation with the Construction Manager and Architect, together, shall have authority to stop work whenever the provisions of the Contract Documents are not being complied with and Contractor shall instruct his employees accordingly.

Article 55. INSPECTOR'S FIELD OFFICE

- a. For Projects using Multiple Trade Contractors, the Construction Manager shall provide for the use of the Inspector a separate trailer or temporary private office of not less than seventy-five (75) square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by the District or the District's Representative. If the Project utilizes a Prime Contractor, the Prime Contractor shall be responsible for providing the Inspector's field office. The Office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, and a fax machine at Contractor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.
- c. The provisions of this section are intended to be complementary to any requirements provided elsewhere in these Contract Documents, however in the event of conflicts between this section and other provisions of these Contract Documents, this section shall prevail.

Article 56. DOCUMENTS ON WORK

- a. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations (Building Standards Administrative Code), Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the Contract, and any other laws, rules or regulations governing building standards for public school construction, which by this reference is a part of the Contract Documents, on job at all times. Said documents shall be kept in good order and available to both the Construction Manager and the Architect and their representatives. Contractor shall be acquainted with and comply with the provisions of said these laws, rules or regulations as they relate to this Project. (See particularly Duties of the Contractor, Titles 21 California Code of Regulations, Section 43.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21 and 24.)
- b. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of the District.

Article 57. RECORD ("AS BUILT") DRAWINGS

- a. Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings. Adequacy of the drawings shall be determined by the District's representative or architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.
- b. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.
- c. At the end of the Project, the Contractor shall provide the District Representative with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing.

Article 58. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.
- c. All permanent meters installed shall be listed in the Contractor's name until completion occurs, as defined in Article 6 hereof, at which time further pro-rating will be determined if necessary. When the District begins using the Project, charges over and above power actually used for construction will be the responsibility of the District.
- d. If the Contract is for construction in existing facilities, Contractor may, with written permission of the District, use the District's existing utilities by making prearranged payments to the District for utilities used by Contractor for construction.

Article 59. SANITARY FACILITIES

For Projects using Multiple Trade Contractors, the Construction Manager shall provide sanitary temporary toilet buildings for the use of all workers. For Projects using a Prime Contractor, Prime Contractor shall provide sanitary temporary toilet buildings for the use of all workers, as directed by the Construction Manager. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the Inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Construction Manager.

Article 60. TRENCHES

- a. **Trenches Five Feet or More in Depth.** If the Contract Price exceeds \$25,000, the Contractor shall submit to the District's Construction, for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL-OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
 1. All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
 2. Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.
- b. **Excavations Deeper than Four Feet.** If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the District's Construction Manager, in writing, of any:
 1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of

the character provided for in the Contract.

District or District's Representatives shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in the Contract.

In the event that a dispute arises between the District or District's Representative and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

Article 61. REGIONAL NOTIFICATION CENTER - EXCAVATIONS

- a. Contractor, except in an emergency, shall contact the appropriate regional notification center at least two working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District or the District's Representatives has been given the identification number by the Contractor.
- b. Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code Section 4216).
- c. Subsurface installation means any underground pipeline, conduit, duct, wire, or other structure operated or maintained in or across a public street or public right of way (Government Code Section 4216).

Article 62. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this Contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Contract Documents. Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. 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. Contractor shall designate a responsible member of his organization on the work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the District's Construction Manager by Contractor.

- b. Contractor shall be responsible to ensure that only authorized personnel enter the project site. The Construction manager shall provide the contractor with list of authorized personnel in addition to contractors and subcontractors workers. Contractor shall be responsible to provide whatever personnel may be needed to ensure that this requirement is met.
- c. Contractor shall provide fencing with screen cloth around all work areas.
- d. Contractor parking shall remain within the limits of the work area. Contractor shall provide sufficient on-site parking for all construction workers.
- e. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from either the Construction Manager, or the District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by the Construction Manager or the District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- f. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- g. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:
 - 1. Enclose working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which may interfere with school routine before or after school hours. (This subsection applies to construction on existing school sites.)
 - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - 3. Deliver materials to the building area over a route designated by both the Construction Manager and the Architect.
 - 4. When directed by the District, take preventive measures to eliminate objectionable dust and follow SCAQMD air quality regulations as appropriate.
 - 5. Confine Contractor's apparatus, the storage of materials, and the operations of his workers to limits indicated by law, ordinances, permits, or directions of the Construction Manager. Contractor shall not unreasonably encumber premises with his materials. Contractor shall enforce all instructions of the District's Construction Manager regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on construction site.

6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, licensed in the State of California, at no cost to the District.

Article 63. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at his expense. Such work shall be done by a qualified civil engineer approved by the Architect. Any required "as-built" drawings of site development shall be prepared by the approved civil engineer.

