

[Insert District name, address, phone number]

**PUBLIC WORKS CONTRACT FOR SERVICES UNDER THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT
(Not to Exceed \$60,000)**

THIS CONTRACT ("Contract") made and entered into on _____, 20__ by and between _____, hereinafter called the Contractor and the [Insert District name], hereinafter called the District. Contractor and District may be individually referred to herein as a "Party," or may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the District has adopted the California Uniform Construction Cost Accounting Act ("Act");

WHEREAS, pursuant to Section 22032(a) of the Act, public projects of sixty thousand (\$60,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order; and

WHEREAS, this Contract is for a public project of sixty thousand (\$60,000) or less.

NOW, THEREFORE, the Parties do hereby contract and agree as follows.

AGREEMENT

- 1. Services.** The Contractor shall furnish labor and materials ("Work" or "Services") to the District as further described in the Scope of Services set forth in **Attachment A** and in accordance with the Terms and Conditions set forth in **Attachment G**, both attached hereto and incorporated herein.
- 2. Rate.** The total Contract price shall be _____ (\$_____) ("Contract Price") (**MAY NOT EXCEED \$60,000**). District shall pay to the Contractor the Contract Price as full consideration for the faithful performance of the Contract, subject to any additions, deductions, or other requirements as provided for in the Contract Documents (defined herein).
- 3. Qualifications.** Contractor shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following classification: _____. Contractor shall perform the Work in a professional and workmanlike manner and with the degree of care generally accepted as standard in the Contractor's industry.
- 4. Term.** This Contract shall commence on _____, 20____ with Work to be completed within ____ (__) consecutive days and/or by _____, 20____, whichever is earlier ("Completion Date"), unless earlier terminated as set forth herein. Work not completed by the Completion Date shall be subject to liquidated damages in the amount of **Five Hundred Dollars (\$500.00)** per day. Contractor shall notify District when the Work is complete, whereupon the Work will be inspected and its completeness determined.
- 5. DIR Registration.** Pursuant to the Terms and Conditions set forth in **Attachment G**, and in accordance with certificate set forth in **Attachment E**, Contractor shall be registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code Section 1725.5 for public projects that exceed \$25,000 and maintenance projects that exceed \$15,000.
- 6. Retention.** When the public project exceeds \$5,000 the District may withhold a maximum of five percent (5%) of any progress payments and may in total withhold no more than five percent (5%) of the entire Contract Price until final completion and acceptance of the project. Retention may be held up to sixty (60) days after notice of completion is approved by the Board of Education, in accordance with Public Contract Code section 7201. Notwithstanding the previous sentence, in the event of a dispute between the Contractor and District, the District is entitled to withhold an amount not to exceed one hundred fifty percent (150%) of the disputed amount from the final payment of the Contract Price. At the request and expense of the Contractor, securities equivalent to the amount withheld may be deposited with the District or with a state or federally chartered bank as the escrow agent in accordance with Public Contract Code sections 22300 *et seq.*
- 7. Invoices.** Invoices for payment shall be mailed to: [Insert District name and address]. Invoices may also be sent electronically to [Insert District email]. Undisputed invoices shall be paid in full within thirty (30) days.

8. **Effective Date.** This Contract shall become effective on the date it is fully executed by both Parties, which, with respect to District, shall not occur until approved by the District's Governing Board.

IN WITNESS WHEREOF, the Parties hereunto have subscribed to this Contract, including all Contract Documents as listed below ("Contract Documents"), all of which are component parts of the Contract as if herein set out in full:

[District staff to mark which attachments are required on a contract-by-contract basis.]

- | | |
|---|---|
| <input type="checkbox"/> Scope of Services, Attachment A | <input type="checkbox"/> Terms and Conditions, Attachment G |
| <input type="checkbox"/> Non-Collusion Declaration, Attachment B | <input type="checkbox"/> Workers' Compensation Certificate, Attachment H |
| <input type="checkbox"/> Tax Identification, Attachment C | <input type="checkbox"/> Performance Bond, Attachment I |
| <input type="checkbox"/> Fingerprinting Certification, Attachment D | <input type="checkbox"/> Payment Bond, Attachment J |
| <input type="checkbox"/> DIR Certification of Contractor Form, Attachment E | <input type="checkbox"/> Purchase Order No. (will follow) |
| <input type="checkbox"/> List of Subcontractors, Attachment F | <input type="checkbox"/> Certificates of Insurance (to be attached by Contractor) |

In the case of any conflict between Contractor's proposal and any Contract Document(s), each and every Contract Document shall prevail and control over Contractor's proposal.

