

BID DOCUMENTS
for
BID # 2023-4
HVAC Installation Project at Discovery Elementary
Bid Closes Date & Time: June 6, 2023 at 2:00 PM

To: Prospective Bidders:

* * *ATTENTION: Please review this document as soon as you receive it.* * * *
* *No Bidder questions will be accepted 72 hours prior to bid closing*
*

Please immediately review our "Bid Process Timeline", Item # 1 in the Information for Bidders - Specific section, Page 5 of this document.

A MANDATORY pre-bid conference shall be held on May 22, 2023 at 9:00 am at Discovery Elementary School located 730 Applewilde Dr., San Marcos, CA 92078, per further details in Item # 2 in the Information for Bidders - Specific section, Page 5 of this document. Bidders are required to have a valid California Contractor's License as follows: C20 - Warm-Air Heating, Ventilating and Air-Conditioning.

This Project is a public work and subject to prevailing wage requirements as set forth in Labor Code §1720 *et seq.* The bidder/contractor and all subcontractors of every tier are required to pay laborers performing any portion of work on the Project not less than the prevailing wage rate established for the labor provided. Pursuant to Labor Code §1771.4(a)(4), prevailing wage rate monitoring and enforcement shall be by the California Department of Industrial Relations ("DIR"). Each bidder must be registered with the DIR pursuant to Labor Code §1725.5 in order to be qualified submit a bid on or to perform work on this Project. Bids submitted by contractors not registered with the DIR will be rejected as non-responsive. All subcontractors listed in the bid also must be registered with the DIR at the time of bid opening. At all times during performance of the Project, the bidder/contractor and **all** subcontractors, **of any tier**, must be registered with the DIR.

Any requests for interpretation or corrections must be made in accordance with the Information for Bidders – Specific section, "Item 3. Interpretation of Documents and Addenda" and according to the "Bid Process Timeline."

The District reserves the right to reject any or all bids, to accept or to reject any one or more items on a bid, or to waive any irregularities or informalities in the bids or in the bidding process.

If you wish to bid, your completed bid must be returned in a sealed envelope no later than the **Bid Opening Date and Time** as stated in the Notice to Contractors Calling for Bids.

If you have any questions regarding the bid requirements or timeline, please contact Vicki Capozza, Buyer at (760) 290-2374 or vicki.capozza@smusd.org.

TABLE OF CONTENTS

BID DOCUMENTS COVER SHEET / LETTER.....	1
TABLE OF CONTENTS.....	2
NOTICE TO CONTRACTORS CALLING FOR BIDS	3
INFORMATION FOR BIDDERS (<i>INSTRUCTIONS TO BIDDERS</i>)	
INFORMATION FOR BIDDERS – Specific.....	4
INFORMATION FOR BIDDERS - General	9
AGREEMENT (to be executed only with awarded vendor).....	14
PERFORMANCE BOND (sample).....	16
PAYMENT BOND (sample).....	18
SPECIFICATIONS	
SPECIFICATIONS – SPECIAL CONDITIONS.....	20
SPECIFICATIONS – TECHNICAL SPECIFICATIONS.....	22
SPECIFICATIONS – PLANS:	23
SPECIFICATIONS – CAMPUS MAP.....	24
SPECIFICATIONS – GENERAL CONDITIONS.....	31
BID FORM.....	56
BID BOND.....	59
REFERENCES.....	60
DESIGNATION OF SUBCONTRACTORS.....	61
NON-COLLUSIVE BIDDING DECLARATION.....	63
CONTRACTOR’S CERTIFICATION REGARDING WORKERS’ COMPENSATION.....	64
CONTRACTOR’S VERIFICATION OF CONTRACTOR AND SUBCONTRACTORS’ DIR REGISTRATION....	65

NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that San Marcos Unified 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 **2:00 PM , on the 6th day of June, 2023**, sealed bids for the award of a contract for:

2023-4

HVAC Installation Project at Discovery Elementary

Description of Work: Work to include the labor and installation of HVAC equipment at Discovery Elementary.

Estimated Project Cost: \$563K

Estimated Start Date: July 15, 2023

Completion of Work: Project shall be completed by January 30, 2024.

Bids shall be received in the Purchasing Department of Owner at 255 Pico Ave. Ste. 250, San Marcos, CA 92069, and shall be opened and publicly read aloud at the above-stated time and place.

A mandatory pre-bid conference shall be held on May 22, 2023 at 9:00 am at Discovery Elementary School, located at 730 Applewilde Dr., San Marcos, CA 92078. Any bid submitted by a Bidder who does not attend the mandatory pre-bid conference shall be considered a non-responsive bid.

Each bidder shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following appropriate classification of contractor's license, for the work bid upon, and must maintain the license throughout the duration of the Contract: **C20 - Warm-Air Heating, Ventilating and Air-Conditioning.**

Bid documents can be obtained on-line at <https://www.smusd.org/departments/Purchasing/bids> or by contacting Vicki Capozza, Buyer, at (760) 290-2374 or vicki.capozza@smusd.org.

Plans and specifications are available on San Marcos Unified School Districts website at <https://www.smusd.org/departments/Purchasing/bids>

Each bid shall conform and be responsive to the bid plans, specifications and bid documents. Each bid submittal shall be accompanied by bid security in the form of cash, cashier's check, certified check, or bidder's bond executed by an admitted surety insurer, and made payable to the San Marcos Unified School District, in the face amount of ten percent (10%) of the contract amount.

Pursuant to Public Contract Code Section 10126 (c) (2) the District declares that the following method shall be used to determine the lowest, responsive bidder on the project: **Total Base Bid for Project**

This Project is a public work and subject to prevailing wage requirements per Labor Code §1720 *et seq.* The bidder/contractor and all subcontractors of every tier shall pay laborers performing any portion of the Project not less than the prevailing wage rate established for the labor provided. Pursuant to Labor Code §1771.4(a)(4), prevailing wage rate monitoring and enforcement shall be by the California Department of Industrial Relations ("DIR"). Each bidder must be registered with the DIR pursuant to Labor Code §1725.5 in order to be qualified to submit a bid or to perform work on this Project. Bids submitted by contractors not registered with the DIR will be rejected as non-responsive. All listed subcontractors in the bid also must be registered with the DIR at the time of bid opening. At all times during performance of the Project, the bidder/contractor and **all** subcontractors, **of any tier**, must be registered with the DIR. Bidders/contractors may register with the DIR online at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

Deadlines: a) **March 1, 2015**: No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code §1725.5 [limited exceptions apply per Labor Code section 1771.1(a)];

b) April 1, 2015: No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code §1725.5.

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 available online at <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 the successful bidder as well as all subcontractors of any tier, shall comply with all applicable Labor Code provisions, which include, but are not limited to, registration with the DIR for the duration of the work performed on the Project, the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, reporting compliance to the DIR, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors.

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. All bonds are to be secured from a surety company that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure section 995.120, and is authorized by the State of California, and all documents required by Code of Civil Procedure section 995.660, to the extent required by law.¹

Pursuant to the provisions of Public Contract Code section 22300, the successful bidder may substitute certain securities for funds withheld by District to ensure his performance under the Contract. At the request and expense of the successful bidder, securities equivalent to any amount withheld shall be deposited at the discretion of District, with either District or a state or federally chartered bank, as the escrow agent, who shall then pay any funds otherwise subject to retention to the successful bidder. Upon satisfactory completion of the Contract, the securities shall be returned to the successful bidder.

All bidders shall agree to obtain and maintain in full effect all required insurance with limits not less than the amounts indicated. Bidders who fail to comply with the insurance requirements of this contract may have their bids rejected as non-responsive at the election of the District.

The District reserves the right to reject any or all bids, to accept or to reject any one or more items on a bid, or to waive any irregularities or informalities in the bids or in the bidding process.

No bidder may withdraw its bid for a period of sixty (60) days after the date set for the opening of bids.

BY THE ORDER OF THE GOVERNING BOARD OF THE
SAN MARCOS UNIFIED SCHOOL DISTRICT

Sarah Ahmad, Clerk of the Governing Board
San Marcos Unified School District
San Diego County, California

Publication: Daily Transcript
May 9, 2023 & May 16, 2023
Notice will appear in the Daily Journal.

¹

A payment bond must be filed for a contract involving expenditure in excess of \$25,000 (Civil Code Section 3247 (a)) and may be required for contracts involving smaller expenditures at the option of the District.

INFORMATION FOR BIDDERS – Specific

The following information is specific to this Bid / Contract. Information stated in this “Information for Bidders – Specific” section supersedes any conflicting information which may be contained in the following “Information for Bidders – General” section.

1. **BID PROCESS TIMELINE:** The following is the timeline for bid submittals and the bid evaluation and selection process:

DATE AND TIME	DEADLINE / PROCESS DESCRIPTION
May 9, 2023 May 16, 2023	Legal Notice to Contractors Calling for Bids is published in the Daily Transcript.
May 22, 2023 9:00 AM	<p>Mandatory Pre-Bid Conference / Job Walk to be held:</p> <p>Discovery Elementary 730 Applewilde Dr. San Marco, CA 92078</p> <p>*Bidder must attend the Pre-Bid Conference</p>
Deadline date: May 25, 2023 2:00 PM	<p>Request for Information / Clarification RFIs are to be sent to: Vicki Capozza, Buyer vicki.capozza@smusd.org</p>
June 1, 2023 4:00 PM	<p>PREQUALIFICATION REQUIREMENT: Contractors must submit prequalification documents to San Marcos Unified School District for registration onto CUPCAA List</p> <p>Registration information can be found here: https://www.smusd.org/departments/Purchasing/cupcaa_contractor_registration</p>
June 1, 2023 4:00 PM	Final Addendum will be issued
June 6, 2023 at 2:00 PM	<p>BID OPENING DATE AND TIME (BID SUBMITTAL DEADLINE). <u>Sealed Bids</u> must be received no later than this date and time at the following address:</p> <p>San Marcos Unified School District Attn: Purchasing Department, Bid # 2023-4 255 Pico Ave. Ste. 250 San Marcos, CA 92069</p> <p>(See following Item #12 “MAILING / DELIVERING THE BID” for envelope labeling instructions.</p>

June 15, 2023	Award of Bid at SMUSD Governing Board Meeting
---------------	---

2. **MANDATORY PRE-BID CONFERENCE/JOB WALK:** Each prospective bidder is responsible for fully acquainting him/herself 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 Mandatory Pre-Bid Conference and Job Walk will be held on the date and time and place as indicated below.

The Mandatory Pre-Bid Conference and Job Walk will be held as follows:

- **DATE:** Monday, May 22, 2023
- **TIME:** 9:00 AM
- **PLACE:** Discovery Elementary
730 Applewilde Dr.
San Marcos, CA 92078

Bidder will be required to sign-in at the pre-bid conference. Any bid submitted by a Bidder whose name does not appear on the sign-in sheet shall be considered a non-responsive bid.