Article 64. REMOVAL OF HAZARDOUS MATERIALS

- a. Since removal and/or abatement of Asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the Contract Documents, the District shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.
- b. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District's Inspector, and the Construction Manager in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the District and Contractor, or by arbitration under Article 80 hereof.

Article 65. CUTTING AND PATCHING

- a. Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as the Construction may direct.
- b. All cost caused by defective or ill-timed work shall be borne by party responsible therefore.
- c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with written consent of the Architect.

Article 66. CLEANING UP

- a. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises. The construction site shall be kept reasonably free of construction debris. Storage of debris in approved solid waste containers shall be

considered compliance with this requirement. Small amounts of construction debris may be stored on site in a neat, safe manner for short periods of time pending disposal. Upon completion of work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and Contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall also clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.

- b. If the Contractor fails to clean up at the completion of the Work, the District may do so and the cost of such clean up shall be charged back to the Contractor.

Article 67. CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Contractor shall promptly remove from the premises all work condemned by the District as failing to conform to the Contract, whether incorporated or not. Contractor shall promptly replace and re-execute his own work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- b. If Contractor does not remove such condemned work within a reasonable time, fixed by written notice, the District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, the District may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

Article 68. ACCESS TO WORK

The District and its Representatives shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that The District's Representatives may perform their functions under contract.

Article 69. OCCUPANCY

The District reserves the right to occupy buildings at any time before completion, and such occupancy shall not constitute final acceptance of any part of work covered by this Contract.

Article 70. TESTS AND INSPECTIONS

- a. If the Contract, the District's construction managers, architects, instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by a public authority other than the District, Contractor shall inform the District's Construction Manager of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by the District, Construction Manager, Architect, or Inspector shall be promptly made and where practicable at source

of supply. If any work should be covered up without approval or consent of the District, Construction Manager and/or Architect, it must, if required by the District's Construction Manager, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with the Contract. Costs for testing and inspection shall be paid by the District. Costs of tests of any materials found not to be in compliance with the Contract shall be paid by the Contractor.

- b. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or the District's representative, and not by Contractor. All test or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- c. In advance of manufacture of materials to be supplied by Contractor under the Contract, which by the terms of the Contract must be tested, Contractor shall notify the District's Construction Manager in advance so that the District and its Representatives may arrange for testing of same at the source of supply. Any materials shipped by Contractor from the source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from the District's Representative that such testing and inspection will not be required, shall not be incorporated into the work without the prior approval of the District or its Representatives and subsequent testing and inspection.
- d. Re-examination of questioned work may be ordered by the District or its Representatives. If so ordered, work must be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and replacement. If such work be found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

Article 71. SOILS INVESTIGATIONS

When a Soils Investigation Report obtained from test holes at the site is available, such report shall not be a part of this Contract. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract. Contractor is required to make a visual examination of site and must make whatever tests he deems appropriate to determine the underground condition of the soil. Contractor agrees that he will make no claim against the District for damages in the event that during the progress of the work Contractor encounters subsurface or latent conditions at the site materially differing from those shown on drawings or indicated in specifications, or for unknown conditions of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in plans and specifications.

Article 72. CONSTRUCTION MANAGER'S AND ARCHITECT'S STATUS

- a. Both the Architect and the Construction Manager shall be the District's representatives during the construction period, and shall have the responsibilities and authorities to act on behalf of the District only to the extent identified in the Contract Documents, and generally as follows:
 - 1. The Architect is responsible for:

- i. Interpreting the DSA approved plans and specifications, and providing any necessary amplification of the plans and specifications.
 - ii. Observing the construction and, in the first instance, judging the Contractor's performance with respect to the quality standards for materials and work in place.
 - iii. Accepting and approving decisions and clarifications, pertaining to the technical aspects of the Contract Documents.
- 2. The Construction Manager is responsible for:
 - i. Serving as the Contractor's point of contact for management and administration of the Contract and coordination of interfaces with other Contractors and organizations participating in the same or adjacent projects, as well as those of the Architect and Inspector.
 - ii. Implementing the established procedures for processing all required submissions and documentation.
 - iii. Monitoring and reviewing the Contractor's safety program, personnel and equipment, scheduling and progress of the work, and, without assuming any of the Architect's legal responsibilities, the work of the Contractor for conformance with the Contract Documents.
- b. The Construction Manager shall have authority to direct stoppage of the work whenever such stoppage may be necessary in the Construction Manager's, the Architect's, or Inspector's reasonable opinion to insure the proper execution of the Contract
- c. The District retains the authority to issue the ultimate decision in the event the Construction Manager and Architect cannot reach a consensus regarding any decisions, clarifications, instructions, directions, acceptances, or approvals required, issues, or made pursuant to the Contract Documents and in connection with the prosecution and progress of the Work.