All notices permitted or required under this Contract shall be given to the respective Parties at the addresses below, or at such other address as the respective Parties may provide in writing for this purpose. Such notice shall be deemed made when personally delivered or, when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

The Contractor hereby agrees to abide by all terms and conditions of the Contract Documents. Under penalty of perjury, the individual signing on behalf of the Contractor hereby certifies that s/he is an authorized agent/representative of the Contractor.

IN WITNESS WHEREOF, this Contract has been duly executed by the below-named Parties.

CONTRACTOR: _____	DISTRICT: _____
Authorized Signature: _____	Authorized Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
Phone: _____	Phone: _____
Email: _____	Email: _____
Date: _____	Date: _____

ATTACHMENT A
Scope of Services

[District to attach on a contract-by-contract basis.]

ATTACHMENT B
Non-Collusion Declaration

NON-COLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

The undersigned declares: I am the _____ of _____, the party making the proposal on which this Contract is based. The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or to refrain from proposing. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer. All statements contained in the proposal are true. The proposer has not directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20____, at _____, California.

By: _____

Name: _____

ATTACHMENT C
Tax Identification

Federal Regulations (26 CFR section 1.6041) requires non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security Number, whichever is applicable. The District requires a valid copy of a W-9 to be supplied upon request.

TYPE OF BUSINESS ENTITY

- Individual
- Sole Proprietorship
- Partnership
- Corporation
- Other

TAX IDENTIFICATION

Employee Identification Number

Social Security Number

License No.

Classification:

Expiration Date:

DIR Registration No. (If applicable): _____

ATTACHMENT D
Fingerprinting Certification

The undersigned does hereby certify to the Governing Board of the District as follows:

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

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

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

Name:

Title:

- The Work on the Contract is at an unoccupied site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with District pupils.

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

Date:

Proper Name of Contractor:

Signature:

Print Name:

Title:

ATTACHMENT E
DIR Certification of Contractor and
Subcontractor Division of Industrial Relations Registration

Pursuant to Labor 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 works contract, unless the work is otherwise exempt for a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

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

_____ is currently registered as a contractor with the Department of Industrial Relations (DIR):
(Contractor Name)

Contractor's DIR Registration Number _____

Expiration date _____

Contract 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 time of 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

(Complete only if pertinent)

ATTACHMENT F

List of Subcontractors

In compliance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*) ("Act") and any amendments thereof, the proposer shall set forth below: (1) the name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid; and (2) the portion of the Work which will be done by each subcontractor under this Act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in the proposal. If the prime contractor fails to specify a subcontractor or if the prime contractor specifies more than one subcontractor for the same portion of Work to be performed under the Contract in excess of one-half of one percent (0.5%) of the prime contractor's total proposal, the prime contractor shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

No prime contractor whose proposal is accepted shall: (1) substitute any subcontractor; (2) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid; or (3) sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the prime contractor's total proposal as to which his original proposal did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the Work in which no subcontractor was designated in the original proposal shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this Contract, setting forth the facts constituting the emergency or necessity.

Portion of Work	Subcontractor Name	License Number	Registration Number	Location and Place of Business

ATTACHMENT G
Terms and Conditions

ARTICLE 1. PROPOSAL ACCEPTANCE: Proposals are subject to acceptance by the signing of a Contract and issuance of an appropriate purchase order at any time within sixty (60) days after the receipt of quotes unless otherwise stipulated. The District reserves the right to accept or reject any and all quotes and reserves the right to waive any informality in any quote.

a) **DUTY OF CONTRACTOR:** If District accepts the proposal and Contractor is awarded the Contract ("Project"), it is the duty of the Contractor to complete the Work covered by this Contract in exact accordance with all approved plans, Work Specifications, and other Contract Documents and in accordance with the specifications of the District. The Work is to be performed at such times and places as directed by, and subject to, the approval of the authorized District representative.

Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District.

ARTICLE 2. SITE EXAMINATION: Contractor must examine the site and certify all measurements, specifications and conditions affecting the Work to be performed at the site. By submitting their quote, a Contractor warrants that it has made such site examination as it deems necessary as to the condition of the site, its accessibility for materials, workmen and utilities, and ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to such matters or for any other undiscovered conditions on the site.

ARTICLE 3. EQUIPMENT AND LABOR: The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Scope of Work attached hereto.

ARTICLE 4. SUBCONTRACTING: Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of his subcontractor and of persons either directly or indirectly employed by himself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

ARTICLE 5. ASSIGNMENT: Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of District.