3. **INSTRUCTIONS FOR BIDDERS:** Bidder and Subcontractors DIR Registered Contractor Status.
Bidder Status. In addition to other requirements in this bid package relating to Bidder qualifications, a **contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code §1725.5.** Bidder must be registered with the DIR at the time of bid opening or the bid will be rejected as non-responsive. Bidder may register with DIR at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

Listed Subcontractors' Status. All Subcontractors listed in Bidder's Bid also must be Registered with the DIR at the time of bid submission. Bidders must include listed subcontractors' DIR registration number with the bid, or if the listed subcontractor's DIR registration number is not known at time of bid submittal, then the subcontractor's DIR registration number may be submitted to District within twenty-four hours (24) of bid opening. Pursuant to Labor Code §1771.1 an inadvertent error in listing a subcontractor who is not registered with DIR in a bid or proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply: (1) The subcontractor is registered prior to the bid opening; (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5; or (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

DIR Registration Verification. A form of DIR Registration – Verification is included with the Contract Documents. Each Bidder shall submit the completed DIR Registration Verification Form executed by a duly authorized officer or employee of the Bidder with the Bidder's bid or proposal.

4. **INTERPRETATION OF DOCUMENTS AND ADDENDA:** If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, or finds discrepancies in, or omissions from the specifications, he/she may submit to the Business & Contract Services office of the San Marcos Unified School District a written request for an interpretation or correction thereof. It is the sole and exclusive responsibility of the Bidder to submit such request in sufficient time for the District's response thereto and delivery of such response to all Bidders prior to the scheduled closing for receipt of Bids. Any request of any Bidder, pursuant to the foregoing sentence that is made after the deadline date and time specified in the "Bid Process Timeline" (Item # 1 in the Information for Bidders – Specific section) shall be deemed untimely. Please email requests to vicki.capozza@smusd.org Your e-mail address or fax # should be included with your request. Any interpretation or correction of the proposed documents will be made only by Addendum duly issued by the District, and a copy of such Addendum or notification of Addendum will be e-mailed, and/or faxed to each person receiving a set of such documents. The San Marcos Unified School District will not be responsible for any other explanation or interpretation of the proposed documents. No Bidder questions will be accepted 72 hours prior to bid closing.

Any addenda or bulletins issued by the San Marcos Unified School District during the time of bidding or forming a part of the documents issued to the bidder for the preparation of the bid shall be covered in the bid and shall be made a part of the contract. The Bidder shall notate in the applicable spaces provided on the Bid Form any and all addenda numbers issued by the District for this Bid.

The District will e-mail addenda or notification of addenda to prospective bidders **whose names appear on the sign-in sheet**. In the absence of any information to the contrary, the District will assume that any addenda or notification of addenda mailed, faxed, or e-mailed to a prospective bidder was successfully received by that prospective bidder, and the District will not request a separate confirmation back from the prospective bidder that such addenda was received.

All prospective bidders are encouraged to check the District's bid website <https://www.smusd.org/departments/Purchasing/bids> for any addenda for this bid prior to sending and submitting its bid package to the District.

5. **DOCUMENTS TO BE INCLUDED IN THE BIDDER'S BID SUBMITTAL PACKAGE:** A Bidder's bid submittal must include the following items, completely filled out and signed by authorized signatory personnel of the Bidder's company, in order to be considered a responsive bid:

- Bid form and Bid Sheets
- Bid Bond
- References
- Designation of Subcontractors
- Non-Collusive Bidding Declaration
- Contractor's Verification of Contractor and Subcontractors' DIR Registration

Bidders do not need to return the entire set of bid documents back to the District. Only the documents listed above are required to be submitted. Should the Bidder submit pages from the Bid Documents that have not been required by the District to be submitted as part of the Bidder's Bid Submittal Package, the District will discard that extraneous paperwork.

6. **BIDDER'S SAMPLES TO BE SUBMITTED AT TIME OF BID:** No samples are required.
7. **BID BOND REQUIREMENT:** A Bid Bond is required of Bidders in the amount of 10% of the combined total of Bid price as reflected on the Bidder's Bid Sheets.
8. **PAYMENT AND/OR PERFORMANCE BONDS TO BE REQUIRED OF AWARDED VENDOR:** Refer to the "Specifications – Special Conditions" section, Item #5.
9. **REFERENCES:** Bidders are required to complete the "References" sheet as part of their bid submittal. Bidder must be able to present evidence of satisfactory experience providing similar goods and / or services as those specified in this Request for Bid.
10. **SUBCONTRACTOR'S LIST:** Bidders are required to complete the "Designation of Subcontractors" Form as part of their bid submittal. The Bidder must provide the name, Address, California Contractors License Number, DIR Registration Number, and Portion of work to be performed for all Subcontractor'.
11. **CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION:** In accordance with the provisions of Section 3700 of Labor Code, Contractor shall secure the payment of compensation to his employees. Contractor shall sign and file with the District the following certificate prior to performing the work under this contract. "I am aware of the provisions of Section 37700 of the labor Code which required 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." The form of such certificate is included as a part of the contract documents. Each bidder shall sign the certificate and submit it with his/her sealed bid.

12. **MAILING / DELIVERING THE BID:** The Bidder is ultimately responsible for the timely submittal of the Bidder's sealed Bid Package. **All bids must be submitted in sealed envelopes bearing on the outside the name of the bidder, his/her address, and the name of the project and bid number for which the bid is submitted. It is the sole responsibility of the bidder to see that his/her bid is received in proper time. All bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened. To ensure that the bid package remains sealed until the bid opening date and time, clearly indicate the Bid Number and Bid Name on the outside of the package, or at a minimum, on the sealed envelope that may be placed inside the mailing package or carton.**

If the package is sent via U.S. Postal Service, UPS, Fed Ex, etc..., all packages must be clearly addressed to:

San Marcos Unified School District
Attn: Purchasing Services, Bid #2023-4
255 Pico Ave. Ste. 250
San Marcos, CA 92069

If the package is hand-delivered prior to or at bid opening, bring Bidder's sealed Bid Package with the bid number and name clearly indicated on the outside of the package to: The office of Purchasing Services Department inside of the District Services Center.

INFORMATION FOR BIDDERS - General**1. Preparation of Bid Form**

The District invites bids on the attached forms to be submitted at such time and place as is stated in the Notice to Contractors Calling for Bids, and not later than such date and time. Bids shall be received in the **Purchasing Department** located at 255 Pico Ave. Ste. 250, San Marcos, CA 92069. All blanks in the bid form must be appropriately filled in, and all prices must be stated in figures. In the case where a calculation is incorrect, the Unit Bid Price shall prevail, and the District will automatically calculate and correct the extended amount(s). **All bids must be submitted in sealed envelopes bearing on the outside the name of the bidder, his/her address, and the name of the project and bid number for which the bid is submitted. It is the sole responsibility of the bidder to see that his/her bid is received in proper time. All bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.**

2. Bid Security

Each bid shall be accompanied by a certified or cashier's check payable to District, or a satisfactory bid bond in favor of the District executed by the bidder as principal and an admitted surety approved to conduct business in the State of California as surety, in the amount specified in the Special Conditions hereof. The check or bid bond shall be given as a guarantee that the bidder shall execute the contract if it be awarded to him in conformity with the contract documents and shall provide the surety bond or bonds as specified therein within five (5) days after notification of the award of the contract to the bidder.

3. Faxed and Electronic Mail Bids

All bids must be under sealed cover. District will not accept any bids or bid modifications submitted by facsimile or electronic mail transmission.

4. Signature

The bid must be signed in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid.

5. Modifications

Changes in or additions to the bid form, recapitulations of the work bid upon, alternate proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in the District's rejection of the bid as not being responsive to the invitation to bid. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the bidder was placed in the mail prior to the opening of bids.

6. Erasures/Mutilation of Bid Documents

The bid form submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid.

Contractors should not deface or mutilate the bid documents to the extent that they may not be usable for construction purposes. Bid documents obtained under deposit shall be returned within ten (10) days after bid opening.

7. Examination of Site and Contract Documents

Each bidder may visit the site of the proposed work and fully acquaint himself/herself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the contract. Bidders shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any bidder to receive or examine any contract documents, form, instrument, addendum, or other document or to visit the site and acquaint himself with conditions there existing shall in no way relieve any bidder from obligations with respect to his/her bid or to the contract. The bidder is responsible to obtain any geotechnical and/or soils report pertaining to the site of the work. Although any such

report does not operate as a warranty or guarantee of site conditions, the submission of a bid shall be taken as prima facie evidence of compliance with all terms of this section.

Each bidder, by making his/her bid represents that the/she has read and understands the Contract and Bid Documents and any and all related reports and information. After executing the Agreement, no consideration will be given to any claim of misunderstanding of the documents.

Each bidder, by making his/her bid, represents that he/she has visited the site, inspected the area of the work, and familiarized himself/herself with the local conditions under which the work is to be performed, including sub-surface conditions. Such inspection shall specifically consider requirements for accessing the site and determining the work can be completed as required by, and as shown in, the Contract Documents.

With District's approval, including provision of insurance as required, and after scheduling access with the District, each bidder may conduct additional site investigations at the bidder's sole cost.

8. Withdrawal of Bids

Any bidder may withdraw his/her bid either personally, by written request, or by telegraphic request confirmed in the manner specified above at any time prior to the scheduled closing time for receipt of bids.

9. Agreements and Bonds

The Agreement from which the successful bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds which he/she will be required to furnish at the time of execution of the Agreement, are included in the contract documents and shall be carefully examined by the bidder. The required number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works is as specified in the Special Conditions.

The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established.

The Payment Bond must be in the amount of 100% of the total amount payable. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish.

Bonds shall be in the form set forth in the contract documents.

10. Interpretation of Plans and Documents

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the drawings, specifications, or other information pertaining to the site (including any available soils or geotechnical report) or finds discrepancies in, or omissions from the drawings and specifications, he is hereby required in accordance with Public Contract Code section 1104 to submit to the Architect a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the contract documents or other available information will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of the contract documents. At the option of the District, all addenda may be mailed, delivered, faxed, made available for pick-up or sent via electronic mail. District shall have the option to send a hard copy via regular mail or overnight delivery, at the option of District. No oral interpretation of any provision in the contract documents will be made to any bidder. Numbers spelled out in words will take precedence over numerals/figures.

11. Bidders Interested in More than One Bid and Bidders Not Qualified to Bid

No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation 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 or making a prime proposal. **No person, firm, or corporation**

shall be allowed to bid who has participated in the preparation of contract specifications; a bid by such a person, firm or corporation shall be determined to be non-responsive.

12. Award of Contract

The District 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 District, will be to the lowest responsible bidder therefore. The District reserves the right to accept or reject the Unit Price Bid portion to the awarded lowest bidder if the District believes pricing is within the best interest of the District.

13. Additive and Deductive Items: Method of Determining Lowest Bid

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:

- ☒ (a) The lowest bid shall be the lowest bid price based on the base bid only without consideration of the prices on the additive or deductive items.
- ☐ (b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in the numerical order set forth in the bid form and specifically identified as being used for the purpose of determining lowest bid price.
- ☐ (c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items 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 the ranking of all bidders from lowest to highest has been determined.

