

Purchasing 101/201

P201



CASBO REGIONAL WORKSHOPS

Twin Rivers COE, September 4, 2014

San Bernardino COE, September 10, 2014

Shasta COE, September 17, 2014

Fresno COE, September 29, 2014

Presented by:

Guiselle Carreon, Commercial Warrants & Accounts Payable Manager San Diego COE

Gretchen Shipley, Fagen Friedman & Fulfrost

Harold Freiman, Lozano Smith Attorneys at Law

Megan Macy, Lozano Smith Attorneys at Law

Anne Collins, Lozano Smith Attorneys at Law

Ruth Mendyk, Lozano Smith Attorneys at Law

This handout has been prepared by the CASBO San Diego – Imperial Section Purchasing Professional Council and has not been reviewed for approval by the State CASBO Committee and is not an official statement of CASBO.

TABLE OF CONTENTS – PURCHASING 201

	PAGE
Section I – Public Works & Bidding Information	
Contract Checklists	3
Construction Bid Documents	8
Public Works Contract for \$15,000 or Less	102
DVBE Documents – Customized	113
Contractor’s Guidebook	118
Material Substitution Request Form	132
Prequalification	133
Labor Compliance	135
Section II – Professional Service Agreements	
Professional Service Agreement Samples	139
Section III – Request for Proposals	
Request for Proposal Samples	179
Section IV – Attorney General Opinions	
Modular Building Ruling Affecting Piggybacking	226
Job Order Contracting Ruling	232
Section V - Insurance & Surety Information	
General Information Regarding Verification & Limits of Insurance	242
Section VI – Proprietary Specifications & District Standards	
Sample Policies & Resolutions	250
Section VII – Purchasing Policies & Procedures	
Miscellaneous Board Policies, Administrative Regulations and Board Items	260
Section IX – California Uniform Public Const. Cost Accounting Act	
Overview of CUPCCAA Requirements & Sample Documents	280
Section X - Prop 39 – Energy Agreements	293

NOTE: Some of the samples may contain outdated bid limits and are for reference purposes only.

ACKNOWLEDGEMENTS

Over the last few years, the development of this manual has been a result of the work of a long list of purchasing and legal experts and volunteers. Countless hours of research and compiling of information are included in this effort.

A few years back CASBO considered adding Purchasing 101 to their annual roadshow. At that time, Sharon Ketcherside was leading the State R & D Committee for Purchasing and a brief outline was developed. In 2008, I borrowed the outline and along with two colleagues and an attorney (named below) began to compile the handbooks. Some of the material was borrowed from other Councils. We believe this handbook contains some very relevant information that will be of assistance to new and seasoned purchasing staff and hope you will find it valuable.

Following is a list of contributors of time and information to this handbook:

Purchasing:

Guy Bryant: Introduction to Educational Purchasing
Janay Greenlee, Director of Purchasing, Escondido Union School District
Donna Caperton, Asst. Supt., Business, Vista Unified School District (formerly Director of Purchasing)
Mary Cox, Director of Purchasing, Ventura Unified School District
2010 – 2011 Southern Section Purchasing Professional Council: Legal Issues in Purchasing

Legal Counsel:

Paula de Sousa, Attorney, Best Best & Krieger
Gretchen Shipley, Attorney, Fagen Freidman Fulfrost
Milton Foster, Attorney, Fagen Freidman Fulfrost
Harold Freiman, Attorney, Lozano Smith at Law
Kelly Rem, Attorney, Lozano Smith at Law
Megan Macy, Lozano Smith Attorneys at Law
Anne Collins, Lozano Smith Attorneys at Law
Ruth Mendyk, Lozano Smith Attorneys at Law