ARTICLE 6. CONTRACTOR AND SUBCONTRACTOR INSURANCE: The Contractor shall not commence Work under this Contract until it has obtained the insurance required under this paragraph and satisfactory proof of such insurance has been submitted to District and said insurance has been approved by the District. Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than \$1,000,000 per occurrence (combined single limit) and \$2,000,000 Project Specific Aggregate (for this Project only). Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of Education, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, the architect, and the architect's consultants, if applicable, individually and collectively as additional insured. Contractor shall take out and maintain and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain, all said insurance during the life of this Contract.

The limits set forth above shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to District, and shall not preclude the District from taking such other actions available to District under other provisions of the Contract Documents or law.

Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the District's prior written consent, and the District shall be named as an additional insured and be furnished thirty (30) days' written notice prior to cancellation. The Contractor shall not allow any subcontractor, employee or agent to commence Work on this Contract or any subcontract until the insurance required of the Contractor, subcontractor, or agent has been obtained.

a) **WORKER'S COMPENSATION INSURANCE:** The Contractor shall procure and shall maintain during the life of this Contract Worker's Compensation Insurance on all its employees engaged in Work under this Contract, and at the site of the Project. If the Work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for subcontractor's employees. Any class of employee or employees not covered by subcontractor's insurance shall be covered by the Contractor's insurance. The Contractor shall provide to the District a certificate regarding Workers' Compensation available from the District prior to performing the Work of the Contract.

ARTICLE 7. LABOR CODE COMPLIANCE: This is a public works project and is subject to compliance monitoring and enforcement by the Department of

Industrial Relations. The Contractor hereby stipulates that it shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5 ("Public Works Labor Code Provisions"), including, but not limited to, the payment of the general prevailing rates for public works projects of more than One Thousand Dollars (\$1,000) (Labor Code section 1771), hiring of Apprentices (Labor Code section 1777.5), Working Hours (Labor Code section 1813), and Payroll Records (Labor Code section 1776). Information regarding prevailing wages rates is available online at www.dir.ca.gov/. Contractor shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, actual time and overtime hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work or any part of the Work contemplated by this Contract, starting wage rates, the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him in connection with the public work, trades, payments made and employee signatures. The records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor, in accordance with the Public Works Labor Code Provisions. Contractor and all subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner. Copies of these records shall be furnished to the District upon request.

In accordance with Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work under this Contract. Contractor and any subcontractor shall pay workers overtime pay as required by Labor Code section 1815. The Contractor shall pay each worker, laborer, mechanic or persons performing work under this Contract at a rate not less than the prevailing wage for each craft or classification covering the work actually performed. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

Contractor shall forfeit to District as a penalty the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor or any subcontractor for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week in violation of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

Additionally, District and Contractor desire that this Contract clarify responsibilities and labor requirements relating to Contractor's Work. In particular, Contractor shall be knowledgeable of and shall comply with Labor Code sections 1727, 1771, 1773.1, 1773.3, 1773.5, 1773.8, 1774 – 1777, 1777.5, 1810, 1813, 1815, and 1860, including all amendments thereto; each of these Sections is incorporated by reference into this Contract.

ARTICLE 8. DIR REGISTRATION: All contractors and subcontractors on a public works project must be 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. Information regarding registration with DIR is available online at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. In the event the Project is under the current legal bid limit, the Contractor must provide its DIR registration number with its proposal. This number shall be on the purchase order. Contractors who work exclusively on small public works projects are not required to register as a public works contractor or file electronic certified payroll reports for those projects. Contractors are still required to maintain certified payroll records on a continuous basis, and provide them to the Labor Commissioner's Office upon request. Additionally, awarding agencies are not required to submit the notice of contract award through DIR's PWC-100 system on projects that fall within the small project exemption.

The small project exemption applies for public works projects that do not exceed:

- **\$25,000** for construction, alteration, demolition, installation, or repair work; or
- **\$15,000** for maintenance.

If said small project exemption does not apply to the Project, Contractor and subcontractors must be registered as of the date of this Contract.

ARTICLE 9. APPRENTICES: Contractor shall comply with Labor Code sections 227, 1777.5, 1777.6, 3070 *et seq.*, and 3077 *et seq.*, each of which is incorporated by reference into this Contract. These Sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, unless an exception is granted and that Contractors and subcontractors shall not discriminate against otherwise qualified employees as

apprentices on any public works solely on the ground of actual or perceived race, religion, color, national origin, ethnic group identification, sex, gender, sexual orientation, age, or physical or mental disability. Only apprentices who are in training under written apprenticeship occupations shall be employed. The responsibility for compliance with these provisions for all apprenticeable occupations rests with Contractor.