The lowest bid shall be determined as described in the Bid Documents generally and specifically in paragraph 1 of the Bid Form.

If no method is checked, sub-paragraph (a) shall be used to determine the lowest bid.

Notwithstanding the method used by the District to determine the lowest responsible bidder, the District retains the right to add to or deduct from the contract any of the additive or deductive items included in the bid solicitation after the lowest responsible bidder has been determined.

14. Evidence of Responsibility

Upon the request of the District, a bidder whose bid is under consideration for the award of the contract shall submit promptly to the District satisfactory evidence showing the bidder's financial resources, his/her construction experience in the type of work being required by the District, and his/her organization available for the performance of the contract and any other required evidence of the bidder's qualifications to perform the proposed contract. The District may consider such evidence before making its decision awarding the proposed contract. Failure to submit requested evidence of a bidder's responsibility to perform the proposed contract may result in rejection of the bid.

15. Listing Subcontractors

Each bidder shall submit with his/her sealed bid a list of the proposed subcontractors on this project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 and following). Forms for this purpose are furnished with the contract documents. All listed subcontractors must be registered with the DIR pursuant to Labor Code §1725.5. Bidder must include in the bid the DIR registration number for each listed subcontractor. If the DIR registration number for a listed subcontractor is not known at the time of bid submittal, the Bidder may submit the subcontractor's DIR registration number to the District within twenty-four (24) hours of

bid opening. Pursuant to Labor Code §1771.1, an inadvertent error in listing a subcontractor who is not registered with DIR in a bid or proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply: (1) The subcontractor is registered prior to the bid opening; (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5; or (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code. In addition to these requirements, within one business day after the bid opening, Contractor shall provide the address, phone number, and license number of each listed subcontractor. If the bidder fails to provide information within one business day, District may in its discretion, reject the bid as non-responsive.

16. Workers' Compensation

In accordance with the provisions of section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his/her employees. Contractor shall sign and file with District the following certificate prior to performing the work under this contract:

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. The form of such certificate is included as part of the contract.

17. Substitution of Security

Monies withheld by the District to ensure performance under the contract may be released in accordance with Public Contract Code section 22300 and the contract documents.

18. Contractor's License

If, at the time the bids are opened, bidder is not licensed to perform the project in accordance with division 3, chapter 9 of the Business and Professions Code of the State of California (Section 7028.15) and the Notice of Contractors Calling for Bids, the bid will not be considered.

19. Ethics in Bidding

The District expects the bidders to maintain high ethical standards in engaging in the competitive bidding process. The bid amount of one bidder should not be divulged to another before the award of the subcontract or order, nor should it be used by Contractor to secure a lower proposal from another bidder on that project (bid shopping). Subcontractors or Suppliers should not request information for the Contractor regarding any sub-bid in order to submit a lower proposal on that project (bid peddling). District will consider any bidder found to be engaging in such practices to be a non-responsible bidder and may reject its bid on that ground.

20. Substitutions and Special Brand Names

In accordance with Public Contract Code section 3400 "prior to or after the award of the contract" district must provide for "submissions of data substantiating a request for a substitution of 'an equal' item." Therefore, no later than thirty-five (35) days after award of the contract, if the bidder is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. Whenever possible, the same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is non-responsive. Bidders are specifically notified that the submission of his/her documentation in no way obligates the District or its representative to review such documentation prior to contract award. Furthermore,

after award of a contract, if a proposed substitution is rejected, bidder shall be responsible to provide the item or product or work as originally specified at no additional cost to the District. District has the complete and sole discretion to determine if an item or article is an equal item.

21. Labor Compliance Program

This contract will be monitored by the California Department of Industrial Relations to ensure compliance with prevailing wage requirements. All contractors, subcontractors, bidders and laborers performing work on the Project are required to comply with the applicable Labor Code requirements (Labor Code §1725.5 and §1771.4, respectively).

Projects funded the proceeds of the District's Prop M ballot initiative will also be subject to the District's own labor compliance program.

AGREEMENT

[To be executed between the District and the selected/awarded contractor]

THIS AGREEMENT, made this ____ day of _____, 20__ in the County of San Diego, State of California, by

and between the **San Marcos Unified 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. Within the time agreed to the Contract herein, Contractor shall perform and provide all labor, materials, apparatus, utility services, facilities, transportation, tools and equipment and perform all the work required to construct and complete the following titled project in a good and workmanlike manner and in strict accordance with the Contract Documents (the "Work"):

BID NO. 2023-4: HVAC Installation Project at Discovery Elementary

the Contract

ARTICLE 2 - TIME FOR COMPLETION. (a) The work shall be commenced on the date stated in the District's Notice to Proceed, as provided in Item # 1 of the Specifications - Special Conditions. As specified in District's Notice to Proceed, the work shall be completed no later than January 30, 2024 ("Completion Date").

(a) In entering into this Agreement, Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the Project.

ARTICLE 3 – CONTRACT PRICE. The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including any applicable sales, use or other taxes or costs, the sum of _____ Dollars (\$_____, the "Contract Amount"), said sum being the total amount of the following amounts stipulated in the bid.

- 1) HVAC Equipment (purchased by SMUSD): \$ 95,599.00
- 2) Base Bid: \$ _____
- 3) Owner's Allowances
- a) Allowance for Unforeseen Conditions \$ 25,000.00*
- Total Base Bid (including Base and Allowances): \$ _____ ****

***Owner's Unspecified Allowance:** Bidder shall include in Bid Proposal the stipulated sum of Twenty-Five Thousand Dollars (\$25,000.00) to be allocated as follows: \$25,000 for Unforeseen Conditions. Any Allowance work is to be performed ONLY at the determination and direction of the District. Work performed at the determination and direction of the District under this Allowance shall be documented by Contractor and submitted to District's Representative. Contractor shall include separate line items in Contractor's Schedule of Values for the listed "Allowances" totaling of Twenty-Five Thousand Dollars (\$25,000.00). At closeout of contract, any funds remaining in the Allowance shall be credited to District through a Change Order.

****Said BID PRICES include all applicable taxes and costs and Owner's Unspecified Allowance. DOES NOT INCLUDE #1, HVAC Equipment**

Payment shall be made as set forth in the General Conditions.

ARTICLE 4 – 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
Designation of Subcontractors
Noncollusion Affidavit
Verification of Contractor and Subcontractors' DIR Registration Agreement
Performance Bond
Payment Bond for Public Works
Contractor's Certificate Regarding Workers' Compensation
Specifications (all components)
Addenda Nos. _____, _____, _____, _____ as issued
Drawings

All of the above-named 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 agreement shall supersede any prior agreement of the parties.

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

SAN MARCOS UNIFIED SCHOOL DISTRICT

San Diego County, California

By: _____

Erin Garcia,
Assistant Superintendent,
Business Services

Date: _____

Contractor

(SAMPLE ONLY. Do not submit with Bid)

By: _____

Signature of Authorized Agent/Officer

Print Name: _____

Title: _____

Date: _____

Award by Governing Board on _____, 20__.

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

Contractors State License Board

9821 Business Park Drive

Sacramento, CA 95827

Phone: (800) 321-CLSB

<http://www.cslb.ca.gov>

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the San Marcos Unified School District (hereinafter designated as "Public Entity" or "District"), by action taken or a resolution passed on _____, has approved the award to _____, hereinafter designated as the "Principal," a contract for the work described as follows:

2023-4

HVAC Installation Project at Discovery Elementary

(the "Project"); and

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

NOW THEREFORE, we, the Principal and, _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the specifications.

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

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

(Attach Required Acknowledgements)

(Principal Name)

By: _____
(Signature)

(Type or printed name)

(Title)

(Corporate Seal)

(Surety Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Type or Printed Name of Attorney-in Fact)

(Address)

(Area Code & Telephone # of Surety)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the San Marcos Unified School District (hereinafter designated as "Public Entity" or "District"), by action taken or a resolution passed on _____, has approved the award to _____, hereinafter designated as the "Principal," a contract for the work described as follows:

**2023-4
HVAC Installation Project at Discovery Elementary**

(the "Project"); and

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

NOW THEREFORE, we, the Principal and, _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

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

(Attach Required Acknowledgements)

(Corporate Seal)

(Principal Name)

By: _____
(Signature)

(Type or printed name)

(Title)

(Corporate Seal)

(Surety Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Type or Printed Name of Attorney-in Fact)

(Address)

(Area Code & Telephone # of Surety)

SPECIFICATIONS - SPECIAL CONDITIONS**1. TIME OF PERFORMANCE:**

The work shall commence on the date stated in the District's Notice to Contractor to Proceed and shall be completed by the Completion Date. District and Contractor each hereby stipulate that the stated performance period is accepted as reasonable and shall not be adjusted except through a written Change Order. Work under this contract shall be scheduled and coordinated in compliance with the following:

- a. The anticipated date of award of the Contract is June 7, 2023.
- b. The anticipated start date is July 15, 2023.
- c. Scheduled completion date is: January 30, 2024.

2. LIQUIDATED DAMAGES: If the work under this contract is not ready for the intended use by the specified time period, the agreed upon liquidated damages established in Article 6 of the General Conditions is Fifty Dollars (\$50.00) per day for each calendar date completion is delayed.**3. DOCUMENTS FURNISHED:** The number of copies of drawings and specifications to be furnished to Contractor free of charge, per Article 3 of the General Conditions is One (1).**4. BID BOND:** A Bid Bond is required of Bidders in the amount of 10% of the Bidder's Total Amount of the Bid as reflected on the Bidder's Bid Sheets.**5. PAYMENT AND PERFORMANCE BONDS:** Before the District issues the District Purchase Order/Notice to Proceed, the Contractor shall submit the following required bonds to the Offices of Contract Services:

- **PAYMENT BOND:** A Payment Bond in the amount of no less than One Hundred Percent (100%) of the Contract Amount as stated in the Agreement between the District and the Contractor.
- **PERFORMANCE BOND:** A Performance Bond in the amount of no less than One Hundred Percent (100%) of the Contract Amount as stated in the Agreement between District and the Contractor.

6. INSURANCE: The Contractor shall maintain adequate insurance to protect him/herself and the District from claims for damages or personal injury, including death, damage to property and loss of property, and from claims under Workers' Compensation Acts, which may arise from operations under a contract with the District. The Contractor shall be required to file the following proofs of such insurance with the District prior to receiving authorization to proceed on a contract:

- Certificate of Insurance, both naming San Marcos Unified School District as an additional insured, confirming the following minimum coverage:
 - \$1,000,000 combined single limit **general liability** coverage, and
 - \$1,000,000 **automobile liability coverage**,
- Endorsements to the above policies naming San Marcos Unified School District as an additional insured.
- Proof of Workers' Compensation coverage (or proof the coverage is not required / applicable).

All policies shall include a provision requiring 30 days written notice to the District prior to the cancellation of said policy. The Contractor shall maintain current insurance documents, for all of the above coverages, on file at the District during the term of any contract with the District.