Article 73. DECISIONS OF CONSTRUCTION MANAGER AND ARCHITECT

Contractor shall promptly notify the District in writing if either the Construction Manager or Architect fail within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the work.

Article 74. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

Article 75. LABOR/EMPLOYMENT SAFETY

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, Section 651 et seq.), and

California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

Article 76. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees 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 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any 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.

Article 77. NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, the District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. District is entitled to recover its reasonable costs incurred in providing such notification.

Article 78. SUBSTITUTION OF SECURITY

In accordance with Public Contract Code Section 22300, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the District, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Article 79. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- a. It shall be the responsibility of the Contractor to file a Notice of Intent and procure a State Water Resources Control Board (State Water Board) Water Quality Order No. 99-08-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating work. The Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be the responsibility of the Contractor to evaluate and include in the bid the cost of procuring the Permit and preparing the SWPPP, as well as complying with the SWPPP and any necessary revisions to the SWPPP. The Contractor shall also include in his or her bid the cost of monitoring as required by the Permit.
- b. Contractor shall also comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water

to separate storm drain system(s) or other water courses under their jurisdiction, including applicable requirements in municipal storm water management programs. This requirement applies to all projects, including those projects that impact less than one acre or disturb less than one acre.

- c. Storm, surface, nuisance or other waters may be encountered at various times during the course of construction. By submitting its bid, Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its bid accordingly, and assumes any and all liabilities arising there from.
- d. Failure to comply with the Permit or any applicable municipal permit is a violation of law and may be subject to penalties, fines, or additional regulatory requirements. Contractor hereby agrees to indemnify and hold harmless District, its officers, directors, agents and employees from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of noncompliance with the Permit or the applicable municipal permit, unless such noncompliance is the result of District's sole established negligence, willful misconduct or active negligence.
- e. District may seek damages from Contractor for project delays in accordance with the contract documents caused by Contractor's failure to comply with the Permit or applicable municipal permit.

Article 80. RESOLUTION OF CONSTRUCTION CLAIMS

a. The following shall be applicable to all Claims:

- 1. **Definition of Claim:** A "Claim" means a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- 2. **Filing Claim is Not Basis To Discontinue Work:** The Contractor shall promptly comply with work under the Contract or work requested by the District even though a written claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all claims that may arise during the performance of the work covered by this Contract.

b. Procedure for Claims \$375,000 and Under:

- 1. Any formal claim of \$375,000 and under shall be processed as follows in accordance with Public Contract Code Section 20104 et. seq.:
 - (a) Claims less than \$50,000: For claims less than Fifty Thousand Dollars (\$50,000.00), the District shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the District and the Contractor. The

written response of the District to the claim, as further documented, shall be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

- (b) Claims in Excess of \$50,000: For claims over Fifty Thousand Dollars (\$50,000.00), and less than or equal to Three Hundred Seventy-five Thousand Dollars (\$375,000.00), the District shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided by mutual agreement of the District and the Contractor. The written response of the District to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.
2. Informal Meet and Confer Conference: If Contractor disputes the written response of the District, or the District fails to respond within the time prescribed, Contractor may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the failure of the District to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
3. Tort Claim: If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of the Title 1 of the California Government Code. For purposes of those provision, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his/her written claim until the time the claim is denied, including any period of time utilized by the meet and confer conference.

c. **Procedures for Civil Actions to Resolve Disputed Claims:**

1. Non-binding Mediation: Within sixty (60) days, but no earlier than thirty (30) days, following the filing of a responsive pleading, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation by both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediation, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause shown to the Court. If the parties fail to select a mediator within the 15 day period, any party may petition the Court to appoint the mediator.
2. Judicial Arbitration: If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, notwithstanding Section

1141.11 of the code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subsection consistent with the rules pertaining to judicial arbitration. Arbitrators shall be experienced in construction law.

3. Appeals: In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of the Code of Civil Procedure), any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees, also pay the attorneys' fees on appeal of the other party.
4. Interest: In any suit filed pursuant to Public Contract Code Section 20104.4, the District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in the court of law.

d. **Procedure for Claims Over \$375,000:**

1. If a dispute in excess of a total value of \$375,000, arises out of, or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree that as a condition precedent to the initiation of litigation, the dispute shall first be submitted to mediation pursuant to this Article 80. The mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.
2. Either party may initiate mediation by notifying the other party or parties in writing. A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.
3. The mediation process set forth in this Article shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator").
4. The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. The shared costs are estimated at \$1,500 or less for claims up to \$60,000 and \$3,000 or less for claims over \$60,000. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for an party shall be paid by the party producing such witnesses.
5. A single mediator, acceptable to all parties, shall be used to mediate the dispute. The Mediator will be knowledgeable in construction matters and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the Mediator.
6. At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the

issues that need to be resolved. At the discretion of the Mediator, such memoranda may be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue presented. The Mediator may require each party to supplement such information.

7. Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic record of the mediation.
8. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties may have an attorney present and shall advise the other parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other parties may also have their attorneys present.
9. The Mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The Mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the Mediator or the parties, as the mediator shall determine.
10. The Mediator is authorized to end the mediation whenever, in the Mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.
11. Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery in subsequent proceedings.
12. The mediation shall be terminated by the execution of a Settlement Agreement by the parties; by a written declaration of the Mediator to the effect that further efforts at Mediation are not longer worthwhile; or by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.
13. If mediation is unsuccessful in resolving the dispute, the parties thereafter may agree to submit the matter to the Administrator for binding arbitration. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree to three (3) arbitrators in writing. The parties further agree that they will faithfully observe this Contract, and that the parties will abide by and perform any award rendered by the arbitrator(s), that a judgment of a court having competent jurisdiction may be entered

upon the award, and that such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Section 1280 through 1294.2 if the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

14. Any arbitration, mediation or other forms of alternate dispute resolution shall be handled within the boundaries of the District unless otherwise mutually agreed.
- e. **Rights and Remedies.** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto and all of the rights and remedies available to District and Construction Manager/Architect hereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.
 - f. **Arbitration Award.** Pursuant to California Government Code Section 818, the Arbitrator shall have no jurisdiction to award punitive or exemplary damages.
 - g. **Attorney's Fees and Costs.** In the event that any arbitration, action, suit or other proceeding is instituted to enforce any provision of this Contract, and/or to remedy, prevent, or obtain relief from a breach of this Contract, the prevailing party shall be entitled to recover all of its attorney's fees and costs incurred in each and every such arbitration, action, suit or other proceeding, including any and all appeals or petitions there from, except as may be provided to the contrary above. As used herein, attorney's fees shall be deemed to mean the full actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fees charged by the attorneys performing such services and shall not be limited to "reasonable attorney's fees" as defined by any statute or rule of Court.

Article 81. INTEGRATION

- a. **Oral Modifications Ineffective.** No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, except by a waiver or modification thereof in writing and signed by the authorized representative of the District and the Contractor.
- b. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire understanding of the District and Contractor as to those matters contained therein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered by the Contract Documents.

Article 82. COMPLIANCE WITH DTSC GUIDELINES—IMPORTED SOILS

If the Project requires the use of imported soils, or the Contractor plans to use imported soils as fill material at the Project site, the Contractor shall be responsible to use imported material free of any hazardous and/or toxic substance or material of any nature or type as defined by State and Federal Law, including but not limited to the Porter Cologne Water Quality Act, the California Health and Safety Code, and the Federal Clean Water Act. The Contractor shall certify and provide test reports confirming that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in the aforementioned laws, acts and code. Contractor's certification and test reports shall be provided to the District no later than 48 hours before Contractor deposits the soil on the Project site. The District reserves the right to test and reject any imported material, which costs of testing, if the soil is found to be noncompliant with these Contract Documents and/or applicable law, shall be backcharged as against the Contractor. District shall not be responsible for any costs of testing, transportation, remediation or replacement of imported soils which are tested and found to be noncompliant; Contractor bears all responsibility and costs for ensuring that imported soils comply with these Contract Documents and/or applicable law. Any Project delay caused by the failure of Contractor's use of imported soils to comply with these Contract Documents and/or applicable law shall be at contractor's sole cost and expense. Contractor shall reimburse the district for any costs, including staff time, testing costs and Projects delays, due to Contractor's use of imported soils that does not comply with these Contract documents and/or applicable law. Contractor must notify the District of the source of any imported soils and expressly recognizes the District's right to reject any imported material that has come from agricultural or commercial land uses. Contractor must further comply with the requirements of San Diego Regional Water Quality Control Board Order No. R9-2002-0342, as well as any other applicable State or local agency rules, regulations, or policies prohibiting, restricting, or otherwise controlling the use of fuel contaminated soils, including but not limited to the guidelines of the Department of Toxic Substances Control (DTSC).

Article 83. DRUG-FREE WORKPLACE, NO ASBESTOS CERTIFICATION

Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." This form is included in the Contract Documents and must be signed under the penalty of perjury and dated prior to commencing work on this Project.

In addition to the above listed certification, Contractor shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." Contractor, further, is aware of the following:

- a. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

3. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- b. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
 - c. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Contract, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.

Article 84. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

Article 85. MISCELLANEOUS

These Contract Documents shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of these Contract Documents, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. Except as otherwise provided in these Contract Documents, in the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the Court.