ARTICLE 10. WORKERS' COMPENSATION: In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees. Contractor shall sign and file with District the attached certificate prior to performing under this Contract.

ARTICLE 11. INDEMNIFICATION: District shall not be liable for, and Contractor shall, at its own expense, defend, indemnify, and hold harmless the District, its officials, employees, agents and volunteers, from and against any and all claims, actions, causes of action, suits, proceedings, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages or injury, in law or equity to property or persons, including wrongful death, expenses, charges or costs of any kind or character, including attorneys' fees and costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the Project or this Contract, arising either directly or indirectly from any act, error, omission or negligence of Contractor or its subcontractors, licensees, agents, servants, volunteers or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its officials, employees, agents or volunteers. However, Contractor shall have no obligation to defend or indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of District or its agents or employees. Contractor shall reimburse District and its officials, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

ARTICLE 12. MATERIALS: Contractor warrants good title to all material, supplies and equipment installed or including in the Work. 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. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work. Contractor shall be entirely responsible for damage or loss

by weather or other causes to materials or Work under this Contract.

ARTICLE 13. PATENTS, ROYALTIES AND INDEMNITIES: The Contractor shall hold and save the District and its 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 14. GUARANTEE: Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all Work for a period of one year after date of acceptance of Work by District and 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 one year period from date of acceptance, without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

This article does not in any way limit the guarantee of 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 District all appropriate guarantee or warranty certificates upon completion of the Project.

If, in the opinion of the District, 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 will attempt to give the notice required by this article. If the Contractor cannot be contacted or does not comply with the District's requirements 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 and the costs of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the guarantees provided in this article or elsewhere in this Contract.

ARTICLE 15. PROTECTION OF WORK AND PROPERTY: 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 and 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

Contract Documents. Contractor shall take all necessary precautions for safety of employees on the Work 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, light 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 the organization on the Work, whose duty shall be prevention of accidents. Contractor shall report name and position of person so designated to District. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at its discretion to prevent the threatened loss or injury. It shall be the responsibility of the Contractor to ascertain from the District the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present.

ARTICLE 16. DISTRICT'S RIGHT TO TERMINATE CONTRACT:

a) TERMINATION FOR CAUSE: Failure to comply with any of the terms and/or conditions of the Contract Documents shall constitute a default by the Contractor. On or after any event of default by the Contractor, the District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to: (a) seek specific performance of all or any part of this Contract; (b) terminate this Contract at no cost to the District; or (c) exercise any other legal or equitable remedy. District shall also have the right to cure, or cause to be cured, any cause of default on behalf of the Contractor, and Contractor shall pay to the District all costs and expenses incurred as a result of the cure.

b) TERMINATION FOR CONVENIENCE: The District may terminate this Contract, in whole or in part, for District's convenience and without cause at any time by giving Contractor seven (7) days' written notice of such termination. The notice shall specify the date on which termination shall become effective. In an event of termination for convenience, Contractor shall be paid for services performed or deliveries made, pursuant to this Contract and to the satisfaction of the District up to the specified date of termination. Such payment shall be Contractor's sole and exclusive compensation and District shall not have liability to Contractor for any other compensation or damages, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

Contractor hereby waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein.

ARTICLE 17. COMPLIANCE WITH STORM WATER PERMIT:

As applicable, Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") – General NPDES Permit No. CAS000004 adopted by the State Water Resources Control Board. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit and include all costs in the Contract amount. Contractor shall be responsible for procuring, implementing and complying with the provisions, monitoring and reporting requirements as required by the Permit. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs. Contractor shall provide copies of all reports and monitoring information to the District Representative.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Project. The Contractor, by signing this Contract, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its proposal accordingly, and assumes any and all risks and liabilities arising therefrom. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for fines or delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit or other regulatory regulations. Contractor shall provide copies of all reports and monitoring information to the District Representative.

ARTICLE 18. CLEAN UP: Contractor shall remove debris, such as waste, rubbish, and excess materials and equipment, from on, under, in, or about the premises. Contractor shall ensure premises shall be free of debris at

all times when work is not actually being performed. Upon completion of work, Contractor shall clean interior and exterior of building 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 remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall be liable to District for any damages arising as a result of a failure to comply with said obligations.

ARTICLE 19. 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 provisions is not inserted, or is not correctly inserted, then upon application of either Party the Contract shall be physically amended to make such insertion or correction.