Thank you to all,

Guiselle Carreon
Director of Purchasing
Grossmont Union High School District

CONSTRUCTION BID DOCUMENTS

PAGE INTENTIONALLY BLANK

CONTRACT REVIEW CHECKLIST FOR DISTRICT PROJECTS

PROJECT NAME: _____ NUMBER: _____

Insurance Documents

GENERAL LIABILITY INSURANCE	Contract Requirement	Number or Amount Submitted
Limits of Liability	\$ _____	\$ _____
No. of Original Copies Required	_____	_____
Certificate of Insurance (or ACORD Form 25-S or equivalent) Received		
Best's Rating (A-, VII, or better)		
Policy Number on Insurance		
Insured named is same as Contractor		
Expiration Date Reviewed (Policy dates fall within job dates)		
Limits of Liability Meet/Exceed Required amounts		
Is an "Admitted Insurer"/ "Authorized" (Check Department of Insurance Listing at http://www.insurance.ca.gov)		
Cancellation Clause		
* Delete "will endeavor"		
* Insert "will notify"		
* 30-day notice		
Additional Insured Endorsement (a CG-2010 or insurer's equivalent) Received		
Policy number matches Policy number on Certificate		
The District, its directors, officers, employees, agents, or volunteers are named as additional insureds		
The primary/non-contributory language is included: "The insurance provided by this policy shall be primary as respects any claim related to the Project. Any insurance, self-insurance, or other coverage maintained by the Agency, its directors, officers, employees, agents, or volunteers shall not contribute to it."		
The Endorsement contains an authorized signature		

AUTOMOBILE INSURANCE**Contract Requirement****Number or Amount
Submitted**

Limits of Liability \$ _____
No. of Original Copies Required _____
The box for "any auto" should
be checked _____
Certificate of Insurance (or ACORD Form
25-S or equivalent) Received
 Best's Rating (A-, VII, or better)
 Policy Number on Insurance
 Insured named is same as
 Contractor
 Expiration Date Reviewed
 (Policy dates fall within job dates)
 Limits of Liability meet/Exceed
 Required amounts
 Is an "Admitted Insurer" (Check Department of Insurance Listing)
 Cancellation Clause
 * Delete "will endeavor"
 * Insert "will notify"
 * 30-day notice
Additional Insured Endorsement (a CG-2010
or insurer's equivalent) Received
 Policy number matches Policy number
 on Certificate
 The District, its directors, officers,
 employees, agents, or volunteers are
 named as additional insureds
 The primary/non-contributory language
 is included: "The insurance provided by
 this policy shall be primary as respects
 any claim related to the Project. Any
 insurance, self-insurance, or other
 coverage maintained by the Agency, its
 directors, officers, employees, agents,
 or volunteers shall not contribute to it."
 The Endorsement contains an authorized
 signature

WORKERS' COMPENSATION INSURANCE**Contract Requirement****Number or Amount
Submitted**

Number of certificates required _____
Limits of Liability Meet/Exceed _____
Required Amounts _____
Expiration date Reviewed (Policy
dates fall within job dates)
Is an "Admitted Insurer" (Check Department of Insurance Listing)
Best's Rating (State Compensation Fund is not rated)

BONDS

PERFORMANCE BOND

Contract Requirements

Number or Amount Submitted

Number of original copies submitted
Provisions meet contract specifications
Each Copy has the appropriate seal
(embossed with the surety's seal)
Powers of Attorney received (one original
required for each bond--ensure that the
attorney named in Power of Attorney is
the same person who signed the bond)
All documents contain the appropriate
signatures
Is an "Admitted Surety Insurer (Check Department of Insurance Listing)
Bond equals 100% of Contract Price
Verify that Contractor protected by
bond is the same as the Contractor with
whom the District has contract

PAYMENT (LABOR AND MATERIAL) BOND

Contract Requirements

Number or Amount Submitted

Number of original copies submitted
Provisions meet contract specifications
Each Copy has the appropriate seal
(embossed with the surety's seal)
Powers of Attorney received (one original
required for each bond--ensure that the
attorney named in Power of Attorney is
the same person who signed the bond)
All documents contain the appropriate
signatures
Is an "Admitted Surety Insurer" (Check Department of Insurance Listing)
Bond equals 100% of Contract Price
Verify that Contractor protected by
bond is the same as the Contractor with
whom the District has contract

BID BOND**Contract Requirements****Number or Amount
Submitted**

Number of original copies submitted _____
Provisions meet contract specifications _____
Each Copy has the appropriate seal
(embossed with the surety's seal)
Powers of Attorney received (one original
required for each bond--ensure that the
attorney named in Power of Attorney is
the same person who signed the bond)
All documents contain the appropriate
signatures
Is an "Admitted Surety Insurer" (Check Department of Insurance Listing)
Bond equals 10% of Contract Price
Verify that Contractor protected by
bond is the same as the Contractor with
whom the District has contract

AGREEMENT

Contractor has signed Agreement
If contractor is incorporated, the
corporation seal must be affixed
adjacent to the signature of the
corporation's authorized representative
District's General Manager has signed
the Agreement

