

REQUEST FOR BIDS

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE
ACADEMY

MANDATORY PRE-BID MEETING:

Tuesday, September 28, 2021 at 9:00 am

BID OPENING:

Tuesday, October 12, 2021 at 1:00 pm

South Bay Union School District
Purchasing Dept.
601 Elm Ave.
Imperial Beach, CA 91932
(619) 628-1636

SOUTH BAY UNION SCHOOL DISTRICT

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

MANDATORY PRE-BID MEETING

AGENDA

Tuesday, September 28, 2021 at 9:00 am

➤ Welcome Bidders and Introduce District Representatives

Only bids from bidders that have signed the pre-bid meeting sign-in sheet will be considered responsive.

1. Please give us your **business card** in case there are any addendums. Make sure your current address, email & phone number is listed. Please sign the **sign-in sheet** before leaving the Pre-bid meeting today.
2. The **Bid Opening** will be on Tuesday, October 12, 2021 at 1:00 pm, at SBUSD Facilities Office located at 2000 Leon Ave., San Diego, CA 92154. Any bids received after this time, will be considered non-responsive.
3. **License** requirement for this project is:
LIC A- General Contractor OR
LIC C12- Earthwork and Paving
4. Be sure to submit all necessary paperwork. Please confirm your Bid Packet contains the **Checklist for Bidders on page 4**. Note that any bids missing documents will be considered non-responsive.
5. The Bid Form is on page 14-16.
6. Bids must include a current DIR (Dept of Industrial Relations) registration number
7. The District has a **No Smoking** policy.
8. Board Approval: Thursday, November 18, 2021
9. Last day for questions: Monday, October 4, 2021 at 3:00pm submitted via email to Don Visnick, Director of Facilities, dvisnick@sbusd.org
10. **Timeline** for project:
Contract Dates: November 29, 2021- April 15, 2022
On-site Construction Dates: February 7, 2022 - April 15, 2022
11. **Management and Invoice approval:** Don Visnick, Director of Facilities.
(619) 628-3590, dvisnick@sbusd.org
12. **Project overview & site inspections**

ATTENTION BIDDERS:

Enclosed are specifications and bidding documents for BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

Mandatory Pre-Bid Meeting: Tuesday, September 28, 2021 at 9:00 am

We will meet at Nestor Language Academy located at 1455 Hollister Street, San Diego, CA 92154.

Bid Opening: Tuesday, October 12, 2021 at 1:00 pm

Bids will be opened and read aloud at the SBUSD Facilities located at 2000 Leon Ave., San Diego, CA 92154.

Bid Security: Each bid shall be accompanied by a certified or cashier's check payable to the District, or a satisfactory bid bond in favor of the District executed by the bidder as principal and a satisfactory surety company, in an amount not less than 10% of the maximum amount of the bid.

In the award of this bid, the intent of the Board of Trustees is to give preference to the lowest responsible bidder with due consideration to the quality of products and the level of service.

If you wish to bid, you must return all executed copies of the bid documents to the Purchasing Office by the bid opening date and time. Submit your bid in a sealed envelope with your company's name and bid number on the front of the envelope. Thank you.

If you have any questions, please feel free to contact:

Joel Ryan, Director of Fiscal Services and Purchasing

(619) 628-1639
jryan@sbusd.org

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**SOUTH BAY UNION SCHOOL DISTRICT
PURCHASING DEPT
601 Elm Ave.
Imperial Beach, CA 91932
619-628-1636**

CHECKLIST FOR BIDDERS

**ALL LISTED ITEMS BELOW MUST BE INCLUDED WITH THE BID.
BIDS MISSING ANY OF THE LISTED DOCUMENTS WILL
BE CONSIDERED NON-RESPONSIVE.**

- Bid Form (Pages 14-16)
- Bid Bond (Page 17) A Cashier's Check can be included with the Bid in lieu of the Bid Bond (see #14 Bid Guarantee Bond on Page 10)
- Designation of Subcontractors (Pages 18-19)
- Contractor's Certificate Regarding Worker's Compensation (Page 20)
- Non-Collusion Affidavit (Page 21)
- Asbestos-Free Materials Certification (Page 22)
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- Fingerprinting Requirement Certification (Page 24)
- Drug-Free Workplace Certification (Page 25)
- Iran Contracting Act (Page 26)
- Public Works Contractor Registration (Page 27)
- Bidder's Information (Page 28)
- Michelle Montoya School Safety Act AB-1610 (Page 29)

***Attendance at the Pre-Bid Meeting is Mandatory.
Only bids from bidders who signed the Pre-Bid Meeting sign-in
sheet for this bid will be considered responsive. Thank you***

NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that the South Bay Union School District of San Diego County, California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT, will receive up to, but not later than Tuesday, October 12, 2021 at 1:00 pm, sealed bids for the award of a contract for:

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

Sealed bids shall be received in the SBUSD Facilities, located at 2000 Leon Ave., San Diego, CA 92154 (in the Imperial Beach area) and shall be opened and publicly read aloud at the above stated time and place.

Bids must be accompanied by cash, a certified or cashier's check, or a Bid Bond in favor of the District in an amount not less than ten percent (10%) of the submitted total bid price.

Each bid must conform and be responsive to the contract documents, copies of which are now on file and may be obtained from the Purchasing Department.

Each bid shall be accompanied by the security referred to in the contract documents, the non-collusion affidavit, the list of proposed subcontractors, and all additional documentation required by the Instructions to Bidders.

The successful bidder will be required to furnish the District with a Performance Bond equal to 100% of the successful bid, and a Payment Bond equal to 100% of the successful bid, prior to execution of the Contract, regardless of the contract amount. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120, and is admitted by the State of California with a rating of A++, A+ A, or no less than A-.

The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the contract which will be awarded to the successful bidder, copies of which are on file and will be made available to any interested party <http://www.dir.ca.gov/dlsr>. A copy of these rates shall be posted by the successful bidder at the job site. The successful bidder and all subcontractor(s) under him, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors.

Pursuant to SB854, No contractor or subcontractor may be listed on a bid proposal for a public works project 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 section 1771.19a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is 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.

Minority, women, and disabled veteran (DVBE) contractors are encouraged to submit bids and bidders are encouraged to make a good faith effort to contact and utilize DVBE subcontractors and suppliers, providing documentation with their bids.

Each bidder shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following appropriate classification(s) of contractor's license(s), for the work bid upon, and must maintain the license(s) throughout the duration of the contract:

LIC A- GENERAL CONTRACTOR OR LIC C12- EARTHWORK AND PAVING

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 process.

No bidder may withdraw his/her bid for a period of ninety (90) days after the date set for the opening of the bids.

For further information, contact Joel Ryan, Director of Fiscal Services and Purchasing at (619) 629-1639, jryan@sbusd.org. Questions are to be submitted by email.

Signed:

Janea Marking, Assistant Superintendent of Business
SOUTH BAY UNION SCHOOL DISTRICT
San Diego County, California

INSTRUCTIONS TO BIDDERS

1. AVAILABILITY OF CONTRACT DOCUMENTS

Bids must be submitted to the District on the Bid Forms which are a part of the Bid Package for the Project. Prospective bidders may obtain one (1) complete set of Contract Documents at no cost. Contract Documents may be obtained from the District at the location(s) and at the time(s) indicated in the Notice Inviting Bids. Prospective bidders are encouraged to telephone in advance to determine the availability of Contract Documents.

The District may also make the Contract Documents available for review at one or more plan rooms, as indicated in the Notice Inviting Bids. Please Note: Prospective bidders who choose to review the Contract Documents at a plan room must contact the District to obtain the required Contract Documents if they decide to submit a bid for the Project.

2. EXAMINATION OF CONTRACT DOCUMENTS

The District has made copies of the Contract Documents available, as indicated above. Bidders shall be solely responsible for examining the Project Site and the Contract Documents, including any Addenda issued during the bidding period, and for informing itself with respect to local labor availability, means of transportation, necessity for security, laws and codes, local permit requirements, wage scales, local tax structure, contractors' licensing requirements, availability of required insurance, and other factors that could affect the Work. Bidders are responsible for consulting the standards referenced in the Contract. Failure of Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be given except as required under State law.