ARTICLE 20. EXCAVATION DEEPER THAN FOUR FEET: If this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, then all of the following apply:

- a. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, 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 by information about the site made available to proposers prior to the deadline for submitting proposals; (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 this Contract.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the 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 this Contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractors' 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 this 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 contracting Parties.

ARTICLE 21. REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES: The Contractor shall not be assessed for liquidated damages for delay in completion of this Project, when such delay was caused by the failure of the awarding authority of this Contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the Contract discovers any utility facilities not identified by the public agency in the Contract plans or Work Specifications, he shall immediately notify the public agency and utility in writing. The public utility, where they are the owners, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and Work Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work.

ARTICLE 22. CHANGES AND CHANGE ORDERS: Change orders may not cause the total aggregate cost of the Project to exceed \$60,000 or the Project will become subject to competitive bidding. The District, without invalidating Contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the Contract Price 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. In giving instructions, Contractor agrees that the District 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 District, and no claim for

an addition to the Contract Price shall be valid unless so ordered.

ARTICLE 23. PAYMENTS: The Contractor shall submit to the District an invoice requesting payment for completion of the Work. The District shall review payment request and, as soon as practical, shall: (i) certify that the request is correct in all aspects and should be paid by the District; (ii) reject the request as not proper, stating the reason(s) why rejection is appropriate; or (iii) require that the Contractor provide additional information that the District reasonably determines is necessary to verify the requested payment amount. In the event the District rejects the request for payment, the Contractor may resubmit the request with additional or new information establishing why payment should be made despite the reason(s) set forth in the District's initial rejection. The District shall pay the undisputed amount of the Contractor's properly submitted request for payment, less any amounts that may be withheld or retained pursuant to this Contract or applicable law, within thirty (30) days of receipt of such request and in accordance with Public Contract Code section 20104.50.

ARTICLE 24. DISPUTE RESOLUTION: Notwithstanding any other language in the Contract Documents, claims between the District and the Contractor shall be resolved in accordance with the procedures set forth in Public Contract Code section 9204. For purposes of this article, "Claims" are defined as a separate demand by the Contractor for one of the following: a time extension for relief from penalties for delay; payment of money or damages arising from Work done; or payment of an amount disputed by the District. Upon receiving a claim sent by registered or certified mail, the District must review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the claim, or request additional documentation supporting the claim within thirty (30) days. The forty-five (45) day period to respond may be extended by mutual agreement. The claim is deemed rejected in its entirety if the District does not issue a response. Any payment due on an undisputed portion of the claim must be processed and made within sixty (60) days after the District's response. If a claimant disputes the District's response or lack thereof, the claimant may demand to meet and confer for settlement of the issues in dispute. Any portion of a claim that remains in dispute after a meet and confer conference will be subject to nonbinding mediation process, as described in Public Contract Code section 9204. Amounts not paid in a timely manner as required by the Code shall bear interest at 7% per annum. A subcontractor or lower tier subcontractor may make a claim to the District through the Contractor, as specified in Public Contract Code section 9204. However, the procedures in this Section shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or

extend the time for the giving of such notice as provided in the Contract Documents.

ARTICLE 25. RESOLUTION OF CONSTRUCTION CLAIMS OF \$375,000 OR LESS: For public work claims of \$375,000 or less between Contractor and District, if District has not elected to resolve disputes by arbitration pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2 of the Public Contract Code, the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of the Public Contract Code apply ("Article 1.5").

For purposes of Article 1.5, "public work" means "public works contract" as defined in Public Contract Code section 1101. For purposes of this article, "claim" means a separate demand by Contractor for a time extension, or payment of money or damages for work done by or for Contractor, payment for which is not otherwise expressly provided in the Contract or to which Contractor would not otherwise be entitled, or a payment disputed by District.

Each claim shall be submitted in writing before the date of final payment and shall include all necessary substantiating documentation. District shall respond in writing within forty-five (45) days of receipt of the claim if the claim is less than \$50,000 ("\$50,000 claim") or within sixty (60) days of receipt of the claim, if the claim is over \$50,000 but less than or equal to \$375,000 ("\$50,000-\$375,000 claim"). In either case, District 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 the District may have against the claimant. Any additional information shall be requested and provided upon mutual agreement of the District and the claimant. District's written response to the claim shall be submitted to claimant within fifteen (15) days after receipt of the further documentation for \$50,000 claims or within thirty (30) days after receipt of the further documentation for \$50,000-\$375,000 claims or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

Within fifteen (15) days of receipt the District's response, if claimant disputes District's written response or within fifteen (15) days of the District's failure to respond within the time prescribed, the claimant shall provide written notification to District demanding an informal conference to meet and confer to be scheduled by the District within thirty (30) days. If the claim or any portion of the claim remains in dispute following the meet and confer, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written

claim until the time the claim is denied, including time utilized as a result of the meet and confer process.