7. **NOTICE TO PROCEED:** The District may provide the Notice to Proceed to the Contractor by e-mail or fax, and then follow up by mailing the original to the Contractor.
8. **EXECUTED COPIES:** The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works required is One (1).
9. **LICENSE CLASSIFICATION:** Each bidder shall be a licensed Contractor pursuant to the Business and Professional Code and shall be licensed in the following classification: C20 - Warm-Air Heating, Ventilating and Air-Conditioning, C-4 - Boiler, Hot Water Heating and Steam Fitting, C43 - Sheet Metal, C38 - Refrigeration, C36 - Plumbing, C-7 - Low Voltage Systems, B - General Building
10. **FINGERPRINTING:** Pursuant to the provisions of article 75 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 73 of the General Conditions.
 - b) X are not subject to the requirements of Education Code section 45125.2 and Paragraph (b) of Article 73 of the General Conditions.
11. **CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS:** Contractor/Bidder must submit to the District the form (included with the Contract Documents) of Verification of Registration with the California Department of Industrial Relations required pursuant to Labor Code section 1725.5 and must also provide to the District the listed subcontractors' DIR registration numbers as part of their bid submittal. Contractor must require subcontractors of every tier to be registered with the DIR and to provide proof of such registration to the Contractor/subcontractor under whom they are working in order to ensure registration and compliance with California Labor Code provisions pertaining to prevailing wage monitoring and compliance (generally, Labor Code section 1720 *et seq.*) Contractor agrees to provide the District with any labor compliance monitoring information upon request.

SPECIFICATIONS - TECHNICAL SPECIFICATIONS

<https://www.smusd.org/departments/Purchasing/bids>

Under Project Documents on website, please click the following:

Document Title: 2023-4 – HVAC Installation at Discovery – HVAC Systems

Document Title: 2023-4 – HVAC Installation at Discovery – Energy Management Controls

Document Title: 2023-4 – HVAC Installation at Discovery – TAB Controls

SPECIFICATIONS - PLANS

<https://www.smusd.org/departments/Purchasing/bids>

Under Project Documents on website, please click the following:

Document Title: 2023-4 – HVAC Installation at Discovery – Plans and Drawings

SPECIFICATIONS – CAMPUS MAP

<https://www.smusd.org/departments/Purchasing/bids>

Document Title: 2023-4 – HVAC Installation at Discovery – Campus Map

SPECIFICATIONS – GENERAL CONDITIONS

Note: Those Articles/sections which are reflected/printed with/as a ~~strike through~~ are Articles/sections which the District is thereby indicating are not applicable to this specific bid/Project.

CONTENTS

1.	DEFINITIONS.....	
2.	DRAWINGS AND SPECIFICATIONS	
3.	COPIES FURNISHED	
4.	OWNERSHIP OF DRAWINGS	
5.	DETAIL DRAWINGS AND INSTRUCTIONS	
6.	TIME FOR COMPLETION AND LIQUIDATED DAMAGES	
7.	PROGRESS SCHEDULE	
8.	CONTRACT SECURITY	
9.	ASSIGNMENT	
10.	PROHIBITED INTERESTS	
11.	SEPARATE CONTRACTS.....	
12.	SUBCONTRACTING	
13.	DISTRICT'S RIGHT TO SUSPEND CONTRACT	
14.	ADJUSTMENTS TO CONTRACT PRICE AND CONTRACT TIME	
15.	DISTRICT'S RIGHT TO TERMINATE CONTRACT.....	
16.	GUARANTEE	
17.	NOTICE AND SERVICE THEREOF	
18.	WORKERS	
19.	WAGE RATES, PAYROLL RECORDS AND DEBARMENT	
20.	APPRENTICES	
21.	HOURS OF WORK.	
22.	WORKERS' COMPENSATION INSURANCE	
23.	COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE.....	
24.	BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE	
25.	PROOF OF CARRIAGE OF INSURANCE	
26.	INDEMNIFICATION	
27.	LAWS AND REGULATIONS	
28.	PERMITS AND LICENSES	
29.	INSPECTION FEES FOR PERMANENT UTILITIES.....	
30.	EASEMENTS	
31.	SURVEYS	
32.	EXCISE TAXES	
33.	PATENTS, ROYALTIES, AND INDEMNITIES	
34.	MATERIALS	
35.	SUBSTITUTIONS	
36.	SHOP DRAWINGS	
37.	SUBMITTALS.....	
38.	CLOSEOUT SUBMITTALS	
39.	COST BREAKDOWN AND PERIODICAL ESTIMATES	
40.	PAYMENTS AND RETENTION	
41.	PAYMENTS WITHHELD	
42.	CHANGES AND EXTRA WORK	
43.	DEDUCTIONS FOR UNCORRECTED WORK	
44.	PAYMENTS BY CONTRACTOR	
45.	CONTRACTOR'S SUPERVISION	

46.	INSPECTOR'S FIELD OFFICE
47.	DOCUMENTS ON WORK
48.	RECORD ("AS-BUILT") DRAWINGS
49.	UTILITY USAGE
50.	SANITARY FACILITIES
51.	TRENCHES
52.	PROTECTION OF WORK AND PROPERTY
53.	LAYOUT AND FIELD ENGINEERING
54.	REMOVAL OF HAZARDOUS MATERIALS
55.	CUTTING AND PATCHING
56.	CLEANING UP
57.	CORRECTION OF WORK BEFORE FINAL PAYMENT
58.	ACCESS TO WORK.....
59.	OCCUPANCY
60.	DISTRICT'S INSPECTOR
61.	TESTS AND INSPECTIONS
62.	SOILS INVESTIGATION REPORT
63.	ARCHITECT'S STATUS
64.	ARCHITECT'S DECISIONS
65.	PROVISIONS REQUIRED BY LAW DEEMED INSERTED
66.	LABOR-EMPLOYMENT SAFETY
67.	NOTICE OF TAXABLE POSSESSORY INTEREST
68.	ASSIGNMENT OF ANTITRUST ACTIONS
69.	SUBSTITUTION OF SECURITY
70.	EXCAVATIONS DEEPER THAN FOUR FEET.....
71.	COMPLIANCE WITH STATE STORM WATER PERMIT
72.	RESOLUTION OF CONSTRUCTION CLAIMS LESS THAN \$375,000
73.	RESOLUTION OF CONSTRUCTION CLAIMS IN EXCESS OF \$375,000
74.	GOVERNING LAW AND VENUE.....
75.	FINGERPRINTING.....
76.	COMPLIANCE WITH D.T.S.C. GUIDELINES – IMPORTED SOIL
77.	NO ASBESTOS
78.	LABOR COMPLIANCE
79.	DISABLED VETERANS PARTICIPATION GOALS AND RECORD RETENTION
80.	NOTIFICATION OF THIRD PARTY CLAIMS

SPECIFICATIONS - GENERAL CONDITIONS

Article 1. DEFINITIONS

- a. "Architect" refers to the Architect of record Merrick+Associates.
- b. The "District" and "Contractor" are those mentioned as such in the Contract. For convenience and brevity, these terms, as well as terms identifying other persons involved in the Contract are treated throughout the Contract Documents as if they are of singular number and masculine gender.
- c. "Subcontractor", as used herein, includes those having a direct contract with Contractor and one who furnishes material that has been specially prepared according to the plans and specifications of this Work, but does not include one who merely furnishes material not so specially prepared.
- d. "Surety" is the person, firm, or corporation, admitted as a California admitted surety that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works.
- e. Words such as "indicated," "shown," "detailed," "noted," "scheduled," or words of similar meaning shall reference the drawings, unless otherwise noted. The direction, designation, selection, or similar import of the Architect is intended, unless stated otherwise.
- f. "Work" of the Contractor or Subcontractor includes labor, materials or both.
- g. The term "day" as used herein shall mean calendar day unless otherwise specifically designated.
- h. Where the words "equal," "equivalent," "satisfactory," "directed," "designated," "selected," "as required," and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the Architect is required.
- i. Where the word "required" and words of similar meaning are used, it shall mean "as required to properly complete the work as required by the Architect," unless stated otherwise.
- j. The word "perform" shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- k. Where the words "acceptable," "acceptance," or words of similar import are used, it shall be understood that the acceptance of the Architect and District is intended, unless otherwise stated.
- l. The words "includes," and "including," do not limit the work to the items following those words.

Article 2. DRAWINGS AND SPECIFICATIONS

- a. **Contract Documents.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the Work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, he shall promptly notify the Architect in writing through the District's office of Purchasing Services at vicki.capozza@smusd.org and any necessary changes shall be adjusted as provided in contract for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:
 - 1. Special Conditions shall take precedence over General Conditions.
 - 2. Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event the conflict between the Technical Specifications and the General Conditions, the General Conditions shall take precedence.

3. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.
 4. With regard to drawings:
 - (a) Figures govern over scaled dimensions;
 - (b) Larger details govern over general drawings;
 - (c) Addenda/Change Order drawings govern over contract drawings;
 - (d) Contract drawings govern over standard drawings.
 5. Work not particularly shown or specified shall be the same as similar parts that are shown or specified.
- c. Ambiguities or misunderstanding of drawings and specifications shall be clarified by the Architect, whose decisions shall be final.

Article 3. COPIES FURNISHED

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

Article 4. OWNERSHIP OF DRAWINGS

All drawings, specifications, and copies thereof furnished by District are the District's property. They are not to be used on other work and with the exception of signed contract sets, are to be returned to District on request upon completion of the Work.

Article 5. DETAIL DRAWINGS AND INSTRUCTIONS

- a. In case of ambiguity, conflict, or lack of information, Architect shall furnish with reasonable promptness additional instructions, by means of drawings or otherwise, necessary for proper execution of work. For purposes of this "reasonable promptness" shall mean as soon as possible in order for Contractor to execute the work. If the item is identified by the Contractor as a critical path item, "reasonable promptness" shall mean no more than five business days. All such drawings and instructions shall be consistent with Contract Documents, true developments thereof, and reasonably inferable therefrom.
- b. Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.

Article 6. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. Project shall be commenced on or before the date stated in District's notice to the Contractor to proceed and shall be completed by the Completion Date. The District is under no obligation to consider early completion of the Project and the Contract Completion Date shall not be amended by the District's acceptance of the Contractor's proposed earlier Completion Date. Furthermore, Contractor shall not, under any circumstances receive additional compensation from the District for indirect, general, administrative or other forms of overhead costs for the period between the time of earlier completion proposed by the Contractor and the official Completion Date. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Special Conditions for each calendar day of delay until work is completed and accepted. Contractor and his/her surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, District shall have the right to recover the balance from the Contractor or his/her sureties, who will pay said balance forthwith. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the Contract Completion Date.
- b. Contractor shall be bound by District's determination of what constitutes inclement weather. A bad weather day is a day when the weather causes unsafe work conditions or is unsuitable for the work scheduled to be performed that day (i.e., exterior finishes). Time extensions based on inclement weather shall only be granted when the work that is stopped during inclement weather is on the critical path of the Project Schedule. The District's consideration of time extension requests will take into account situations when rain days exceed the normal frequency and amount based on the closest weather station data averaged over the past three years, for the period of this Contract and when Contractor can show such rain days impact the critical path. Contractor shall be expected to perform all work he can possibly complete during inclement weather (i.e., interior work).

- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another Contractor in performance of a contract with District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays of subcontractors due to such causes. Contractor shall within five (5) days of the beginning of any such delay (unless District grants a further period of time prior to date of final settlement of the Contract) notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The District's findings of fact thereon shall be final and conclusive on all parties. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the Contract Completion Date.
- d. **Determining Damages for Delay.** District's liability to Contractor for delays for which District is responsible shall be limited to an extension of time unless such delays were unreasonable under the circumstances and were not within the contemplation of the parties when the Contract was awarded. Contractor agrees that the District's representative shall determine the actual costs to Contractor of any delay for which Contractor may claim damages from District. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, office overhead and ongoing insurance costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the judicious handling of forces, equipment, or plant.
- e. **Removal or Relocation of Main or Trunk line Utility Facilities.** The Contractor shall not be assessed for liquidated damages for delay in completion of the Project, when such delay was caused by the failure of the awarding authority of this Contract or the owner of the utility to provide for removal or relocation of the existing main or trunk line utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunk line utility facilities, or to provide for its removal or relocation. In accordance with section 4215 of the Government Code, if the Contractor while performing the Contract discovers any existing main or trunk line utility facilities not identified by the public agency in the Contract plans or specifications, he shall immediately notify the public agency and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out of Article 40 hereof.

Article 7. PROGRESS SCHEDULE

- a. Within fourteen (14) days after the date of the Award of the Contract, Contractor shall prepare a baseline progress schedule in hard copy and disk form and shall submit this schedule for the District's approval. 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. The schedule shall include milestones and shall include the "critical path" of construction. 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; the District's approval of the progress schedule does not relieve the Contractor of any such responsibility. Once approved by the District, the submitted schedule shall become the "Project Schedule". Contractor's failure to incorporate all elements of work required for the performance of the Contract or any inaccuracy in the Project Schedule shall not excuse the Contractor from performing all work required for a completed Project within the specified contract time period, notwithstanding the District's acceptance of the Project Schedule. **The first payment will not be made unless the District has been provided and has accepted the Project Schedule.**
- b. The Project Schedule shall allow enough time for inclement weather, shall indicate graphically the beginning and completion dates of all phases of construction, and shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration which does not exceed the Contract time. Excess time may be picked up with "float time" at the discretion of the District. A "bar chart" in reasonably complete detail shall be adequate in contracts over \$1 million and shall show critical path items. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. **At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims.**

Article 8. CONTRACT SECURITY

Unless otherwise specified in Special Conditions, Contractor shall furnish a surety bond in an amount equal to 100 percent of contract price as security for faithful performance of this Contract and shall furnish a separate bond as security for payment of persons performing labor and furnishing materials in connection with this Contract. The Payment Bond must be in the amount of 100 percent of the total amount payable. Both the Payment and the Performance Bonds must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish. Aforesaid bonds shall be in form set forth in these Contract Documents. Upon request of Contractor, District will consider and accept multiple sureties on such bonds.

Article 9. ASSIGNMENT

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

Article 10. PROHIBITED INTERESTS

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

Article 11. SEPARATE CONTRACTS

District reserves the right to let other contracts in connection with this work or other work at the same site. Contractor shall afford other contractors' reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his/her work with theirs.

If any part of Contractor's work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to Architect any defects in such work that renders it unsuitable for such proper execution and results. His/her failure to inspect and report shall constitute his/her acceptance of other contractor's work as fit and proper for reception of his/her work, except as to defects which may develop in the other contractor's work after execution of Contractor's work.

To insure proper execution of his/her subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between executed work and Contract Documents.

Contractor shall ascertain to his/her own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of 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 Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on Project. If simultaneous execution of any contract for Project is likely to cause interference with performance of some other contract or contracts, District 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. 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 Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

Article 12. SUBCONTRACTING

- a. Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work and understands that all subcontractors of any tier performing work on the Project are subject to registration with the Department of Industrial Relations pursuant to Labor Code §1725.5 and 1771.1. Failure to register with the DIR or expiration of registration at any time during the duration of work on the Project shall be grounds for termination of subcontractor's contract. If Contractor subcontracts any part of this Contract, Contractor shall be as fully responsible to District for the acts and omissions of his/her subcontractor and of persons either directly or indirectly employed by his/her subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained in these Contract Documents shall create any contractual relation between any subcontractor and District. The District shall be deemed to be the third-party beneficiary of the Contract between the Contractor and subcontractor.

- b. District's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his/her obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract. The District reserves the right of approval of all subcontractors proposed for use on this Project, and to this end, may require financial, performance and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another of the same trade for approval.
- c. Substitution or addition of subcontractors shall be permitted only as authorized in chapter 4 (commencing at section 4100), part 1, division 2 of the California Public Contract Code.

Article 13. DISTRICT'S RIGHT TO SUSPEND WORK

The District may, in its reasonable discretion, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

Article 14. ADJUSTMENTS TO CONTRACT PRICE AND CONTRACT TIME

In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided, however, that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which shall remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

Article 15. DISTRICT'S RIGHT TO TERMINATE CONTRACT

District may, without prejudice to any other right or remedy, serve written notice of upon Contractor and his/her surety stating its intention to terminate this Contract if the Contractor (i) refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said Work within such time, or (iii) if the Contractor should file a bankruptcy petition, or (iv) if he should make a general assignment for the benefit of his/her creditors, or (v) if a receiver should be appointed on account of his/her insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of District, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if he or his/her subcontractors should violate any of the provisions of this Contract, including, but not limited to, failure to register and maintain in full force and effect registration with the California Department of Industrial Relations for purposes of labor compliance monitoring. The notice of intent to terminate shall state generally the reasons for such intention to terminate. Unless within five days (5) days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this Contract shall be deemed to have ceased and terminated. The Contractor then shall not be entitled to receive any further payment until work is finished. Upon the termination of the Contract as provided above, District shall immediately serve upon surety and Contractor written notice of termination stating that the Contract has ceased and terminated. Surety shall have the right to investigate, take over and perform this Contract, provided, however, that if surety, within five (5) days after service upon it of said notice of termination, does not give District written notice of its intention to take over and perform this Contract and does not commence performance thereof within seven (7) days from the date of service upon it of such notice of termination, District may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. If Surety does not perform the Project work itself, the Surety shall consult with the District regarding its planned choice of a contractor or contractors to complete the Project, and upon request by District, Surety shall provide District Evidence of Responsibility of Surety's proposed contractor or contractors. District shall be entitled to reject Surety's choice of contractor or contractors if District determines in its sole discretion that the Contractor or contractors are non-responsible. If Surety provides District written notice of its intention to take over and perform this Contract, within fourteen (14) days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractors are approved by District) shall provide District a detailed Progress Schedule as specified in Article 7 above. Contractor and his/her surety shall be liable to District for any excess cost or other damages occasioned the District as a result of Surety or Surety's contractor or contractors takeover and performance. If the District takes over the work as hereinabove provided, the District may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

If the unpaid balance of the Contract price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to District. Expense incurred by District as herein provided, and damage incurred through Contractor's default, shall be certified by Architect.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

Notwithstanding the foregoing provisions, this Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. sections 365 (Federal Bankruptcy Act).

Article 16. GUARANTEE

Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District. Contractor shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one-year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District will attempt to give the notice required by this article. If the Contractor cannot be contacted or does not comply with the District's request for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the guarantees provided in this article or elsewhere in this Contract.

This article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District with all appropriate guarantee or warranty certificates upon completion of the Project.

Article 17. NOTICE AND SERVICE THEREOF

- a. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by party giving such notice or by the duly authorized representative of such party. Any such notice shall be effective for any purpose whatsoever unless served in one of the following manners:
 1. If notice is given to District, by personal delivery thereof to District's representative or District's Architect or by depositing same in United States mail, enclosed in a sealed envelope addressed to District for attention of said representative or Architect, postage prepaid and registered;
 2. If notice is given to Contractor, by personal delivery thereof to said Contractor or his/her foreman at site of Project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at his/her regular place of business or at such other address as may have been established for the conduct of work under this Contract, postage prepaid and registered;
 3. If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.
 4. If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

Article 18. WORKERS

- a. Contractor shall at all times enforce strict discipline and good order among his/her employees. Contractor shall not employ on work any unfit person or any one not skilled in work assigned to him.

- b. Any person in the employ of the Contractor whom District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of District.

Article 19. WAGE RATES, PAYROLL RECORDS AND DEBARMENT

- a. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws, including but not limited to, registration of Contractor and all subcontractors, of all tiers with the Department of Industrial Relations (DIR) pursuant to Labor Code §1771.1 and 1725.5 and the compliance monitoring and reporting requirements set forth in labor Code §1771.4. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the DIR located at www.dir.ca.gov/dlsr/. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site and shall post any additional job site notices required by Labor Code section 1771.4 subd (a)(1) or applicable DIR regulations. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws (Labor Code §1720 et seq) and/or the District's LCP.
- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than two hundred (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor or subcontractor, subject to the provisions of Labor Code §1775, to which Contractor agrees to comply. Contractor could also be subject to a \$2,000 penalty for failure to comply with the DIR registration requirements (Labor Code §1725.5).
- c. As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.
- d. Accurate payroll records shall be kept by the Contractor and each subcontractor, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- e. It shall be the responsibility of Contractor to Comply with Labor Code section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. Pursuant to Labor Code §1771.4 subd (a)(3), each contractor and subcontractor shall furnish the records specified in Labor Code §1776 directly to the Labor Commissioner at DIR at least monthly and in a format prescribed by the Labor Commissioner. As of June 2014, Labor Code section 1776 provides as follows:
 - "(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - "(1) The information contained in the payroll record is true and correct.
 - "(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project
 - "(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the Following basis:

- “(1) A certified copy of an employee’s payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - “(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.
 - “(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
- “(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).
- “(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of written request.
- “(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or, the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual’s name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual’s full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual’s full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual’s social security number.
- “(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual’s name, address, and social security number.
- (2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.
- “(g) The Contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.
- “(h) The Contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion

thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

“(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

“(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.”

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

Article 20. APPRENTICES

Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall be knowledgeable of and comply with all California Labor Code sections including 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments; each of these sections is incorporated by reference into this Contract. The responsibility for compliance with these provisions for all apprentice able occupations rests with the Contractor. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7 for the first offense. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by Chapter 1 of Part 7 of Division 2 of the Labor Code (§1720 – 1861), shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

Article 21. HOURS OF WORK

- a. As provided in Article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the work or upon any part of the work contemplated by this Contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- b. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- c. The Contractor or subcontractor shall pay, as a penalty to the District, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Contract by the respective Contractor or subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code. The District shall take cognizance of all violations of Labor Code §1810 *et seq.* committed in the course of the execution of the Contract, and shall report them to the Division of Labor Standards Enforcement.
- d. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District.