3. INTERPRETATION OF CONTRACT DOCUMENTS

Discrepancies in, and/or omissions from the Plans, Specifications or other Contract Documents or questions as to their meaning shall be immediately brought to the attention of the District by submission of a written request for an interpretation or correction to the District. Such submission, if any, must be sent to the Director of Purchasing by emailing to jryan@sbusd.org.

Any interpretation of the Contract Documents will be made only by written addenda duly issued and mailed or delivered to each person or firm who has purchased a set of Contract Documents. The District will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to make any oral interpretation of any provision in the Contract Documents to any bidder, and no bidder should rely on any such oral interpretation.

Bids shall include complete compensation for all items that are noted in the Contract Documents as the responsibility of the Contractor.

4. INSPECTION OF SITE; PRE-BID CONFERENCE AND SITE WALK

Each prospective bidder is responsible for fully acquainting itself with the conditions of the Project Site (which may include more than one site), as well as those relating to the construction and labor of the Project, to fully understand the facilities, difficulties and restrictions which may impact the cost or effort required to complete the Project. To this end, a Pre-Bid Conference and Site Walk will be held on the date(s) and time(s) indicated in the Notice Inviting Bids.

5. ADDENDUM

The District reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written Addendum. All addendums issued by the District shall be included in the bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the District issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of bids, the District will extend the deadline for submission of bids. The District may determine, in its sole discretion, whether an Addendum warrants postponement of the bid submission date. Each prospective bidder shall provide the District a name, address and facsimile number to which an Addenda may be sent, as well as a telephone number by which the District can contact the bidder. Copies of Addendum will be furnished by facsimile, first class mail, express mail or other proper means of delivery without charge to all parties who have obtained a copy of the Contract Documents and provided such current information. Please Note: Bidders are responsible for ensuring that they have received any and all

Addendums. To this end, each bidder should contact the Purchasing Dept. to verify that he has received all Addendum(s) issued, if any, prior to the bid opening.

6. ALTERNATE BIDS

If alternate bid items are called for in the Contract Documents, the lowest bid will be determined on the basis of the base bid only. However, the District may choose to award the contract on the basis of the base bid alone or the base bid and any alternate or combination of alternates. 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.

7. COMPLETION OF BID FORMS

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute bid forms other than clear and correct photocopies of those provided by the District will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. USE OF BLACK OR BLUE INK, INDELIBLE PENCIL OR A TYPEWRITER IS REQUIRED. Deviations in the bid form may result in the bid being deemed non-responsive.

8. MODIFICATIONS OF BIDS

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms, nor make substitutions thereon. Oral, telephonic and electronic modifications will not be considered, unless the Notice Inviting Bids authorizes the submission of electronic bids and modifications thereto and such modifications are made in accordance with the Notice Inviting Bids.

9. DESIGNATION OF SUBCONTRACTORS

In accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.), each bidder must list in its Bid Proposal Form the names and locations of the places of business of each subcontractor that will perform any portion of the Work, or that, under subcontract to the bidder, will specially fabricate and install a portion of the work, in an amount in excess of ½ 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 agrees that it 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.

10. DISABLED VETERAN BUSINESS ENTERPRISES - (NOT APPLICABLE)

Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is NOT required for this project. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation in this project.

Bidders must make a good faith effort to contact and utilize DVBE subcontractors and suppliers in securing bids for performance of the contract. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. Bidders are encouraged to retain documentation of their good faith efforts, in the event such documentation is requested by the District.

Bidders must indicate on the bid form whether they are a certified DVBE and provide a copy of the DVBE Certification Letter issued by OSBCR. Bidders must also certify, under penalty of perjury, that a good faith effort was made to include DVBE subcontractors and suppliers in the bid. In addition, bidders must indicate on the Designation of Subcontractors form whether the subcontractor is DVBE certified, and provide the District a copy of the DVBE Certification Letter issued by OSBCR.

Prior to, and as a condition precedent for final payment under the Contract, the successful bidder shall provide the District with written documentation identifying the amount paid to certified DVBE subcontractors and suppliers in performance of the Contract and provide a copy of the DVBE Certification Letter issued by OSBCR for each DVBE. This documentation will be used by the District to evaluate its success in meeting its DVBE participation goal.

11. LICENSING REQUIREMENTS

Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.5 of the Business and Professions Code, the District shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be non-responsive, and the District shall reject the Bid. The District shall have the right to request, and Bidders shall provide within five (5) calendar days, evidence satisfactory to the District of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

12. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) CONTRACTOR REGISTRATION REQUIREMENT

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with DIR pursuant to Labor code section 1725.5.

This project is subject to compliance monitoring and enforcement by DIR.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with DIR to perform public work. If awarded a Contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with DIR for the duration of the Project. To this end, the Bidder shall sign and submit the Certification of the Division of Industrial Relations Registration with its Bid, 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.

13. SIGNING OF BIDS

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venturer or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

14. BID GUARANTEE (BOND)

Each bid shall be accompanied by: (a) a cashier's check made payable to the District; or (b) a bid bond payable to the District executed by the bidder as principal and surety as obligor in an amount not less than

10% of the maximum amount of the bid. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The cash, check or bid bond shall be given as a guarantee that the bidder shall execute the Contract if it be awarded to the bidder, shall provide the payment and performance bonds and insurance certificates and endorsements as required herein within ten (10) calendar days after notification of the award of the Contract to the bidder. Failure to provide the required documents may result in forfeiture of the bidder's bid deposit or bond to the District and the District may award the Contract to the next lowest responsible bidder, or may call for new bids.

15. SUBMISSION OF SEALED BIDS

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials in an envelope, sealed, addressed and delivered or mailed, postage prepaid to the District at the place and to the attention of the person indicated in the Notice Inviting Bids. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by District as provided herein. The envelope shall also contain the following in the lower left-hand corner thereof:

(Bidder's Name)
(Bid Name and Bid Number)

Only where expressly permitted in the Notice Inviting Bids, may Bidders submit their bids via electronic transmission pursuant to Public Contract Code Sections 1600 and 1601. The acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. District reserves the right to not accept electronically transmitted bids where not specifically authorized in the Notice Inviting Bids, and may reject any bid not strictly complying with the District's designated methods for delivery.

16. DELIVERY AND OPENING OF BIDS

Bids will be received by the District at the address shown in the Notice Inviting Bids up to the date and time shown therein. The District will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the dates(s) and time(s) indicated.

Bids will be opened at the date and time stated in the Notice Inviting Bids, and the amount of each Bid will be read aloud and recorded. All Bidders may, if they desire, attend the opening of Bids. The District may in its sole discretion, elect to postpone the opening of the submitted Bids. District reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid. In the event of a discrepancy between the written amount of the Bid Price and the numerical amount of the Bid Price, the written amount shall govern.

17. WITHDRAWAL OF BID

Prior to bid opening, a Bid may be withdrawn by the Bidder only by means of a written request signed by the Bidder or its properly authorized representative.

18. BASIS OF AWARD; BALANCED BIDS

The District shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest bid will be determined on the basis of the total bid, which is the Base Bid A plus Allowance #1. The District may reject any Bid which, in its opinion when compared to other bids received or to the District's internal estimates, does not accurately reflect the cost to perform the Work. The District may reject as non-responsive any bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

19. IDENTICAL BIDS

Pursuant to Section 20117 of the Public Contract Code, in the event there are two or more identical lowest or highest bids, as the case may be, submitted to a school district of the purchase, sale or lease of real property, supplies, materials, equipment, services, bonds, or the awarding of any contract, pursuant to a provision requiring competitive bidding, the governing board of any school district may determine by lot which bid shall be accepted.

When bids are equal, they shall be awarded by lot, and shall be witnessed by three (3) impartial observers.

20. DISQUALIFICATION OF BIDDERS; INTEREST IN MORE THAN ONE BID

No bidder shall be allowed to make, submit or be interested in more than one bid. However, a person, firm, corporation or other entity that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders submitting a bid to the District. No person, firm, corporation, or other entity may submit sub-proposal to a bidder, or quote prices of materials to a bidder, when also submitting a prime bid on the same Project.

21. INSURANCE REQUIREMENTS

The successful bidder shall procure the insurance in the form and in the amount specified in the Contract Documents.