If a civil action is filed to resolve claims within sixty (60) days (but no earlier than thirty (30) days) following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both Parties. The mediation process shall provide that both Parties select a disinterested third person mediator within fifteen (15) days, shall be commenced within thirty (30) days of the submittal and concluded within fifteen (15) days from the commencement of the mediation unless time is extended upon a good case showing to the court or by stipulation of both Parties. If the Parties fail to select a mediator within the 15-day period, any Party may petition the court to appoint the mediator.

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 Code of Civil Procedure, notwithstanding Section 1141.11 of that Code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The court may, upon request by any Party, order any witness to participate in the mediation or arbitration process.

Notwithstanding any other provision of law, upon stipulation of the Parties, arbitrators appointed for purposes of this article shall be experienced in construction law and, upon stipulation of the Parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates not to exceed their customary rate. Such fees and expenses shall be paid equally by the Parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall state or county funds pay these fees or expenses. Any Party who, after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment, shall pay the attorney's fees of the other Party arising out of the trial de novo in addition to payment of costs and fees required under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure. District shall not fail to pay any portion of a claim which is undisputed unless otherwise provided herein and shall pay interest at the legal rate commencing on the date the suit is filed in court on any arbitration award or judgment.

ARTICLE 26. DEFAULT BY CONTRACTOR: When Contractor, or any subcontractor, or vendor shall fail to deliver any article or service or shall deliver any article or service which does not conform to the Work Specifications, the District may, upon five (5) business days' prior written notice describing the default, at its option, annul and set aside the Contract entered into with

said Contractor, subcontractor or vendor either in whole or in part, and make and enter into a new contract in such manner as seems to the Board of Education to be to the best advantage of the District. Any failure for furnishing such articles or services by reason of the failure of the Contractor, subcontractor or vendor, as above stated, shall be a liability against the Contractor and his sureties. The Board of Education reserves the right to cancel any articles or services which the Contractor may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the Contractor provided satisfactory proof is furnished to the Board of Education, if requested.

ARTICLE 27. WORKERS AND SUPERVISION: Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from the job site and shall not again be employed at site without written consent from the District.

ARTICLE 28. SUBSTITUTIONS: No substitutions of materials from those specified in the Work specifications and/or Scope of Work shall be made without the prior written approval of the District.

ARTICLE 29. ACCESS TO WORK: District representatives shall at all times have access to Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access.

ARTICLE 30. OCCUPANCY: District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for substantial completion of the Work.

ARTICLE 31. FORCE MAJEURE: The Parties to this Contract shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by Act of God, fire, strike, loss, pandemic or epidemic, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other Party(ies), provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing. The Contractor shall not be entitled to additional monetary compensation as a result of any excused performance set forth herein.

ARTICLE 32. PERMITS AND LICENSES: The Contractor and all of his employees, agents, and subcontractors shall secure and maintain in force, at

Contractor's sole cost and expense, such licenses and permits as are required by law, in connection with the furnishing of Work, materials, supplies, or services in accordance with this Contract.

ARTICLE 33. CONTRACTOR NOT OFFICER, EMPLOYEE, OR AGENT OF DISTRICT: While engaged in carrying out other terms and conditions of the Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. The Parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Contract; (2) the Contractor's personnel shall only perform work that is outside the usual course of the District's business; and (3) Contractor's personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

ARTICLE 34. ASSIGNMENT OF CLAIMS: In submitting a quote on this public works project, or any subcontractor agreeing to supply goods, services, or materials, and entering a contract pursuant thereto, the Contractor and/or subcontractor do offer and agree to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act, Chapter 2 (commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor without further acknowledgment by the Parties.

ARTICLE 35. GOVERNING LAW AND COMPLIANCE WITH LAWS: This Contract shall be governed by and construed in accordance with the laws of the State of California. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct or work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinances, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any Work knowing it to be in violation of such laws, ordinances, rules or regulations, and without first notifying the District of such violation, Contractor shall bear all costs arising therefrom.

Contractor agrees to post job site notices prescribed by regulation Chapter 8 of the California Code of Regulations, section 16451(d):

This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).

Local Office Telephone Number: (619) 220-5451

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html.

ARTICLE 36. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

ARTICLE 37. NO ORAL MODIFICATION: Any waiver, amendment, modification, consent or acquiescence with respect to this Contract or any provision of this Contract or with respect to any failure to perform in accordance

therewith shall be set forth in writing and mutually executed by both Parties hereto.