Reviewed by: _____

Date transmitted to BB&K: _____

BID/CONTRACT CHECK-OFF SHEET

Contract Documents

- ☐ Notice of Completion
- ☐ Notice to Proceed
- ☐ Executed Agreement
- ☐ Certificate of Workers' Compensation Liability
- ☐ Certificate of General Liability
- ☐ Certificate of Automobile Liability
- ☐ Payment Bond (\$25,000 or more)
- ☐ Performance Bond
- ☐ Escrow Agreement (Optional)
- ☐ Drug-Free Workplace Certification
- ☐ Asbestos-Free Certification
- ☐ Alcohol – Tobacco Free Certification
- ☐ Background Check Certification
- ☐ Contractor Fingerprinting Certification
- ☐ Subcontractor Fingerprinting Certification
- ☐ W-9 (___ on File)

Bid Documents:

- ☐ Notice of Award (PNOA or NOA)
- ☐ Bid Form
- ☐ Proof of Contractors License
- ☐ Non-Collusion Affidavit
- ☐ Bid Bond
- ☐ Subcontractors List (Original and/or Fully Executed)
- ☐ Bidder Information Forms
- ☐ Bid Schedule
- ☐ Bid Results
- ☐ Acknowledgment of Phasing
- ☐ Site Visit Certification
- ☐ Acknowledgment of Bidding Practices
- ☐ DVBE Documents (if applicable)

ADDITIONAL DOCUMENTS

- ☐ PWC100
- ☐ Agenda Item for Award w/Bid Results Summary
- ☐ Proof of Publication
- ☐ Bidder's Sign-in Sheet
- ☐ Bid Results

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

[INSERT NAME OF DISTRICT]

[**INSERT PROJECT NAME & NUMBER**]

CONTRACT DOCUMENTS

[These sample documents are designed to be used with a General Contractor. Projects undertaken on a multi-prime basis and/or with a construction manager will require additional revisions.]

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

TABLE OF CONTENTS

	<u>Page No.</u>
NOTICE INVITING BIDS	1
INSTRUCTIONS TO BIDDERS	3
BID FORM	12
BID SCHEDULE	13
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION	16
BID BOND	17
DESIGNATION OF SUBCONTRACTORS	19
INFORMATION REQUIRED OF BIDDERS	2
NON-COLLUSION AFFIDAVIT	5
CONTRACT	6
PERFORMANCE BOND	9
PAYMENT BOND	13
GENERAL CONDITIONS	15
SPECIAL CONDITIONS	55
TECHNICAL SPECIFICATIONS	56
PLANS AND DRAWINGS	57

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

[INSERT NAME OF DISTRICT]

NOTICE INVITING BIDS

The [INSERT NAME OF DISTRICT] ("District") will receive sealed bids for the [**INSERT PROJECT NAME**] Project at the office of the [**INSERT DEPT**] no later than [**INSERT DATE**] [**INSERT TIME**], at which time or thereafter said bids will be opened and read aloud. Bids received after this time will be returned unopened. Bids shall be valid for 60 calendar days after the bid opening date.

Bids must be submitted on the District's Bid Forms. [**INSERT WHETHER BIDDERS WILL BE ALLOWED TO SUBMIT ELECTRONIC BIDS VIA EMAIL OR THROUGH A WEBSITE AND HOW MODIFICATIONS TO ELECTRONICALLY SUBMITTED BIDS MAY BE ACCOMPLISHED. SHOULD THE DISTRICT PERMIT THE SUBMISSION OF ELECTRONIC BIDS, IT IS HIGHLY RECOMMENDED THAT LEGAL COUNSEL REVIEW THE PROCESS FOR SUCH SUBMISSION.**]

Bidders may obtain a copy of the Contract Documents from the [**INSERT DEPARTMENT**] at: [**INSERT ADDRESS**] [**INSERT TELEPHONE NUMBER**] for [**INSERT WRITTEN AMOUNT (\$_____)**]. A non-refundable charge of [**INSERT WRITTEN AMOUNT (\$_____)**] will be required of any bidder who requests that the Contract Documents be mailed within California (costs for out-of-state mailings will be higher). The District [**INSERT "WILL" OR "WILL NOT"***] also make the Contract Documents available for review at one or more plan rooms.

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

A [**INSERT "NON-MANDATORY" OR "MANDATORY"***] Pre-Bid Conference will be held at [**INSERT LOCATION**] on the following date(s) and time(s): [**INSERT DATE(S) AND TIME(S)**] Each and every Bidder [**INSERT "MUST" OR "SHOULD"***] attend the Pre-Bid Conference. Prospective bidders [**INSERT "MAY" OR "MAY NOT"***] visit the Project Site without making arrangements through the [**INSERT TITLE**]. Bids [**INSERT "WILL" OR "WILL NOT"***] be accepted from any bidder who did not attend the Pre-Bid Conference.