22. AWARD PROCESS

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the District Council may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3) the required insurance certificates and endorsements. Once the District notifies the Bidder of the award, the Bidder will have ten (10) consecutive calendar days from the date of this notification to execute the Contract and supply the District with all of the required documents and certifications. Regardless whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run ten (10) calendar days from the date of the notification. Once the District receives all of the properly drafted and executed documents and certifications from the Bidder, the District shall issue a Notice to Proceed to that Bidder.

23. FILING OF BID PROTESTS

Bidders may file a "protest" of a Bid with the District's Director of Purchasing. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date. The District will not accept or consider any oral protest (e.g. telephone) or any protest sent via electronic transmission (e.g. email);
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific District staff determination or recommendation being protested;
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, the District's Director of Purchasing, or other designated District staff member, shall review the basis of the protest and all relevant information. The Director of Purchasing will provide a written decision to the protestor. Within five calendar days of receipt of the Director of Purchasing's response, the protestor may then appeal the decision of the Director of Purchasing to the Assistant Superintendent of Business Services.

24. WORKERS COMPENSATION

Each bidder shall submit the Contractor's Certificate Regarding Workers' Compensation form with the bid or the bid will be rejected as non-responsive.

25. SUBSTITUTION OF SECURITY

The Contract Documents call for monthly progress payments based upon the percentage of the work completed. The District will retain ten percent (10%) of each progress payment as provided by the Contract

Documents. At the request and expense of the successful Bidder, the District will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

26. PREVAILING WAGES

The Bidder to which the District awards a contract for the Project, and each of the 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"). All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (Division of Labor Standards Enforcement). The successful bidder must retain copies of certified payrolls for a minimum of five years from the date of completion and submit upon the request of the District or its authorized agent. Awarded Bidder shall post a copy of the per-diem rated of Prevailing Wages at the site of the Project. Rates are available at <http://www.dir.ca.gov/dlsr/pwd/index.htm>

27. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

In accordance with the provisions of the Labor Code, contractors or subcontractors 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 Labor Code. Any contract on a public works project entered into between a 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 to a debarred subcontractor by the Contractor for 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.

28. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

Within the time specified in the Contract Documents, the Bidder to whom a Contract is awarded shall deliver to the District three (3) identical counterparts of the Performance Bond and Payment Bond in the form supplied by the District and included in the Contract Documents. Failure to do so may, in the sole discretion of District, result in the forfeiture of the Bid Guarantee. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the District. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Bid Price.

Rating for the surety must be A++, A+, A, or no less than A-. Rating information can be obtained from Best's State Rate Filings: <http://www.ambest.com/bsrf>

29. REQUEST FOR SUBSTITUTIONS

The successful bidder shall comply with the substitution request provisions set forth in the Special Conditions, including any deadlines for substitution requests **which may occur prior to the bid opening date.**

30. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents.

31. EXECUTION OF CONTRACT

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The District may require appropriate evidence that the persons executing the Contract are duly empowered to do so.

32. REQUIRED CERTIFICATIONS

Bidders, for all projects, are required to submit the "Asbestos-Free Materials Certification." This form is included in this package and must be signed under the penalty of perjury and dated, and shall be submitted to the District with this bid. The successful bidder shall also execute, under the penalty of perjury and dated, the "Recycled Content Certification" and the "Drug-Free Workplace Certification" included in this package. Further, 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.** These forms are included with the bid package and must be signed under the penalty of perjury and dated.

33. GRATUITIES

Bidders shall not provide, offer, imply or otherwise extend any gratuities, including cash gifts, services, allowances, or enticements in any manner or form, to officers, employees, students, agents or representatives of the District.

34. BIDDER INVESTMENTS IN IRAN

Subject to certain exceptions, the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) prohibits a party that engages in investment activities in Iran, as described in Public Contract Code Section 2202.5, from entering into any contract of \$1,000,000 or more for goods or services to be provided to a public entity. Each bidder must complete, execute and deliver to the District, with its bid, the "Iran Contracting Act Certification" form, which is included as one of the Required Bid Forms.

35. BID IRREGULARITIES

The District, in accordance with applicable law, may waive any minor irregularity or informality in any bid or in the bidding process. The District may, but is not required to, seek information from any bidder that might resolve an ambiguity in the bidder's bid.

BID FORM

TO: SOUTH BAY UNION SCHOOL DISTRICT, acting by and through its Governing Board, herein after called the "District":

Legal Name of Bidder: _____

Business Name (dba): _____

Contact Name: _____

Business Address: _____

Phone Number: _____

E-mail: _____

Company Website: _____

The undersigned, hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specification, and all addenda, if any, of the following Project:

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project for the following bid prices:

Base Bid for Nestor Language Academy:

_____ \$ _____

Allowance #1 – For unforeseen conditions in the installation of the project

Twenty-thousand dollars and no cents \$ 20,000.00

*****All work performed under the allowance shall be approved and directed by the District. The Contractor shall be responsible to document all costs incurred and provide all required documentation to the District prior to approval of an allowance. Each allowance shall be invoiced separately. A deductive change order will be prepared for any portion of allowances not used.***

TOTAL BASE BID

_____ \$ _____

In case of discrepancy between the written price and the numerical price, the written price shall prevail.

The owner reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. The award of the contract, if made by the Owner, will be to the lowest responsive, responsible bidder therefore.

The undersigned agrees that this Bid Form constitutes a firm offer to the District which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the Work is fully executed by the District and a third party, whichever is earlier.

The Contract duration shall commence on the date stated in the District's Notice to Proceed, and shall be completed by the contractor in the time specified in the Contract Documents. In no case shall the Contractor commence construction prior to the date stated in the District's Notice to Proceed.

Bidder certifies that it is licensed in accordance with the law providing the registration of Contractors,

License Number _____ Expiration Date _____

Class of License _____ DIR Number _____

If the bidder is a joint venture, each member of the joint venture must include the above information.

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Contract Documents:

Addenda Number _____

Addenda Number _____

Addenda Number _____

Addenda Number _____

The following signed and dated documents are attached to this Bid Form:

- 1 Bid Security of not less than 10% of the total bid price
- 2 Designation of Subcontractors form
- 3 Contractor's Certification Regarding Worker's Compensation form
- 4 Non-Collusion Declaration form
- 5 Asbestos-Free Materials Certification form
- 6 Recycled Content Certification form
- 7 Fingerprinting Requirement Certification form
- 8 Drug-Free Workplace Certification form
- 9 Iran Contracting Act Certification form
- 10 Public Works Contractor Registration Certification form
- 11 Michelle Montoya School Safety Act AB1610 - Communication with Pupils
- 12 Bidder's Information form

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

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. If bidder is an individual, his or her signature shall be placed above.

BID BOND

The makers of this bond are held and firmly bound unto the South Bay Union School 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 _____ for:

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

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

Title _____

(Attach Attorney-in-Fact Certificate)

STATE OF CALIFORNIA
DISTRICT OF _____

On this _____ day of _____, in the year _____, 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

DESIGNATION OF SUBCONTRACTORS

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 and (b) 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. 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, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater if the work involves streets or highways, 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.

No prime contractor who bid is accepted shall (a) substitute any subcontractor, (b) 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 (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the prime contractor's total bid as to which his original bid 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 excess of one-half of one percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid 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.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

Please list your Subcontractors information on the next page. Make and use copies of the attachment sheet, as necessary to list additional subcontractors.

DESIGNATION OF SUBCONTRACTORS

Bidding Contractor _____

Attachment Sheet _____ of _____

Subcontractor Name _____

Email _____

Address _____

Percent of Work _____ Type of Work _____

CSLB License _____ License Type _____ DIR Number _____

Subcontractor Name _____

Email _____

Address _____

Percent of Work _____ Type of Work _____

CSLB License _____ License Type _____ DIR Number _____

Subcontractor Name _____

Email _____

Address _____

Percent of Work _____ Type of Work _____

CSLB License _____ License Type _____ DIR Number _____

Subcontractor Name _____

Email _____

Address _____

Percent of Work _____ Type of Work _____

CSLB License _____ License Type _____ DIR Number _____

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

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.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

NON-COLLUSION DECLARATION

The undersign declares:

I, _____, being first duly sworn, deposes and says that he is _____ of _____ the party making the attached bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or 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. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, 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.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

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

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

ASBESTOS-FREE MATERIALS CERTIFICATION

We do hereby certify that no Asbestos or Asbestos Containing Materials shall be used in this Project or in any tools, devices, clothing, or equipment

Contractor further certifies that he/she has instructed his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

Asbestos and/or asbestos containing materials shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite.