ARTICLE 38. ASBESTOS NOTIFICATION: This article hereby advises Contractor of the availability of information relative to the location(s) of asbestos-containing building materials ("ACBM") which Contractor's employees or subcontractors may come in contact with while performing services for the District. Existing federal law, as contained in 40 CFR, Part 763.84(d), mandates that Contractor's workers be provided with this information before starting any work in these areas. Each school facility has its own site specific "management plan" which contains this information. It is suggested that Contractor's workers receive and review these documents for their work location. The District assumes no responsibility for costs of addressing any asbestos that is encountered by Contractor's or subcontractors' negligence or for providing Contractor's or subcontractors' workers with training or protective equipment which may be required by any federal, state or local regulation enforcement agency.

All Contract Work that is performed for the District by outside contractors or workers must meet all of the regulations that have been set forth in the Asbestos Hazard Emergency Response Act ("AHERA"). This means that all work which could disturb the integrity of any ACBM needs to be approved by the District. This refers to the sawing, grinding, cutting, or drilling of any ACBM in occupied areas of District buildings.

ARTICLE 39. PROHIBITION AGAINST LEAD-BASED MATERIALS: In accordance with the Lead-Safe Schools Protection Act (Education Code sections 32240 *et seq.*), the Contractor shall not use for purposes of the Work, or incorporate into the Work, any lead-based paint, lead plumbing or solders, or other materials, equipment or other things that, in whole or in part, consist of lead and, therefore, may be a potential source of lead contamination.

ARTICLE 40. DRUG FREE/SMOKE FREE/ALCOHOL FREE POLICY: All District sites are designated drug free/smoke free/alcohol free. The use or abuse of controlled substances, tobacco products and alcohol will not be tolerated.

ARTICLE 41. DVBE PARTICIPATION: This Contract will be subject to disabled veterans participation goals and record retention program if State funding is used for the Project. If applicable, in accordance with Education Code section 17076.11, this District will implement its participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract

for such project, Contractor shall provide appropriate documentation to the District identifying the amount paid to DVBE in conjunction with the Contract, so that the District can assess its success at meeting this goal.

Contractor agrees that, for all contracts subject to DVBE participation goals, the State and the District have the right to review, obtain and copy all records pertaining to performance of the Contract in accordance with DVBE requirements. Contractor agrees to provide the State or the District with any relevant information requested and shall permit the State and/or the District access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. Contractor agrees to maintain such records for a period of three (3) years after final payment under the Contract.

ARTICLE 42. PROJECT-RELATED RECORDS: The Contractor shall maintain all documents, books, papers, accounting records, computer files, and other information related to the Project and performance of the Work ("Project Records"), including, but not limited to, Change Orders, submittals, requests for information, daily reports, correspondence, permits, insurance policies, certificates of insurance, testing and inspection reports, and safety records. The Contractor shall keep such accurate and comprehensive Project Records as are (i) necessary for proper administration and performance of the Work and (ii) required by law or this Contract. All Project Records, as applicable, shall be maintained in accordance with generally-accepted accounting principles. If the Contract amount, as adjusted pursuant to this Contract, exceeds \$10,000, then, in accordance with Government Code section 8546.7, the State has the right to examine, review, audit and/or copy the Records of the Work during the three-year period following final payment to the Contractor pursuant to the Contract. In addition, the District hereby has the right to examine, review, audit and/or copy the Records of the Work during the three-year period following final payment to the Contractor pursuant to the Contract. Therefore, the Contractor shall make the Project Records available at its offices at all reasonable times during the performance of the Work and for three (3) years after the District accepts the Work. However, if any audit is commenced within such three (3) year period, the Contractor shall make the Project Records available at all reasonable times until proceedings related to such audit are complete and all statutes of limitation related thereto have expired. In the event the District notifies the Contractor that federal funds have been used in connection with the Project, the Contractor shall retain and make available the Project Records for such longer period as may be required by federal law.

ARTICLE 43. PAYMENT AND PERFORMANCE BONDS: Upon request, the Contractor shall file with the District: (a) a corporate surety bond, in a sum not less than 100% of the amount of the Contract, to guarantee the faithful

performance of the Contract; and (b) a corporate surety bond, in a sum not less than 100% of the amount of the Contract, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract. Corporate sureties on these bonds must be admitted sureties as defined by law, legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties and bond forms must be satisfactory to the District. Failure to submit the required bonds, using the forms provided by the District, may result in termination of the Contract.