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

The successful bidder will be required to furnish the District with a Performance Bond equal to 100% of the successful bid, and a Payment Bond equal to 100% of the successful bid, prior to execution of the Contract. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120, and is admitted by the State of California. [**OPTIONAL: USE THE FOLLOWING TWO SENTENCES IF YOU WANT SUBS TO BE BONDED - DELETE OTHERWISE**]

NOTICE INVITING BIDS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Contractor shall require all subcontractors providing labor and materials in excess of **[**INSERT DOLLAR AMOUNT**]** to supply Payment and Performance Bonds in the amounts of the subcontractor and in a manner required of the Contractor. The Contractor shall specify this requirement for subcontractor bonds in its written or published request for subcontractor bids in accordance with Public Contract Code Section 4108. **[**OPTIONAL: USE LAST 2 SENTENCES IF YOU WANT SUBS TO BE BONDED - DELETE OTHERWISE**]**

Pursuant to Public Contract Code Section 22300, the successful bidder may substitute certain securities for funds withheld by District to ensure his performance under the Contract.

The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the successful bidder, copies of which are on file and will be made available to any interested party upon request at **[**INSERT OFFICE NAME**]** or 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 him, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors.

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

[INCLUDE ONLY IF SOLE SOURCE FINDINGS HAVE BEEN MADE**]** Pursuant to Public Contract Code Section 3400(b), if the District has made any findings designating certain materials, products, things, or services by specific brand or trade name, such findings and the materials, products, things, or services and their specific brand or trade names will be set forth in the Special Conditions.

Award of Contract: The District shall award the Contract for the Project to the lowest responsible bidder as determined from the base bid alone by the District. 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 process.

For further information, contact **[**INSERT NAME AND PHONE NUMBER**]**.

NOTICE INVITING BIDS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

[NAME OF DISTRICT]

INSTRUCTIONS TO BIDDERS

1. AVAILABILITY OF CONTRACT DOCUMENTS

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

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

2. EXAMINATION OF CONTRACT DOCUMENTS

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

3. INTERPRETATION OF CONTRACT DOCUMENTS

Discrepancies in, and/or omissions from the Plans, Specifications or other Contract Documents or questions as to their meaning shall be immediately brought to the attention of the District by submission of a written request for an interpretation or correction to the District. Such submission, if any, must be sent to the [**INSERT TITLE**] by faxing [**INSERT FAX NUMBER**] or emailing to [**INSERT E-MAIL ADDRESS**].

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

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

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

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

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

5. ADDENDA

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

6. ALTERNATE BIDS

If alternate bid items are called for in the Contract Documents, the lowest bid will be determined on the basis of the base bid only. However, the District may choose to award the contract on the basis of the base bid alone or the base bid and any alternate or combination of alternates. **[**PER PUBLIC CONTRACT CODE 20103.8, DISTRICT MAY CHOOSE DIFFERENT BASIS OF AWARD BUT MUST CHANGE CONTRACT LANGUAGE, COUNSEL SHOULD REVIEW ALL CHANGES**]** The time required for completion of the alternate bid items has been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The District may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work, accordingly each Bidder must ensure that each bid item contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Bidder.

7. COMPLETION OF BID FORMS

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute bid forms other than clear and correct photocopies of those provided by the District will not be permitted. Bids shall be executed by an authorized signatory

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. USE OF BLACK OR BLUE INK, INDELIBLE PENCIL OR A TYPEWRITER IS REQUIRED. Deviations in the bid form may result in the bid being deemed non-responsive.

8. MODIFICATIONS OF BIDS

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

9. DESIGNATION OF SUBCONTRACTORS

Pursuant to State law, the Bidders must designate the name and location of each subcontractor who will perform work or render services for the Bidder in an amount that exceeds one-half of one percent (1/2%) of the Bidder's Total Bid Price, as well as the portion of work each such subcontractor will perform on the form provided herein by the District. No additional time will be provided to bidders to submit any of the requested information in the Designation of Subcontractor form.

10. DISABLED VETERAN BUSINESS ENTERPRISES

Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required for this project. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation in this project.

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

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

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

subcontractor is DVBE certified, and provide the District a copy of the DVBE Certification Letter issued by OSBCR.