Any or all material containing greater than one-tenth of one percent (.1% asbestos shall be defined as asbestos containing material.

Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy. The costs of any such test shall be paid by the contractor if the material is found to contain asbestos.

All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and this work will be removed at no additional cost to District.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

RECYCLED CONTENT CERTIFICATION

Pursuant to Public Contract Code Section 10308.5, all contractors are required to certify in writing under penalty of perjury the minimum (if not exact) percentage of recycled content in materials, goods, or supplies offered or products used in the performance of their contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The recycled content shall include both post-consumer material and secondary material as defined in Public Contract Code Sections 12161 and 12200 shall apply.

I declare under penalty of perjury under the laws of the State of California that the following percentages of Post-consumer Material and Secondary Material is in the materials, goods or supplies offered for, or products used in, the performance of the contract for the Project:

_____ % Post-consumer Material

_____ % Secondary Material

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

FINGERPRINTING REQUIREMENT CERTIFICATION

Pursuant to the provisions of Article 13 of the General Conditions, District determination of fingerprinting requirements is as follows:

The district has considered the totality of the circumstances concerning the Project and has determined that the Contract and Contractor's employees, and subcontractor and its employees are subject to the requirements of Education Code section 45125.2 and paragraph (a) of Article 13 of the General Conditions.

In accordance with the Education code the Contractor shall provide for the continual supervision and monitoring of all Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice.

I certify (or declare) under penalty of perjury under the laws of the State of California that prior to commencement of work all supervisors on this project will have completed fingerprint background checks from the California Department of Justice through any Livescan Service and will have been found to have not committed a violent or serious Felony (Penal Code Sections 667.5(c) and 1192.7(c)); and will provide continual supervision and monitoring of the contractor's employees. If background checks are not completed prior to commencement of the project, contractor will notify the South Bay Union School District and a per diem charge will be charged for Supervision by District employees.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

DRUG-FREE WORKPLACE CERTIFICATION

This form is required from all successful bidders pursuant to the Drug-Free Workplace Act of 1990 (government Code Section 8350). 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 from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- 1 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 action which will be taken against employees for violations of the prohibition:
- 2 Establish a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. The availability of drug counseling, rehabilitation and employee-assistance programs, and
 - d. The penalties that may be imposed upon employee for drug abuse violation.
- 3 Requiring that each employee be given a copy of the statement of above, as a condition of employment on the contract, the employees agree 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. 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 8350 and 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.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

CERTIFICATION OF ELIGIBILITY TO BID FOR CONTRACTS OF \$ 1 MILLION OR MORE
(Public Contract Code sections 2202-2208)

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID IF BID TOTAL IS \$1 MILLION OR MORE

Pursuant to Public Contract Code 2204. (a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

PUBLIC WORKS CONTRACTOR REGISTRATION WITH DIVISION OF INDUSTRIAL RELATIONS REGISTRATION

Pursuant to Labor Code Section 1725.5, all contractor and subcontractor must be registered with the Department of Industrial Relations (DIR) in order to bid on, to be listed in a bid proposal, or to engage in the performance of any defined public work contract. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for addition information.

No bid will be accepted no any contract entered into without proof of the contractor's and subcontractors' current registration.

Bidder hereby certifies that it is aware of the registration requirement set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name Contractor _____

DIR Registration Number _____

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.

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.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

BIDDER'S INFORMATION

List of current projects:

Project name and client _____
Description of Bidder's work _____
Anticipated completion date _____
Contract amount _____
Contact person and phone number _____

Project name and client _____
Description of Bidder's work _____
Anticipated completion date _____
Contract amount _____
Contact person and phone number _____

List of completed projects:

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

Project name and client _____
Description of Bidder's work _____
Period of performance _____
Contract amount _____
Contact person and phone number _____

Project name and client _____
Description of Bidder's work _____
Period of performance _____
Contract amount _____
Contact person and phone number _____

Project name and client _____
Description of Bidder's work _____
Period of performance _____
Contract amount _____
Contact person and phone number _____

**Michelle Montoya School Safety Act
Chapter 588 of Statutes of 1997 (AB1610)**

Under no circumstances shall the contractor and his/her employees contact and communicate with any district pupil unless a district employee is present. In the event that Contractor fails to prohibit its employees from contacting or communicating with pupils and injury results from failure to prohibit pupil communication, Contractor shall indemnify the District for any and all damages or loss that are a proximate result from Contractor's failure to prohibit pupil contact or communication.

Contractor shall defend, indemnify, protect, and hold South Bay Union School District and its agents, officers, and employees harmless from and against any and all claims to be caused by Contractor's or District's failure to comply with all the requirements contained in Education Code section 45125.2, including, but not limited to, the requirement prohibiting Contractor from using employees who may have contact with pupils who have been convicted or have charges pending for a felony as defined in Education Code section 45122.1.

- I certify that none of my employees who may come into limited contact with pupils has a pending criminal proceeding for a felony as defined in Education Code 45122.1, nor has ever been convicted of a felony as defined in Section 454122.1

I hereby have read and understand the above provisions and also understand that the South Bay Union School District has tobacco-free facilities and tobacco use is prohibited on all areas of the district property.

Business Name of Bidder _____

Authorized Signature _____

Name and Title _____

Date _____

CONTRACT AGREEMENT

THIS CONTRACT, made this ____ day of _____, in the County of San Diego, State of California, by and between South Bay Union School District, hereinafter called the District, and _____ hereinafter called the Contractor.

WITNESSETH that the District and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1 - SCOPE OF WORK: The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete all of the Work required in compliance with the contract documents as specified in Article 4 below for the following Project:

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

The Contractor and its surety shall be liable to the District for any damages arising as a result of the contractor's failure to comply with this obligation, and the Contractor shall not be excused with respect to any failure to so comply by act or omission of the Construction Manager, Architect, Engineer, Inspector, Division of the State Architect, or representative of any of them, unless such act of omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the District office within five (5) days of the date of occurrence of the act or omission preventing the Contractor from fully complying with the Contract Documents.

ARTICLE 2 - TIME OF COMPLETION: The work shall be commenced on the date stated in the District's Notice to Proceed, as provided in Section A of the Special Conditions. As specified in the District's Notice to Proceed, the work shall be completed within dates stated below in such notice, (see below) which shall include 10 working days or whatever time is needed and agreed upon for normal bad weather, taking into consideration the seasonal weather for the time when construction will be undertaken.

Contract Dates: November 29, 2021- April 15, 2022
On-site Construction Dates: February 7, 2022 - April 15, 2022

In entering into this Agreement, Contractor acknowledges and agrees that the construction duration stipulated herein as adequate and reasonable for the size and scope of the project.

ARTICLE 3 - CONTRACT PRICE: The District shall pay to the Contractor as full compensation for the performance of the Contract, subject to any Allowances, additions

or deductions as provided in the Contract Documents, and including all applicable sales, use or other taxes or costs, the sum of:

(\$ _____) Payment shall be made as set forth in the General Conditions.

ARTICLE 4 – LIQUIDATED DAMAGES. In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the District the sum of one-thousand five-hundred dollars (**\$1,500**) per site for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the District may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

ARTICLE 5 - COMPONENT PARTS OF THE CONTRACT: The contract entered into by this Agreement consists of the following Contract Documents (referred to herein as the contract or the Contract Documents), all of which are component parts of the contract as if herein set out in full or attached hereto:

- Notice to Contractors Calling for Bids
- Information for Bidders
- Bid, as accepted
- Bid Form
- Bid Security
- Designation of Subcontractors
- Contractor's Certificate Regarding Workers' Compensation
- Non-Collusion Affidavit
- Asbestos-Free Materials Certification
- Recycled Content Certification
- Fingerprinting Requirement Certification
- Drug-Free Workplace Certification
- Iran Contracting Act Certification
- Public Works Contractor Registration Certification
- Michelle Montoya School Safety Act AB1610 - Communication with Pupils
- Contract Agreement
- Performance Bond
- Payment Bond
- General Conditions and Special Conditions
- Technical Specifications (as applicable)
- Plans and Drawings (as applicable)
- Addenda (as applicable)
- Approved and fully executed change orders
- Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents. All of the Contract Documents are intended to be complementary. Work required by one of the above-named contract documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6 – PROVISIONS REQUIRED BY LAW: Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project.