Article 22. WORKERS' COMPENSATION INSURANCE

- a. The Contractor shall provide, during the life of this Contract, workers' compensation insurance for all of his/her employees engaged in work under this Contract, on or at the site of the Project, and, in case any of his/her work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his/her insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.
 1. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District.
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and
 - (c) The Longshoremen's and Harbor Workers Endorsement, where applicable to the work under this Contract; and
 - (d) Waiver of Subrogation Endorsement.

Article 23. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

- a. The Contractor shall provide, during the life of this contract, workers' compensation insurance for all of his/her employees engaged in work under this contract, on or at the site of the project, and, in case any of his/her work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his/her insurance protecting workers.
- b. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.
- d. 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 insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.
- e. The coverage afforded by the additional insured endorsement described in paragraph d above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing with such coverage.
- f. Contractor shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.
- g. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 26 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, 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, products and completed operations coverage and broad form property damage described in paragraphs d and e, above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.

- h. Contractor and District release each other, and their respective authorized representatives, from any Claims (as defined in Article 26 hereof), but only to the extent that the proceeds received from any policy of liability insurance carried by District or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.
- i. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - 1. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
 - 2. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.
 - 3. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the agreement.
 - 4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- j. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Contract, and District may, at its option, terminate the Agreement for any such default by Contractor.
- k. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.
- l. District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- m. All deviations from the Contractual insurance requirements stated herein must be approved in writing by District's risk manager.

Article 24. BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE

- a. It is the Contractor's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. 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 builder's risk or applicable installation of not less than the amount identified in the special conditions insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.
 - 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - 2. Coverage shall include all materials stored on site and in transit.
 - 3. Coverage shall include Contractor's tools and equipment.
 - 4. Insurance shall include boiler, machinery and material hoist coverage.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

Article 25. PROOF OF CARRIAGE OF INSURANCE

- a. Contractor shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Agreement, deliver to District certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that Contractor has obtained such coverage for the period of the Agreement. Contractor shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to District within thirty (30) days prior to the expiration of the term of any policy required herein. Contractor shall permit District at all reasonable times to inspect any policies of insurance of Contractor which Contractor has not delivered to District.
- b. Certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District stating date of cancellation, reduction or other adverse change respecting such insurance. The date of cancellation, reduction or adverse change may not be less than thirty (30) days after date of mailing notice."
- c. Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice. All Certificates of Insurance provided by Contractor shall name District, the Architect, and Architect's consultants as additional insureds.
- d. After receiving written Notice of Cancellation of Insurance, Contractor shall have ten (10) days to provide other policies of insurance similar to the canceled policies and acceptable insurance. If such replacement coverage is not provided, the District may secure insurance at the Contractor's expense.
- e. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from operations under this agreement.

Article 26. INDEMNIFICATION

District shall not be liable for, and Contractor shall defend and indemnify District to the fullest extent permitted by law against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees, expert witness fees, investigation costs and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its subcontractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of District or its agents or employees.

Article 27. 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 Architect in writing and any necessary changes shall be adjusted as provided in 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 Architect, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

Article 28. PERMITS AND LICENSES

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

Article 29. 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 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 District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees.

Article 30. EASEMENTS

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

Article 31. SURVEYS

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

Article 32. EXCISE TAXES

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

Article 33. PATENTS, ROYALTIES, AND INDEMNITIES

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

Article 34. MATERIALS

- a. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, super intendency, 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 both workmanship and materials shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this Contract.
- d. No materials, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. He further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

Article 35. SUBSTITUTIONS

- a. Whenever in specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified. Any material, process, or article not exactly meeting the specifications in the documents in every respect shall be considered a substitution. If a material, process, or article offered by Contractor is not, in opinion of Architect, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified. Burden of proof as to equality of any material, process, or article shall rest with Contractor.

- b. In accordance with Public Contract Code section 3400 "prior to or after the award of the Contract", district must provide for "submission of data substantiating a request for a substitution of 'an equal' item." Therefore, no later than thirty-five (35) days after award of the Contract, if the Contractor is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the Contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. Whenever possible, the same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is nonresponsive. BIDDERS ARE SPECIFICALLY NOTIFIED THAT THE SUBMISSION OF THIS DOCUMENTATION IN NO WAY OBLIGATES THE DISTRICT OR ITS REPRESENTATIVE TO REVIEW SUCH DOCUMENTATION PRIOR TO CONTRACT AWARD. FURTHERMORE, IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE TO PROVIDE THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED. DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.

After award of the Contract should the District determine in its sole discretion that substitution of an item or product is reasonable and necessary or reasonable and appropriate, the Contractor shall submit any substitution requests together with all data required to substantiate that the substituted product or item is an "or equal" to the specified product or item. The make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item, product or work and substantiates that it is an "or equal" to the specified item, product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the Contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted product is equivalent to the specified product or item in every way except as listed on the affidavit. Failure to submit all the needed substantiating data, including the signed affidavit, to the District Representative or Architect in a timely fashion so that the substitution can be adequately reviewed and considered prior to any necessity for its use or application may result in the rejection of the proposed substitution. The District Representative or Architect is not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package either at time of submission of bid documents or in a timely manner after award of contract.

- c. In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

Article 36. SHOP DRAWINGS

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his/her own work or in that of any other contractor, subcontractor, Architect, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the Contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of Project and compliance with information given in Contract Documents. Contractor shall make any corrections required by Architect, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless he has in writing called Architect's attention to such deviations at time of submission and has secured his/her written approval. Architect's approval of such drawings and schedules also shall not relieve contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

Article 37. SUBMITTALS

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

Article 38. CLOSEOUT SUBMITTALS

The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications. The final payment will not be made until the District representative has had an opportunity to review and accept the required documents.

Article 39. COST BREAKDOWN AND PERIODICAL ESTIMATES

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

Article 40. PAYMENTS AND RETENTION

- a. Each month as soon as practicable after receipt of approved periodical estimate for partial payment, but in order to avoid the payment of interest, in any event within thirty (30) days of receipt of such periodical estimate, there shall be paid to Contractor a sum equal to ninety percent (95%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Upon receipt of a payment request the District shall as soon as practicable determine whether the payment request is proper. If the request is determined not to be a proper payment request suitable for payment, it shall be returned to the Contractor as soon as practicable within seven days after receipt and shall be accompanied by a statement in writing as to the reasons why the payment request is not proper. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this Contract and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by the District or Architect shall remain uncompiled with.
- b. The final payment of five percent (5%) of the value of work done under this Contract, if unencumbered, shall be made within sixty (60) days after the date of completion of the work, provided however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Completion means any of the following as provided by Public Contract Code section 7107:
 1. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

2. The acceptance by public agency, or its agent, of the work of improvement.
 3. For purposes of this Contract, the acceptance by the District means acceptance made only by an action of the governing body of District in session. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against District arising from this Contract.
 4. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the Contractor.
 5. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.
- c. This contract is subject to the provisions of Public Contract Code section 7107.
- d. At any time after fifty percent (50%) of the work has been completed, if the District, by action of its governing body, finds that satisfactory progress is being made, District may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as District may find appropriate based on the Contractor's progress.
- e. Whenever any part of the work is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this section shall in no case be construed as constituting acceptance of the work or any part thereof. Such use shall neither relieve the Contractor of any of his/her responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, on the Project.

Article 41. PAYMENTS WITHHELD

- a. In addition to amounts which District may retain under any and all other articles in this Contract including those entitled "Payments," and "Time for Completion and Liquidated Damages," District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his/her judgment may be necessary to cover.
1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
 2. Defective work not remedied.
 3. Failure of Contractor to make proper payments to his/her subcontractor or for material or labor.
 4. Completion of contractor if there exists a reasonable doubt that contract can be completed for balance then unpaid.
 5. Damage to another Contractor.
 6. Amounts which may be due District for just claims against Contractor.
 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 8. Failure to provide update on construction schedule as required by Article 7 hereof.
- b. District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

Article 42. CHANGES AND EXTRA WORK

- a. Changes in Work. Changes in the Work may be accomplished, without invalidating contract, and as provided by law, by Change Order or by Order for a Minor Change in the Work. No Change Order or Order for Minor Change in the Work shall be effective

to change the scope of the Work or the Contract Price unless it is in writing and signed by the District or its authorized representative. Through a Change Order, the District may order extra work or make changes by altering, adding to, or deducting from work, the Contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

- b. In giving instructions, Contractor agrees that Architect shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the Project, through issuing an Order for Minor Change in the Work.
- c. Unforeseen Conditions. Contractor shall provide District with notice of unforeseen conditions immediately upon discovery of such conditions.
- d. Value of any such extra work, change, or deduction shall be determined at the discretion of District in one or more of the following ways:
 1. By acceptable lump sum proposal from Contractor with itemization of required by District.
 2. By unit prices contained in Contractor's original bid and incorporated in the Contract Documents or fixed by subsequent agreement between District and Contractor.
 3. By the cost of material and labor and a percentage for overhead and profit. The following form shall be followed as applicable for additions and deductions to contract.

	EXTRA / (CREDIT)
(a) Material (attached itemized quantity and unit cost plus sales tax)	_____
(b) Labor (attach itemized hours and base rates from Identified prevailing wage schedules)	_____
(c) General Liability and Builder's Risk Insurance, Workers' Compensation Insurance, Social Security Pension and Unemployment Taxes at actual and Verified cost. <u>(Do not include this amount if OCIP is in place.)</u>	_____
(d) Subtotal	_____
(e) Subcontractor's overhead and profit not to Exceed 10% of item (d).	_____
(f) Subtotal	_____
(g) General Contractor's Overhead and Profit, Including extended home office overhead, Not to exceed 10% of item (d).	_____
(h) Subtotal	_____
(i) Bond Premium, not to exceed 1% of Item (h)	_____
(j) Total	=====

- e. Regardless of whether the cost of the Change Order is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable overhead mark-up and the bonding mark up for deleted items. In addition, in no circumstance shall contractor be entitled to subcontractor's overhead costs or mark-up where work is performed by Contractor's own forces.

- f. Contractor may initiate a Change Order by submitting a Change Order Request to District or Architect ("Contractor-Initiated Change"). The only "Contractor-Initiated Change" that will be considered will be those caused by factors both completely outside the control of Contractor (such as District generated, material scope revisions) and that Contractor did not foresee, and could not have foreseen, both at the time it bid on, and the time it executed, this Contract. Any Contractor -Initiated Change must be submitted in writing to Owner within five days of when Contractor becomes aware, or should have become aware, of the condition or event giving rise to the Contractor-Initiated Change.
- g. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Contract; or (iii) constitutes a waiver of any provision in the Contract, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN FIVE (5) WORKING DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such five (5) working day period shall be deemed a waiver and relinquishment of the claim against the District.
- h. In the event of a dispute as to any work to be performed, the District has the right to direct the Contractor to continue to proceed with work as directed, and the Contractor is obligated to continue performance of work and advise District of its concerns in writing in accordance with the provisions of subsection f.
- i. In the event a mutual agreement cannot be reached on the cost of a Change Order, Contractor and District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed Change Order item.
- j. All costs associated with the change are to be included in the Change Order proposal to the District. Costs may be in terms of time, money or both.