ARTICLE 44. COVID-19 PANDEMIC: Contractor shall at all times comply with any and all state, local, and federal regulations regarding the COVID-19 pandemic at Contractor's own expense, including but not limited to phased reopening and access to the site, wearing masks or other personal protective equipment, social distancing, and any resulting or related reduction in site capacity.

THIS CONCLUDES THE GENERAL TERMS AND CONDITIONS consisting of Articles 1 through 44.

ATTACHMENT H
Workers' Compensation Certificate

I hereby affirm, under penalty of perjury, one of the following declarations:

- I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided by Labor Code section 3700, for the duration of any business activities conducted for which this license is issued.
- I have and will maintain workers' compensation insurance, as required by Labor Code section 3700, for the duration of any business activities conducted for which this license is issued.

My workers' compensation insurance and policy number are:

Carrier _____

Policy Number _____

I certify that in the performance of any business activities for which this license is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with the provisions of Labor Code section 3700.

Name: _____

Date: _____

Address: _____

Signature: _____

Warning: Failure to secure workers' compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines, in addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest, and attorney's fees.

ATTACHMENT I
Performance Bond

WHEREAS, the **Insert District name** ("District") and _____ ("Contractor" or "Principal") have entered into a contract ("Contract") for the work described as follows: _____ ("Project"), which Contract dated _____, 20__; and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract documents for the Project (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required under the terms of said Contract Documents to perform the terms thereof and to furnish a bond to the District as obligee ensuring its full and faithful performance of the Contract Documents, which are fully incorporated herein by this reference.

NOW, THEREFORE, we, the Principal and _____ as Surety, hereby guarantee the Principal's full, faithful and complete performance of the Contract Document requirements and are held and firmly bound unto the District in the sum of _____ Dollars (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally, and firmly by this Contract to perform or have performed all of the work and activities required to complete the Project pursuant to the Contract Documents and to pay to the District all damages the District incurs as a result of the Principal's failure to fully perform in accordance with the Contract Documents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its 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 faithfully fulfill all obligations; and shall insure and indemnify and save harmless the District, its officials, employees, agents, and volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void. Otherwise, it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, in law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the District's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents;
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents; or
- (3) Permit the District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the

balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor. Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the District, when declaring the Contractor in default, notifies Surety of the District's objection to Contractor's further participation in the completion of the Project.

Principal and Surety further agree to pay all costs incurred by the District in connection with enforcement of this bond, including, but not limited to the District's reasonable attorney's fees and costs incurred, with or without suit, in addition to any other sum required by this bond. Surety further agrees that death, dissolution, or bankruptcy of the Principal shall not relieve the Surety of its obligations hereunder.

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

[Remainder of Page Left Intentionally Blank.]

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

CONTRACTOR/PRINCIPAL:

By: _____

Title: _____

SURETY:

By: _____

Title: _____

The above bond is accepted and approved this _____ day of _____, 20__.

By: _____
Authorized District Signature

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

*Note: Appropriate Notarial Acknowledgments of Execution by Principal and Surety and a Power of Attorney MUST BE ATTACHED.

ATTACHMENT J
Payment Bond

WHEREAS, the **Insert District name** ("District") and _____ ("Contractor" or "Principal") have entered into a contract ("Contract") for the work described as follows: _____ ("Project"), which Contract dated _____, 20__; and

WHEREAS, the work ("Work") to be performed by the Contractor is more particularly set forth in the Contract documents for the Project (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Principal is required by California Civil Code section 9550 *et seq.* to furnish a bond in connection with the Contract.

NOW, THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the District 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 Principal, or its heirs, executors, administrators, successors or assigns, or a subcontractor, shall fail to pay any person or persons named in Civil Code section 9100 or fail to pay for any materials or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department any amounts required to be deducted, withheld, and paid over pursuant to Section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, then said Surety will pay for the same, in or to an amount not exceeding the amount set forth above, and in case suit is brought upon this bond Surety will also pay such reasonable attorney's fees as shall be fixed by the court, as provided in California Civil Code sections 9550 *et seq.*

This Bond shall inure to the benefit of any of the persons named in California Civil Code section 9100 so as to give a right of action to such person or their assigns brought upon this Bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the 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 described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, 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 District and original contractor or on the part of any obligee named in such bond, unless permitted pursuant to law.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,
if corporation)

Principal (Proper Name of Contractor)

By _____
(Signature of Principal)

(Seal of Surety)

Surety

By _____
Attorney in Fact

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

*Note: Appropriate Notarial Acknowledgments of Execution by Principal and Surety and a Power of Attorney MUST BE ATTACHED