ARTICLE 7 - INDEMNIFICATION: Contractor shall provide indemnification as set forth in the General Conditions.

IN WITNESS WHEREOF: This Contract has been duly executed by the above-named parties, on the day and year first above written.

CONTRACTOR:

Name _____

Signature _____

Title _____

Date _____

License #: _____

(Corporate seal)

DISTRICT:

South Bay Union School District
601 Elm Avenue
Imperial Beach, CA 91932

Signature _____

Name _____

Title _____

Date _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, _____ (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

(hereinafter referred to as the "Project").

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

WHEREAS, the Contractor is required by said Contract documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, 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 which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract 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 intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officers and agents, 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 part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

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, 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; or

- (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.
- (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.

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 there under 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.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

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)

STATE OF CALIFORNIA)

) ss.

DISTRICT OF _____)

On this _____ day of _____, in the year _____, 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.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That WHEREAS, the District (hereinafter designated as the "District"), by action taken or a resolution passed _____, 20__ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

BID 350 - EMERGENCY LANE & ASPHALT at NESTOR LANGUAGE ACADEMY

(the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

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 said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the District 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 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 herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, 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 herein above described, nor by any rescission or attempted 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 owner or District 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 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, 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 (Property Name of Contractor)

By _____
(Signature of Contractor)

(Seal of Surety)

Surety

By _____
Attorney in Fact

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

*Note: Appropriate Notarial Acknowledgments of Execution by Contractor and +surety and a power of Attorney MUST BE ATTACHED.

GENERAL CONDITIONS

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ARTICLE 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of the District Representative and/or the District.
- b. Act of God an Act of God is an earthquake of magnitude 3.5 on the Richter scale and tidal waves.
- c. Approval means written authorization by District Representative and/or District.
- d. Contract Documents includes all documents as stated in the Contract.
- e. Day shall mean calendar day unless otherwise specifically designated.
- f. District and Contractor are those stated in the Contract. The terms District and Owner may be used interchangeably.
- g. District Representative shall mean the Director of Facilities & Services, or his/her designee, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "District's Representative" or "Representative" in the Contract Documents.
- h. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of the District Representative and/or District.
- i. 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 District Representative and/or District is intended, unless stated otherwise.
- j. Install means the complete installation of any item, equipment or material.
- k. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- l. Perform shall mean that the Contractor, at Contractor's expense, shall take all actions necessary to complete The Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- m. Project is The Work planned by District as provided in the Contract Documents.
- n. Provide shall include provide complete in place, that is furnish, install, test and make ready for use.
- o. Recyclable Waste Materials shall mean materials removed from the Project sites which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- p. Specifications means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work. Except for Sections 1-9 of the Standard Specifications for Public Works Construction ("Greenbook"), 2003 Edition or most current edition, which are specifically excluded from incorporation into these Contract Documents, the Work shall be done in accordance with the Greenbook, including all

current supplements, addenda, and revisions thereof. In the case of conflict between the Greenbook and the Contract Documents, the Contract Documents shall prevail.

- q. The Work means the entire improvement planned by the District pursuant to the Contract Documents.
- r. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.

ARTICLE 2. CONTRACT DOCUMENTS

- a. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- b. **Interpretations.** The Contract Documents are intended to be fully cooperative and to be complementary. If Contractor observes that any documents are in conflict, the Contractor shall promptly notify the District Representative in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
 - 1. Change Orders or Work Change Directives
 - 2. Addenda
 - 3. Special Provisions (or Special Conditions)
 - 4. Technical Specifications
 - 5. Plans (Contract Drawings)
 - 6. Contract
 - 7. General Conditions
 - 8. Instructions to Bidders
 - 9. Notice Inviting Bids
 - 10. Contractor's Bid Forms
 - 11. Green book
 - 12. Standard Plans
 - 13. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

- 1. Figures govern over scaled dimensions
 - 2. Detail drawings govern over general drawings
 - 3. Addenda or Change Order drawings govern over Contract Drawings
 - 4. Contract Drawings govern over Standard Drawings
 - 5. Contract Drawings govern over Shop Drawings
- c. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.
- d. **Organization of Contract Documents.** Organization of the Contract Documents 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. CONTRACTS DOCUMENTS: COPIES & MAINTENANCE

Contractor will be furnished, free of charge, one copy of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents at the Project site.

ARTICLE 4. DETAIL DRAWINGS AND INSTRUCTIONS

- a. **Examination of Contract Documents.** Before commencing any portion of The Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site and other

information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the District Representative of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work 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. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

- b. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the District Representative will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- c. **Quality of Parts, Construction and Finish.** All parts of The Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with The Work without obtaining first from the District Representative such Approval may be necessary for the proper performance of Work.
- d. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the District Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

ARTICLE 5. EXISTENCE OF UTILITIES AT THE WORK SITE

- a. The District has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. 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 its 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 in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- c. All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of The Work.
- d. Notwithstanding the above, pursuant to Section 4215 of the Government Code, 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.
- e. Contractor, except in an emergency, shall contact the appropriate regional notification center, Southern California Underground Service Alert at 1-800-227-2600 at least two working days prior to commencing any excavation if the excavation will be performed in an area 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 or 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 has been given the identification number by the Contractor.

ARTICLE 6. SCHEDULE

- a. **Estimated Schedule.** Within fourteen (14) days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to the District Representative for Approval. The receipt or Approval of any schedules by the District Representative or the District shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. 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 for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the District Representative.
- b. **Schedule Contents.** The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. Schedule duration shall match the Contract time. Schedules indicating early completion will be rejected.
- c. **Schedule Updates.** Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the District Representative whenever requested to do so by District Representative and with each progress payment request. The District Representative may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

ARTICLE 7. SUBSTITUTIONS

- a. Pursuant to Public Contract Code Section 3400(b) the District may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.
- b. Unless specifically designated in the Contract Documents, whenever 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 the words "or equal." Contractor 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 in the Contract Documents. However, the District may have adopted certain uniform standards for certain materials, processes and articles.
- c. Unless otherwise specified in the Special Conditions, Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Contractor. 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. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from the Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog 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. 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 required substantiating data, including the signed affidavit, to the District in a timely fashion will result in the rejection of the proposed substitution.

- e. The Contractor shall bear all of the District's costs associated with the review of substitution requests.
- f. The Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article.
- g. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

ARTICLE 8. SHOP DRAWINGS

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in his own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop or setting drawings, calculations, schedules, and materials list, and all other provisions required by the Contract. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to District Representative. 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 make any corrections required by the District Representative, and file with the District Representative six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. District Representative's approval of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called District Representative's attention to such deviations at time of submission and has secured the District Representative's written Approval. District Representative's Approval of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

ARTICLE 9. SUBMITTALS

- a. Contractor shall furnish to the District Representative for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by the District Representative, to the District Representative within a reasonable time period to provide for adequate review and avoid delays in the Work.
- c. These requirements shall not authorize any extension of time for performance of this Contract. District Representative will check and approve such samples, but 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 and submittals.

ARTICLE 10. MATERIALS

- a. Except as otherwise specifically stated in the Contract Documents, 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 ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.

- 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 the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to the District free from any claims, liens, or charges.
- e. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the District or any independent contractor. On-Site storage space is limited. Contractor shall coordinate all material deliveries with District's Representative prior to delivery. Deliveries shall coincide closely with installation dates.

ARTICLE 11. CONTRACTOR'S SUPERVISION

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent approved by the District. Superintendent must be able to proficiently speak, read and write in English and shall be onsite whenever workers are present. Project superintendent shall be as binding as if given to Contractor. Contractor shall continuously provide efficient supervision of the Project.

ARTICLE 12. WORKERS

- a. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- b. Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from The Work and shall not be employed on this Project except with the written Approval of the District.