Article 43. DEDUCTIONS FOR UNCORRECTED WORK

If District deems it inexpedient to correct work injured or not done in accordance with contract, an equitable deduction from contract price shall be made therefore.

Article 44. PAYMENTS BY CONTRACTOR

Contractor shall pay:

- a. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,
- b. For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at site of Project and balance of cost thereof not later than the 30th day following completion of that part of work in or on which such materials, tools, and equipment are incorporated or used, and
- c. To each of his/her subcontractors, not later than the 5th day following each payment to Contractor, the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein.

Article 45. CONTRACTOR'S SUPERVISION

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

Article 46. INSPECTOR'S FIELD OFFICE

- a. Contractor shall provide for the use of inspector a separate trailer or temporary private office of not less than seventy-five square feet of floor area to be located as directed by inspector and to be maintained until removal is authorized by District. The Office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized renewal.
- 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 47. DOCUMENTS ON WORK

- a. Contractor shall keep one copy of all Contract Documents, including addenda, Change Orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the Contract, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his/her representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21 and 24.)
- b. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.

Article 48. RECORD ("AS BUILT") DRAWINGS

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

Article 49. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.

- c. All permanent meters installed shall be listed in the Contractor's name until completion occurs, as defined in Article 6 hereof, at which time further pro-rating will be determined if necessary. When District begins using the Project, charges over and above power actually used for construction will be the responsibility of the District.
- d. If contract is for construction in existing facilities, Contractor may, with written permission of District, use District's existing utilities by making prearranged payments to District for utilities used by Contractor for construction.

Article 50. SANITARY FACILITIES

The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the inspector.

Article 51. TRENCHES

If the contract price \$25,000, the Contractor shall submit to the District or a registered civil or structural engineer employed by the District, 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 such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by District or the person to whom authority to accept has been delegated by District.

Article 52. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of his/her fault or negligence in connection with the prosecution of this Contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and Contract Documents. Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his/her organization on the work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to District by Contractor
- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Architect or District, is hereby permitted to act, at his/her discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by Architect or District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 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, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:
 - 1. Enclosed working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which may interfere with school routine before or after school hours. (This subsection applies to new construction on existing sites.)
 - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - 3. Deliver materials to the building area over a rout designated by Architect.
 - 4. When directed by District, take preventive measures to eliminate objectionable dust.
 - 5. Confine Contractor's apparatus, the storage of materials, and the operations of his/her workers to limits indicated by law, ordinances, permits, or directions of Architect. Contractor shall not unreasonably encumber premises with his/her materials. Contractor shall enforce all instructions of District and Architect regarding

signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on construction site.

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

Article 53. LAYOUT AND FIELD ENGINEERING

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

Article 54. REMOVAL OF HAZARDOUS MATERIALS

- a. Since removal and/or abatement of asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the Contract Documents, district shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.
- b. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District, inspector, and Architect in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the District and Contractor, or by arbitration under Article 71 hereof.

Article 55. CUTTING AND PATCHING

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

Article 56. CLEANING UP

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises. 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.

Article 57. CORRECTION OF WORK BEFORE FINAL PAYMENT

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

Article 58. ACCESS TO WORK

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

Article 59. OCCUPANCY

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

Article 60. DISTRICT'S INSPECTOR

- a. If applicable, an inspector will be employed by District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the work. His/her duties are specifically defined in Part 1, Title 24, Section 4-342 of the California Code of Regulations.
- b. 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 or Architect shall have authority to stop work whenever the provisions of the Contract Documents are not being complied with and Contractor shall instruct his/her employees accordingly.

Article 61. TESTS AND INSPECTIONS

- a. If contract, District's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection **at least two (2) working days prior to being tested or covered up**. If inspection is by a public authority other than District, Contractor shall inform District of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District shall be promptly made and where practicable at source of supply. If any work should be covered up without approval or consent of District, it must, if required by District, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with the Contract. Costs for testing and inspection shall be paid by District. Costs of tests of any materials found not to be in compliance with the Contract shall be paid by the Contractor.
- b. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or District's representative, and not by Contractor.
- c. In advanced of manufacture of materials to be supplied by Contractor under the Contract, which by the terms of the Contract must be tested, Contractor shall notify District in advance so that District may arrange for testing of same at the source of supply. Any materials shipped by Contractor from the source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from District's representative that such testing and inspection will not be required, shall not be incorporated into the work without the prior approval of District and subsequent testing and inspection.
- d. Re-examination of questioned work may be ordered by District. If so ordered, work must be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the costs of re-examination and replacement. If such work be found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

Article 62. SOILS INVESTIGATION REPORT

Except as provided in Article 68, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this Contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests he deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Work, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and

sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Work shall be governed by provisions of the General Conditions of the Contract for unforeseen conditions.

Article 63. ARCHITECT'S STATUS

- a. In general, and where appropriate and applicable, the Architect shall be the District's representative during the construction period and shall observe the progress and quality of the work on behalf of the District. He shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his/her reasonable opinion to insure the proper execution of the Contract.
- b. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Contract.

Article 64. ARCHITECT'S DECISIONS

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

Article 65. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

Article 66. LABOR/EMPLOYMENT SAFETY

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

Article 67. NOTICE OF TAXABLE POSSESSORY INTEREST

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

Article 68. ASSIGNMENT OF ANTITRUST ACTIONS

Contractor or subcontractor offers and agrees to assign to District all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 USC, section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time District tender's final payment to the Contractor, without further acknowledgment by the parties.

Article 69. SUBSTITUTION OF SECURITY

- a. Upon the Contractor's conditions:
 1. The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
 2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this section.
 3. The contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
 - (a) The amount of securities to be deposited,

- (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
 - (c) Conversions to cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the Contract,
 - (d) Decrease in value of securities on deposit,
 - (e) The termination of escrow upon completion of the Contract.
- 4. The Contractor shall obtain the written consent of the surety to such agreement.
 - 5. As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

Article 70. EXCAVATIONS DEEPER THAN FOUR FEET

If this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, then all of the following shall apply:

- a. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 - 1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, which 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.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work District shall issue a Change Order under the procedures described in this Contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the 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 this Contract, but shall proceed with all work to be performed under the Contract. A contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Contracting parties. (Public Contract Code section 7104).

Article 71. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- a. The 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. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Contract. 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 implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit. Contractor shall provide copies of all reports and monitoring information to District.
- c. Contractor shall comply with the lawful requirements of any applicable municipality, the County, 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. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its Board Members, 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 Board Members, 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 negligence or willful misconduct of District, its Board Members, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with Article 6 hereof, caused by Contractor's failure to comply with Permit.

Article 72. RESOLUTION OF CONSTRUCTION CLAIMS OF \$375,000 OR LESS

- a. For public work claims of \$375,000 or less between Contractor and District, if District has not elected to resolve disputes by arbitration pursuant to article 7.1 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code, the provisions of article 1.5 (commencing with section 20104) of chapter 1 of part 3 of the Public Contract Code apply ("Article 1.5").
- b. For purposes of Article 1.5, "public work" has the same meaning as in sections 3100 and 3106 of the Civil Code. "Claims" means a separate demand by Contractor for a time extension, or payment of money or damages for work done by or for Contractor, payment for which is not otherwise expressly provided in the Contract or to which Contractor would not otherwise be entitled, or a payment disputed by District.
- c. Each claim shall be submitted in writing before the date of final payment and shall include all necessary substantiating documentation. District shall respond in writing within forty-five (45) days of receipt of the claim if the claim is less than \$50,000 ("\$50,000 claim") or within sixty (60) days of receipt of the claim, if the claim is over \$50,000 but less than or equal to \$375,000 ("\$50,000-\$375,000 claim"). In either case, District may request in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the claimant. Any additional information shall be requested and provided upon mutual agreement of the District and the claimant. District's written response to the claim shall be submitted to claimant within fifteen (15) days after receipt of the further documentation for \$50,000 claims or within thirty (30) days after receipt of the further documentation for \$50,000-\$375,000 claims or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- d. Within fifteen(15) days of receipt of the District's response, if claimant disputes District's written response or within fifteen (15) days of the District's failure to respond within the time prescribed, the claimant shall provide written notification to District demanding an informal conference to meet and confer ("conference") to be scheduled by the District within thirty (30) days. If the claim or any portion of the claim remains in dispute following the meet and confer ("meet and confer conference") to be scheduled by the District within 30 days, the claimant may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim until the time the claim is denied, including time utilized as a result of the meet and confer process, including time utilized by the meet and confer process.
- e. If a civil action is filed to resolve claims within sixty (60) days (but no earlier than thirty (30) days) following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide that both parties select a disinterested third person mediator within fifteen (15) days, shall be commenced within thirty (30) days of the submittal and concluded within fifteen (15) days from the commencement of the mediation unless time is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
- f. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986 (article 3 [commencing with section 2016] of chapter 3 of title 3 or part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The court may, upon request by any party, order any witness to participate in the mediation or arbitration process.

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

Article 73. RESOLUTION OF CONSTRUCTION CLAIMS IN EXCESS OF \$375,000

- a. If a dispute in excess of a total value of \$375,000, arises out of, or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree that as a condition precedent to the initiation of litigation, the dispute shall first be submitted to mediation pursuant to this Article 71. The mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.
- b. Either party may initiate mediation by notifying the other party or parties in writing. A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.
- c. The mediation process set forth in this section shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator").
- d. The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- e. A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction matters and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- f. At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.
- g. Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic record of the mediation.
- h. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties may have an attorney present and shall advise the other parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other parties may also have their attorneys present.
- i. The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.
- j. The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

- k. Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a Change Order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery in subsequent proceedings.
- l. The Mediation shall be terminated by the execution of a Settlement Agreement by the parties; by a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.
- m. If mediation is unsuccessful in resolving the dispute, the parties thereafter may agree to submit the matter to the Administrator for binding arbitration. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree to three (3) arbitrators in writing. The parties further agree that they will faithfully observe this agreement, and that the parties will abide by and perform any award rendered by the arbitrator(s), that a judgment of a court having competent jurisdiction may be entered upon the award, and that such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s) fees and expenses. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Section 1280 through 1294.2. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.
- n. Any arbitration, mediation or other forms of alternate dispute resolution shall be handled within the boundaries of the District unless otherwise mutually agreed.

Article 74. GOVERNING LAW AND VENUE

This Contract shall be governed in accordance with the laws of the State of California and venue shall be in San Diego County.

Article 75. 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 Agreement/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 Agreement/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 76. 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 77. NO ASBESTOS

- a. The Contractor will be required to execute and submit a Certificate Regarding Non-Asbestos Containing Materials.
- 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/their risk and at his/her/their 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 Agreement, 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/their employees with respect to the above-mentioned standards, hazards, risk and liabilities.