ARTICLE 13. FINGERPRINTING

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 14. SUBCONTRACTORS

- a. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of The Work. Contractor shall be as fully responsible to the District for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the District.
- b. The District reserves the right to approve all subcontractors. The District's Approval of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.
- c. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

ARTICLE 15. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

- a. Contractor shall obtain and pay for all other permits and licenses required for The Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the District.
- b. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the District's responsibility pursuant to the Contract Documents.
- c. Before Acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the District.

ARTICLE 16. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The 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 Project Acceptance.
- d. If the Contract is for construction in existing facilities, Contractor may, with prior written Approval of the District, use the District's existing utilities by compensating the District for utilities used by Contractor.

ARTICLE 17. 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 shall be responsible for arranging and coordination with District for the payment of such fees.

ARTICLE 18. TRENCHES

- a. Trenches Five Feet or More in Depth. The Contractor shall submit to the District, 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. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.
- 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, 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.

The District 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 Documents.

In the event that a dispute arises between the District 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 19. REMOVAL OF HAZARDOUS MATERIALS

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the District in writing. The District shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor.

ARTICLE 20. SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. 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 toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.

ARTICLE 21. AIR POLLUTION CONTROL

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

ARTICLE 22. COMPLIANCE WITH STATE STORM WATER PERMIT

- a. 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") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. In bidding on this Contract, it shall be Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- b. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District Representative.
- c. 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 separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- d. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- e. 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 delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.

ARTICLE 23. CLEANING UP

- a. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. 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. Contractor shall fully clean up the site at the completion of The Work. If the Contractor fails to immediately 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 24. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Layout shall be done by a registered civil engineer Approved

by the District Representative. Any required “as-built” drawings of the Work shall be prepared by the registered civil engineer.

ARTICLE 25. EXCESSIVE NOISE

- a. The Contractor shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- b. The Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

ARTICLE 26. TESTS AND INSPECTIONS

- a. If the Contract Documents, the District Representative, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or Approved, Contractor shall provide the District Representative at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the District, Contractor shall promptly inform the District of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for District testing and District inspection shall be paid by the District. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- b. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- c. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the District, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- d. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the District so that the District may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into The Work.
- e. If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of District, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- f. Reexamination of Work may be ordered by the District. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

ARTICLE 27. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or properties that occur as a result of The Work. 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 necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the

Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field 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 in the course of construction.

- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the District Representative, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the District Representative or the District. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the District and the Contractor.
- c. 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.
- d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by The Work operations. Contractor shall:
 - 1) Enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 - 2) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - 3) Deliver materials to the Project site over a route designated by the District Representative.
 - 4) Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the District shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.
 - 5) Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the District Representative. Contractor shall not unreasonably encumber the Project site with its materials.
 - 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, at no cost to the District.

ARTICLE 28. CONTRACTORS MEANS AND METHODS

Contractor is solely responsible for the means and methods utilized to perform the work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

ARTICLE 29. AUTHORIZED REPRESENTATIVES

The District shall designate representatives, who shall have the right to be present at the Project site at all times. The District may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Contractor's failure to carry out The Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

ARTICLE 30. PROHIBITION OF HARASSMENT

The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color, religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs, ethnic jokes, posting of offensive statements, posters or cartoons or similar conduct.

The Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification

protected under local, state or federal law, regulation or policy. The Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. The Contractor shall require that any subcontractor performing any portion of the work on the Project to adopt and implement policies in conformity with the Article.

The Contractor shall not permit any person, whether employed by the contractor, a subcontractor, or any other person or entity, performing any work on the Project at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of The Work at or about the Site shall be subject to appropriate sanction in accordance with the Contractor's anti-harassment policy adopted and implemented pursuant to this Article. Any person performing or providing work on the Project on or about the Site who engages in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of The Work on the Project.

ARTICLE 31. 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 by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
- b. Work 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.
- c. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on District-observed holidays, unless otherwise Approved by the District Representative:
 - 1) Powered Vehicles
 - 2) Construction Equipment
 - 3) Loading and Unloading Vehicles
 - 4) Domestic Power Tool.

ARTICLE 32. PAYROLL

Pursuant to Labor Code Section 1776, 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 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.

- a. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.
- b. The payroll records described herein shall be certified and submitted electronically by the Contractor to the DIR. 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 described herein shall be made available for inspection or furnished upon request 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 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 any 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 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 33. 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>

ARTICLE 34. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

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.

ARTICLE 35. EMPLOYMENT OF APPRENTICES

The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 36. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training

without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

ARTICLE 37. 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 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

ARTICLE 38. 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 Project site, and, in case any of sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. 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 Project site, 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 the Contract Documents.

ARTICLE 39. EMPLOYER'S LIABILITY INSURANCE

Contractor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide District with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the District.

ARTICLE 40. COMMERCIAL GENERAL LIABILITY 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, Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Contractor's operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Such policy shall comply with all the requirements of this Article. The limits set forth herein 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 herein 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.
- c. 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.
- d. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
- 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 these General Conditions, 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 the Contract Documents.

ARTICLE 41. AUTOMOBILE LIABILITY INSURANCE

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of, at least, one million dollars (\$1,000,000). 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.

ARTICLE 42. BUILDER'S RISK ["ALL RISK"] X DOES NOT APPLY

- a. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["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. Such insurance shall comply with the provisions of the Contract Documents.

ARTICLE 43. FORM AND PROOF OF CARRIAGE OF INSURANCE

- a. Before the commencement of the work, the Prime Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers or approved surplus lines with a financial rating of at least A- status as rated in the most recent edition of Best's Insurance Reports or as otherwise set forth in the Special Conditions, such insurance will protect the District from claims set forth below, which may arise out of or result from the Prime Contractor's operations under the Contract and for which the Prime Contractor may be legally liable, whether such operations are by the Prime Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- b. Contractor shall cause its insurance carrier(s) to furnish the District with either 1) a properly executed original Certificates(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the District Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. The District, its Directors and officers, employees, agents or representatives are named as Additional Insureds and Provide

a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the District may terminate or Stop Work pursuant to the Contract Documents, unless the District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project site, or commence operations under this Agreement until the District has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so, on its behalf.

- c. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- d. The District reserves the right to adjust the monetary limits of insurance coverage's during the term of this Contract including any extension thereof-if in the District's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- e. Contractor shall pass down the insurance obligations contained herein to all tiers of sub-contractors working under this Contract.

ARTICLE 44. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. **Time for Completion/Liquidated Damages.** Work shall be commenced within ten (10) days of the date stated in the District's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. 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 receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the District (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If the work is not completed as stated in the Contract Documents, it is understood that the District will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each day of delay until the work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages. See Special Conditions, #B for dollar amount.
- b. **Inclement Weather.** Contractor shall abide the District Representative's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the work stopped during inclement weather is on the critical path of the Project schedule.
- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the District in writing of causes of delay. The District shall ascertain the facts and extent of delay and grant extension of time for completing the work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- d. **No Damages for Reasonable Delay.** The District's liability to Contractor for delays for which the District is responsible shall be limited to only an extension of time unless such delays were

unreasonable under the circumstances. In no case shall the District be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable District delay, including delays caused by items that are the responsibility of the District pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 45. COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms Approved by the District:

- a. Within ten (10) Days of award of the Contract a detailed estimate giving a complete breakdown of the Contract price;
- b. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the District to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- c. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the District Representative, for unit price items listed, if any, in the Bid Form.
- d. Following the District's Acceptance of the Work, the Contractor shall submit to the District a written statement of the final quantities of unit price items for inclusion in the final payment request.
- e. The District shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

ARTICLE 46. MOBILIZATION

- a. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate ("Initial Mobilization"). When no bid item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of The Work.
- b. Payment for Initial Mobilization based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the District Representative. The scope of the Work included under Initial Mobilization may include, but shall not be limited to, the following principal items:
 1. Obtaining and paying for all bonds, insurance, and permits.
 2. Moving on to the Project site of all Contractors' plant and equipment required for first month's operations.
 3. Installing temporary construction power, wiring, and lighting facilities.
 4. Establishing fire protection system.
 5. Developing and installing a construction water supply.
 6. Providing and maintaining the field office trailers for the Contractor and the District Representative, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
 7. Providing on-site communication facilities for the Owner and the District Representative, including telephones, radio pagers, and fax machines.

8. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
9. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
10. Arranging for and erection of Contractor's work and storage yard.
11. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
12. Full-time presence of Contractor's superintendent at the job site as required herein.
13. Submittal of Construction Schedule as required by the Contract Documents.

ARTICLE 47. PAYMENTS

- a. The District shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Contractor shall be paid a sum equal to ninety percent (90%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments.
- b. The Contractor shall, after the full completion of The Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.
- c. Unless otherwise required by law, the final payment of ten percent (10%) of the value of the Work, if unencumbered, shall be paid no later than sixty (60) Days after the date of recordation of the Notice of Completion.
- d. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the District arising from this Contract.
- e. Payments to the Contractor shall not be construed to be an acceptance of any defective work or improper materials, or to relieve the Contractor of its obligations under the Contract Documents.
- f. The Contractor shall submit with each payment request the Contractor's conditional waiver of lien for the entire amount covered by such payment request, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors for all work and materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by California Civil Code Section 3262. Prior to final payment by the District, the Contractor shall submit a final waiver of lien for the Contractor's work, together with releases of lien from any subcontractor.
- g. If State Bond Monies are used to fund this project, prior to, and as a condition precedent for final payment, Contractor shall provide the Construction Manager with written documentation identifying the amount paid to Disabled Veteran Business Enterprises (DVBE), and shall submit the certification letter issued by the Office of Small Business Certification and Resources verifying the DVBE status of the subject subcontractors. This documentation is required regardless of whether DVBE subcontractors were utilized in the performance of the Contract.

ARTICLE 48. PAYMENTS WITHHELD AND BACK CHARGES

In addition to amounts which the District may retain under other provisions of the Contract Documents the District may withhold payments due to Contractor as may be necessary to cover:

- a. Stop Notice Claims.
- b. Defective work not remedied.
- c. Failure of Contractor to make proper payments to its subcontractors or suppliers.

- d. Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
- e. Damage to another contractor or third party.
- f. Amounts which may be due the District for claims against Contractor.
- g. Failure of Contractor to keep the record ("as-built") drawings up to date.
- h. Failure to provide updates on the construction schedule.
- i. Site cleanup.
- j. Failure of the Contractor to comply with requirements of the Contract Documents.
- k. Liquidated damages.
- l. Legally permitted penalties.

Upon completion of the Contract, the District will reduce the final Contract amount to reflect costs charged to the Contractor, back charges or payments withheld pursuant to the Contract Documents.

ARTICLE 49. CHANGES AND EXTRA WORK

a. Change Order Work.

- 1) The District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract amount and Contract time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
- 2) All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Contractor. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions and provisions of the original Contract.
- 3) Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract time, within seven (7) Days after receipt of a scope of a proposed change order, unless the District requests that proposals be submitted in less than seven (7) Days.
- 4) Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- 5) Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the District.
- 6) Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the District.

- 7) If the Contractor fails to submit the cost proposal within the seven (7) Day period (or as requested), the District has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the contract price in accordance with

the District's estimate of cost. If the change is issued based on the District estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the District's estimate was in error.

- 8) Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:

- (a) Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- (b) Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the District Representative shall determine the materials cost, at its sole discretion.
- (c) Tool and Equipment Use. No payment will be made for the use of small tools, tools which have a replacement value of \$1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.
- (d) Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
 - i. "Net Cost" is defined as consisting of costs of labor, materials and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up.
 - ii. For Work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
 - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work to which the Contractor may add five (5%) percent of the subcontractor's Net Cost.
 - iv. For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work to which the subcontractor and general contractor may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.

- iv. No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by District exceed twenty-five (25%) percent of the Net Cost as defined herein.
- 9) For added or deducted Work by subcontractors, the Contractor shall furnish to the District the subcontractor's signed detailed estimate of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors.
- 10) For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the District a detailed estimate or quotation of the cost to the Contractor, signed by such vendor or supplier.
- 11) Any change in The Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
- 12) Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the change order for work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the District's change order form in an attempt to reserve additional rights.
- 13) If the District disagrees with the proposal submitted by Contractor, it will notify the Contractor and the District will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the District, a change order will be issued by the District. If no agreement can be reached, the District shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the District within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order.
- 14) No dispute, disagreement or failure of the parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of the work, including extra work, promptly and expeditiously.
- 15) Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Contractor's surety or sureties.

ARTICLE 50. OCCUPANCY

The District reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

ARTICLE 51. INDEMNIFICATION

Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of District's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that

may be brought or instituted against District, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

ARTICLE 52. RECORD ("AS BUILT") DRAWINGS

- a. Contractor shall prepare and maintain a complete set of record drawings (herein referred to as "as-built") and shall require each trade to prepare its own as-built. The as-built 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. Contractor shall mark the as-built 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 where shop drawings are used, Contractor must 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 as-built into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Contractor to also provide an electronic version of the as-built. The suitability of the as-built will be determined by the District Representative.

ARTICLE 53. RESOLUTION OF CONSTRUCTION CLAIMS

- a. In accordance with Public Contract Code Sections 20104 *et seq.* and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and the District shall be resolved under the following the statutory procedure unless the District has elected to resolve the dispute pursuant to Public Contract Code Section 10240 *et seq.*
- b. **All Claims:** All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the District.
- c. **Claims Under \$50,000.** The District shall respond in writing to the claim within 45 days of receipt of the claim, or, the District may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the District and the claimant. The District's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.
- d. **Claims over \$50,000 but less than or equal to \$375,000.** The District shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the District and the claimant. The District's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.
- e. The Contractor will submit the claim justification in the following format:

- 1) Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
 - 2) List of documents relating to claim
 - (a) Specifications
 - (b) Drawings
 - (c) Clarifications (Requests for Information)
 - (d) Schedules
 - (e) Other
 - 3) Chronology of events and correspondence
 - 4) Analysis of claim merit
 - 5) Analysis of claim cost
 - 6) Analysis of time impact analysis in CPM format
 - 7) Cover letter and certification of validity of the claim
- f. If the claimant disputes the District's response, or if the District fails to respond within the statutory time period(s), the claimant may so notify the District within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the District shall schedule a meet and confer conference within 30 Days.
- g. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.
- h. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by District, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

ARTICLE 54. DISTRICT'S RIGHT TO TERMINATE CONTRACT

- a. **Termination for Cause:** The District may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract if the Contractor: (i) refuses or fails to prosecute The Work or any part thereof with such diligence as will ensure its completion within the time required; (ii) fails to complete The Work within the required time; (iii) should file a bankruptcy petition or be adjudged a bankrupt; (iv) should make a general assignment for the benefit of its creditors; (v) should have a receiver appointed; (vi) should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials to complete the work; (vii) should fail to make prompt payment to subcontractors or for material or labor; (viii) persistently disregard laws, ordinances, other requirements or instructions of the District; or (ix) should violate any of the provisions of the Contract Documents.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) Days after the service of such notice, such condition shall cease or satisfactory arrangements (acceptable to the District) for the required correction are made, this Contract shall be terminated. In such case, Contractor shall not be entitled to receive any further payment until the Project has been finished. The District may take over and complete The Work by any method it may deem appropriate. Contractor and its surety shall be liable to the District for any excess costs or other damages incurred by the District to complete the Project. If the District takes over The Work, 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 Project site.

- b. **Termination For Convenience:** The District may terminate performance of The Work in whole or, 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 remaining portion of The Work.
- 6) Submit to the District, within ten (10) Days from the effective date of the Notice of Termination, all of the 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) 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."
- 7) These provisions are in addition to and not in limitation of any other rights or remedies available to the District.

- c. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the District may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the District or the Contract is terminated.

ARTICLE 55. WARRANTY AND GUARANTEE

- a. Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.
- b. Unless otherwise stated, all warranty periods shall begin upon the filing of the Notice of Completion. Unless otherwise stated, the warranty period for parts and labor shall be for one year.