Article 78. LABOR COMPLIANCE

- a. Labor compliance monitoring shall be conducted by the Department of Industrial Relations pursuant to Labor Code §1771.4(a)(4). The Contractor and every subcontractor of any tier must be registered with the DIR pursuant to Labor Code §1725.5 at all times during the Project in order to be qualified to perform work on this Project. Contractor/subcontractors may register with the DIR online at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. The Contractor must submit to the District the form of DIR Registration Verification included with the Contract Documents executed by a duly authorized officer or employee of the Contractor at the time of Bid and Contractor shall require all subcontractors of any tier to be registered with DIR and to submit their respective DIR registration numbers at the commencement of Work on the Project. Contractor shall furnish all information associated with labor compliance monitoring and registration to the District upon request and shall diligently report payroll records to the DIR pursuant to labor Code sections 1776 and 1771.4 subd. (a)(3). It is the responsibility of Contractor to ensure that subcontractors of all tiers are registered with DIR and that their registration with DIR has been verified,
- b. Labor Compliance Program. A labor compliance program is only required if the Project will be funded by either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 and if a notice to proceed was issued on or after April 1, 2003. The District also maintains a Labor Compliance Program for Projects funded by the District's Prop M bond measure. If a labor compliance program is required, the following applies to this

Contract in addition to the requirements for DIR monitoring if the Contract subject to a Labor Compliance Program is entered into on or after April 1, 2015:

This contractor is subject to a labor compliance program, as described in subdivision (b) of Section 1771.5 of the Labor Code. The Labor Compliance Program is incorporated by reference into the Contract and it will be enforced as required by state law and regulations and the Director of the Department of Industrial Relations. That law requires that District's labor compliance program shall include, but not be limited to, the following requirements:

1. All bids invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter,
2. A pre-job conference shall be conducted with the Contractor and subcontractors to discuss federal and state labor law requirements applicable to the Contract,
3. Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury,
4. The District shall review, and, if appropriate, audit payroll records to verify compliance with this chapter,
5. The District shall withhold contract payments when payroll records are delinquent or inadequate,
6. The District shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

Article 79. DISABLED VETERANS PARTICIPATION GOALS AND RECORD RETENTION

- a. In accordance with Education Code section 17076.11, this District has a participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such project, the Contractor shall provide appropriate documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the Contract, so that the District can assess its success at meeting this goal.
- b. The Contractor agrees that, for all contracts subject to DVBE participation goals, the State and the District have the right to review, obtain and copy all records pertaining to performance of the Contract in accordance with DVBE requirements. The Contractor agrees to provide the State or the District with any relevant information requested and shall permit the State and/or the District access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The Contractor agrees to maintain such records for a period of three years after final payment under the Contract.

Article 80. NOTIFICATION OF THIRD-PARTY CLAIMS

The District shall provide the Contractor with timely notification of the receipt by the District of any third-party claim relating to this contract, and the District may charge back to the Contractor the cost of any such notification.

BID FORM

TO: San Marcos Unified School District, acting by and through its Governing Board, herein called the "District":

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

2023-4**HVAC Installation Project at Discovery Elementary**

all in strict conformity with the drawings and specifications and other Contract Documents, including addenda nos.

_____, _____, _____, and _____, on file at the office of the said District for the sum of _____ Dollars

(\$ _____). Said sum includes all applicable taxes and costs.

***Said BID PRICES include all applicable taxes and costs.**

all in strict conformity with the drawings and specifications and other contract documents, including addenda nos.

_____, _____, _____, and _____, on file at the office of the said District for the sum of _____ Dollars

(\$ _____). Said sum includes all applicable taxes and costs and owner's unspecified allowance*.

1) Pre Fab Restroom (Purchased by EUHSD): \$ 95,599.00

2) Base Bid: \$ _____

3) Owner's Allowances

a) Allowance for Unforeseen Conditions \$ 25,000.00*

Total Base Bid \$ _____ **

***Owner's Unspecified Allowance:** Bidder shall include in Bid Proposal the stipulated sum of Twenty-Five Thousand Dollars (\$25,000.00) to be allocated as follows: \$25,000 for Unforeseen Conditions. Any Allowance work is to be performed ONLY at the determination and direction of the District. Work performed at the determination and direction of the District under this Allowance shall be documented by Contractor and submitted to District's Representative. Contractor shall include separate line items in Contractor's Schedule of Values for the listed "Allowances" totaling of Twenty-Five Thousand Dollars (\$25,000.00). At closeout of contract, any funds remaining in the Allowance shall be credited to District through a Change Order.

****Said BID PRICES include all applicable taxes and costs and Owner's Unspecified Allowance. DOES NOT INCLUDE #1, HVAC Equipment**

- It is understood that the District reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.
- Supplemental Unit Pricing Bid Portion is attached.
- The required bid security is attached hereto.

5. Non-collusion affidavit is attached hereto.
6. The required list of proposed subcontractors is attached hereto.
7. It is understood and agreed that bidder shall provide the name, addresses, portion of work and license numbers of all listed subcontractors as part of their bid submittal.
8. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District a contract in the form attached hereto in accordance with the bid as accepted. The undersigned will also furnish and deliver to the District the Performance Bond and Payment Bond for Public Works as specified, all within five (5) days after receipt of notification of award. The work under the Contract shall be commenced by the undersigned bidder, if awarded the Contract, on the date to be stated in the District's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents.
9. Notice of acceptance or requests for additional information should be addressed to the undersigned at the address stated below:
10. The names of all persons interested in foregoing proposal as principals are as follows:

(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual copartners comprising the firm; if bidder or other interested person is an individual, state first and last names in full.)
11. **Bidder certifies that he is licensed in accordance with the law providing for the registration of Contractors, License No. _____, Expiration Date _____, class of license _____.**

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

Executed on this _____ day of _____ at _____ County, California.

Proper Name of Bidder

Address

By: _____

Signature of Authorized Agent/Officer

City, State, Zip Code

Print Name

Telephone

Fax

Email address

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

Bidder must submit the following documents with this Bid Form in order to be considered responsive:

- ◆ Bid Security
- ◆ References
- ◆ Designation of Subcontractors
- ◆ Non-Collusion Affidavit
- ◆ Contractor's Certificate Regarding Workers' Compensation
- ◆ Contractors Verification of Contractor and Subcontractors' DIR Registration

BID BOND

KNOW ALL MEN BY THESE PRESENTS: THAT we, _____,
as Principal, and _____, as Surety, are held and firmly bound
unto the **SAN MARCOS UNIFIED SCHOOL DISTRICT**, hereinafter called the District, in the penal sum of _____ PERCENT (%) OF THE TOTAL AMOUNT OF THE BID of the Principal submitted to the said District for the work described below for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

2023-4**HVAC Installation Project at Discovery Elementary**

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening; and, if the Principal be awarded the Contract, and shall within the period specified therefore, or, if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the District, in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the Contract, or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, if the Principal shall pay the District the difference between the amount specified in said bid and the amount for which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the District in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation 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 corporate party being hereto affixed and these presents duly assigned by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL: __

By: _____

Title: _____

SURETY: _____

By: _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

REFERENCES

Bidder must be able to present evidence of satisfactory experience in providing similar materials and/or services to that requested in this Request for Bid. List as references the three (3) nearest companies or governmental agencies for the proposed goods and/or services which can be contacted or inspected for an assessment of past client satisfaction for such similar materials and/or services.

Name of Company/Entity :			
Address :			
City / State / Zip Code :			
Contact Person :		Title :	
Phone Number / Ext. :		FAX # :	
Project Description / Time Period			
Comments :			

Name of Company/Entity :			
Address :			
City / State / Zip Code :			
Contact Person :		Title :	
Phone Number / Ext. :		FAX # :	
Project Description / Time Period			
Comments :			

Name of Company/Entity :			
Address :			
City / State / Zip Code :			
Contact Person :		Title :	
Phone Number / Ext. :		FAX # :	
Project Description / Time Period			
Comments :			

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 and (c) License & DIR number(s) of subcontractor. 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.

NOTE: If alternate bids are called for and bidder intends to use a different or additional subcontractor on the alternates, a separate list of subcontractors must be provided for each such alternate. Identify additional list of subcontractors by Alternate Bid No.

All information below is required to be completed in full.

SUBCONTRACTOR	Location of Business (Address)	PORTION OF Work	License Number	DIR Registration Number

SUBCONTRACTOR	Location of Business (Address)	PORTION OF Work	License Number	DIR Registration Number

Name of Bidder: _____

Signature: _____

Name and Title: _____

NON-COLLUSION BIDDING DECLARATION

State of California)
)
County of _____)

I, _____ declare as follows:

That I am the _____ of _____,

the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

Proper Name of Bidder

Signature of Authorized Agent/Officer

Date

CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION

State of California Labor Code section 3700 in relevant part provides:

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

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

By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provision 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 the code, and I will comply with such provisions before commencing the performance of work of this Contract.

Proper Name of Bidder

Signature of Authorized Agent/Officer

Date

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

VERIFICATION OF CONTRACTOR/SUBCONTRACTORS' DIR REGISTRATION

I am the _____ of _____
(Title/position) (Proper Name of Bidder)
("Bidder/Contractor") submitting the accompanying Bid for the Work on the Project described as:

**2023-4
HVAC Installation Project at Discovery Elementary**

I hereby certify as follows:

1. Bidder/Contractor is currently registered as a contractor with the California Department of Industrial Relations ("DIR");
2. Bidder/Contractor's DIR Registration Number is: _____. The expiration date of the Bidder's DIR Registration is June 30, 20____.
3. If Bidder is awarded the Contract for the Work and the expiration date of the Bidder'/Contractor's DIR Registration will occur (i) prior to expiration of the Contract Time for the Work; or (ii) prior to the Bidder/Contractor completing all obligations under the Contract for the Work, the Bidder/Contractor will take all measures necessary to renew Bidder/Contractor's DIR Registration so that there is no lapse in Bidder'/Contractor's DIR Registration while performing Work under the Contract.
4. The Bidder, if awarded the Contract for the work, will remain a DIR registered contractor for the entire duration of the Work;
5. Bidder/Contractor has independently verified that each subcontractor listed in the Bid is currently registered with DIIR;
6. Bidder has provided the DIR Registration number for each listed subcontractor or will do so within twenty-four (24) hours of the bid opening for the Project,
7. Bidder's solicitation of subcontractor bids includes notice to prospective subcontractors that : (i) all sub-tier subcontractors must be registered with DIR at all times during performance of Work on the Project; and (ii) prospective subcontractors may only solicit sub-bids from and contract with lower -tier subcontractors who are registered with the DIR.
8. If any of the statements in this Verification are false or omit material facts rendering a statement to be false or misleading, the Bidder's Bid is subject to rejection as non-responsive.
9. I have personal first-hand knowledge of the foregoing.

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

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

Signature

Printed Name and Title