- c. The Contractor shall remedy at its expense any damage to District-owned or controlled real or personal property.
- d. Contractor shall furnish the District with all warranty and guarantee documents prior to final Acceptance of the Project by the District.
- e. The District shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the county shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense.
- f. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the District may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Contractor shall:
 - 1) Obtain for District all warranties that would be given in normal commercial practice;
 - 2) Require all warranties to be executed, in writing, for the benefit of the District; and
 - 3) Enforce all warranties for the benefit of the District, unless otherwise directed in writing by the District.

This Article shall not limit the District's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. The District specifically reserves all rights related to defective work, including but not limited to the defect claims pursuant to California Code of Civil Procedure Section 337.15.

ARTICLE 56. DOCUMENT RETENTION & EXAMINATION

- a. In accordance with Government Code Section 8546.7, records of both the District and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- b. Contractor shall make available to the District any of the Contractor's other documents related to the Project immediately upon request of the District.
- c. In addition to the State Auditor rights above, the District shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the District, for a period of four (4) years after final payment.

ARTICLE 57. SOILS INVESTIGATIONS

When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

ARTICLE 58. REQUIRED CERTIFICATIONS

Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification" and a "Recycled Content Certification." These forms are 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 certifications, Contractor shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." Contractor, further, is aware of the following:

- b. 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.
- c. 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.
- d. 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 59. SEPARATE CONTRACTS

- a. The District reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- b. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the District Representative any problems with the work in place or discrepancies with the Contract Documents.
- c. Contractor shall ascertain to its 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 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 site.

ARTICLE 60. NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to District shall be addressed to the District as designated in the Notice Inviting Bids unless District designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

ARTICLE 61. 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.

ARTICLE 62. STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 63. INTEGRATION

- a. Oral Modifications Ineffective. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- b. Contract Documents Represent Entire Contract. The Contract Documents represent the entire agreement of the District and Contractor.

ARTICLE 64. 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 the Contract Documents 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 or the Government Code.

ARTICLE 65. 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 66. 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 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 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 makes final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 67. PROHIBITED INTERESTS

No District official or representative who is authorized in such capacity and on behalf of the District to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any 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 the Contract.

ARTICLE 68. 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 District Representative 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 District Representative, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 69. PATENT FEES OR ROYALTIES

The Contractor shall include in its bid amount the patent fees or royalties on any patented article or process furnished or used in the Work. Contractor shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with The Work, and shall defend, indemnify and hold harmless the District, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

ARTICLE 70. OWNERSHIP OF DRAWING

All Contract Documents furnished by the District are District property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the District on request at completion of The Work.

ARTICLE 71. NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

ARTICLE 72. COMPLIANCE WITH DTSC GUIDELINES—IMPORTED SOILS

If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify 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 accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the San Diego Regional Water Quality Control Board Resolution 95-63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

ARTICLE 73. DISTRICT'S INSPECTOR

- a. One or more inspectors employed by District in accordance with requirements of title 19, 21 and/or 24 of the California Code of Regulations will be assigned to the work. His duties are specifically defined in 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 74. INSPECTOR'S FIELD OFFICE

- a. The Contractor shall be responsible for providing the inspector's field office if required in the Scope of Work. 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.
- 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.
- 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 75. 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 terms of these Contract document, the action shall be brought in a state or federal court situated in the county of San Diego, State of California.

ARTICLE 76. NO WAIVER

No provision of these contract Documents shall be deemed waived by either party unless such waiver shall be expressly specified in writing, regardless of the actions or inaction of the parties.

SPECIAL CONDITIONS

- A. **Time of Performance:** The work shall be commenced on the date stated in the District's Notice to the Contractor to Proceed, (which date will be not less than (5) Five consecutive calendar days from and after the date of execution of the contract and shall be completed within the contracts dates listed below in such notice, and in accordance with the scheduled dates as specified below. 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 Agreement and Article 6 of General Conditions.)

Work under this contract shall be scheduled and coordinated in compliance with the following:

1. The anticipated date of the award of the contract is: November 19, 2021
The anticipated start date of the project is: November 29, 2021

Contract Dates: November 29, 2021- April 15, 2022

On-site Construction Dates: February 7, 2022 - April 15, 2022

2. Contractor shall complete all work and obtain all jurisdictional authorities' approval necessary to permit staff occupancy of all buildings for fixturing and outfitting no later than: not applicable
 3. Contractor shall complete all work and obtain all jurisdictional authorities' approval of work under this contract necessary to permit occupancy of all buildings by students and staff for classroom and school operations no later than: not applicable
 4. If the site will not be available after the Notice to Proceed date, Contractor shall utilize this time period for administrative tasks and initial mobilization and shall coordinate such activities with District.
 5. Contractor shall provide restroom facilities (porta-potty) for his/her staff for the duration of project.
- B. **Substitutions:** The District will consider equivalent products or materials by other manufacturers for the approval if submitted with appropriate information and/or specs to the District no later than three days prior to the bid opening for approval.
- C. **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 43 of the General Conditions is **Fifteen Hundred Dollars (\$1500)** per day for each calendar date completion is delayed.
- D. **Documents Furnished:** The number of copies of the bid specifications to be furnished to each Contractor free of charge is one(1), per Article 3 of the General Conditions.

- E. **Bonds:** Contractor shall provide (i) a Bid Bond in the amount of ten percent (10%) of the contract price; (ii) a Payment Bond in the total amount of bid or as specified in the Information to Bidders; and (iii) a Performance Bond in the amount of one hundred percent (100%) of the contract price or as specified in the Information for Bidders.
- F. **Insurance:** As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain:

Comprehensive General Liability Insurance \$1,000,000.00
with a combined single limit per occurrence
of not less than.....

OR

Commercial General Liability and Property Damage 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)	\$2,000,000.00
c) Products/Completed Operations	\$1,000,000.00
d) Personal & Advertising Injury limit	\$1,000,000.00

AND

Builder's Risk (or Course of Construction Coverage) Applicable
Fire Insurance X does not apply
(See Article 22) Project Replacement Value at.....100%
(one hundred percent)

Workers' Compensation as prescribed by State Law

Automobile Liability Insurance \$1,000,000.00

Insurance Covering Special Hazards: The 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:

Automotive and truck where operated in amounts \$1,000,000.00

Material hoist where used in amounts \$1,000,000.00

Explosion, collapse, & Underground (XCU) coverage \$1,000,000.00

Excess Liability Insurance coverage in the amount of \$1,000,000.00

Additional Insurance Endorsement: Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of Trustees, and the officers, agents,

employees and volunteers of District, the State Allocation Board, if applicable, the architect, and the architect's consultants, individually and collectively, as additional insurers.

- G. **Executed Copies:** The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works required is one (1).
- H. **License Classification:** Each bidder shall be a licensed Contractor pursuant to the Business and Professions Code and shall be licensed in the following classification(s):

**LIC A- GENERAL CONTRACTOR OR LIC C12- EARTHWORK AND
PAVING**

- I. **Fingerprinting:** Pursuant to the provisions of Article 13 of the General Conditions, District Determination of Fingerprinting Requirement Application is as follows:

The District has considered the totality of the circumstances concerning the project and has determined that the Contractor and Contractor's employees,

- a. _____ are subject to the requirements of Education Code section 45125.2 and Paragraph (A) of Article 13 of the General Conditions.
- b. XX are not subject to the requirements of Education Code section 45125.2 and **are** subject to Paragraph (B) of Article 13 of the General Conditions.
- J. **Invoices:** All invoices should be submitted to the District Representative in charge of the project so payments can be processed. Please include Purchase Order number and Bid number on all invoices and correspondence.
- K. **Additive & Deductive Items:** Pursuant to Public Contract Code section 20103.8, should this bid solicitation include additive and/or deductive items, the checked (X) method shall be used to determine the lowest bid:

XX (a) The lowest bid shall be the lowest total of Base Bid A plus Allowance #1.

_____ (b) The lowest bid shall be the lowest total of Base Bid A plus Allowance #1 and those additive or deductive items taken in the numerical order set forth in the bid form.

_____ (c) The lowest bid shall be the lowest total of Base Bid A plus Allowance #1 and those additive or deductive items taken in order from a specifically identified list of those items that, when in the bid form and added to, or subtracted from the base contract, are less than, or equal to, a funding amount publicly disclosed by the District before the first bid is opened.

_____ (d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before ranking of all bidders from lowest to highest has been determined.