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

11. LICENSING REQUIREMENTS

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

12. SIGNING OF BIDS

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

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

13. BID GUARANTEE (BOND)

Each bid shall be accompanied by: (a) cash; (b) a certified check made payable to the District; (c) a cashier's check made payable to the District; or (d) a bid bond payable to the District executed by the bidder as principal and surety as obligor in an amount not less than 10% of the maximum amount of the bid. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The cash, check or bid bond shall be given as a guarantee that the bidder shall execute the Contract if it be awarded to the bidder, shall provide the

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

payment and performance bonds and insurance certificates and endorsements as required herein within ten (10) calendar days after notification of the award of the Contract to the bidder. Failure to provide the required documents may result in forfeiture of the bidder's bid deposit or bond to the District and the District may award the Contract to the next lowest responsible bidder, or may call for new bids.

14. SUBMISSION OF SEALED BIDS

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

Bid of _____ (Bidder's Name)
for the **INSERT PROJECT NAME**

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

15. DELIVERY AND OPENING OF BIDS

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

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

16. WITHDRAWAL OF BID

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

INSTRUCTIONS TO BIDDERS

17. BASIS OF AWARD; BALANCED BIDS

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

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

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

19. INSURANCE REQUIREMENTS

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

20. AWARD PROCESS

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

21. FILING OF BID PROTESTS

Bidders may file a "protest" of a Bid with the District's **[**INSERT TITLE**]**. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific District staff determination or recommendation being protested;

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and

E. Include all relevant, supporting documentation with the protest at time of filing.

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

If the protest is valid, the District's **[**INSERT TITLE**]**, or other designated District staff member, shall review the basis of the protest and all relevant information. The **[**INSERT TITLE**]** will provide a written decision to the protestor. The protestor may then appeal the decision of the **[**INSERT TITLE**]** to the **[**INSERT TITLE**]**.

22. WORKERS COMPENSATION

Each bidder shall submit the Contractor's Certificate Regarding Workers' Compensation form.

23. SUBSTITUTION OF SECURITY

The Contract Documents call for monthly progress payments based upon the percentage of the work completed. The District will retain ten percent (10%) of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the District will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

24. PREVAILING WAGES

The District has obtained from the Director of the Department of Industrial Relations 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. These rates are on file and available at **[**INSERT OFFICE NAME**]** or may be obtained online at <http://www.dir.ca.gov/dlsr>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

25. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

26. **PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS**

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

27. **REQUEST FOR SUBSTITUTIONS**

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

28. **SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

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

29. **EXECUTION OF CONTRACT**

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

30. **REQUIRED CERTIFICATIONS**

Bidders, for all projects involving state funds, are required to submit the "Asbestos-Free Materials Certification." This form is included in this package and must be signed under the penalty of perjury and dated, and shall be submitted to the District in accordance with Section 33 below and Section 83 of the General Conditions. The successful bidder shall also execute, under the penalty of perjury and dated, the "Recycled Content Certification" and the "Drug-Free Workplace Certification" included in this package. Further, by law it is the District's responsibility to determine whether a contractor must provide fingerprint certification. Pursuant to Education Code section 45125.2, the District considers the totality of the circumstances in order to determine if fingerprinting of employees of a contractor working on a school site is required. Factors to be considered include the length of time the contractor's employees are on school grounds, whether students are in proximity with the location where the contractor's employees are working, and whether the contractor's employees are working alone or with others. **A determination regarding whether fingerprint certification is required is contained in the Special Conditions.** These forms are included with the bid package and must be signed under the penalty of perjury and dated.

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

END OF INSTRUCTIONS TO BIDDERS

SAMPLE

INSTRUCTIONS TO BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

BID FORM

NAME OF BIDDER: _____

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

[INSERT NAME OF PROJECT**]**

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

[USE THIS FORMAT FOR LUMP SUM BIDS - DELETE OTHERWISE**]**

BASE BID	BID PRICE (IN WRITTEN FORM)	BID PRICE (IN NUMBERS)
TOTAL BID PRICE		

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

BID FORM

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

[USE THIS FORMAT FOR UNIT PRICE BIDS - DELETE OTHERWISE**]**

[FORMAT MAY BE MODIFIED TO MEET PROJECT REQUIREMENTS**]**

BID SCHEDULE

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	ITEM COST
1.	Initial Mobilization	LS	1		
2.	Diversion of Recyclable Waste Materials	LS	1		
3.	Sheeting, Shoring, and Bracing or Equivalent Method [**INSERT IF REQUIRED**]	LS	1		
4.	Insurance for Earthquakes [**INSERT IF WANTED**]	LS	1		

In case of discrepancy between the unit price and the item cost set forth for a unit basis item, the unit price shall prevail and, shall be utilized as the basis for determining the lowest responsive, responsible bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price. Final payment shall be determined by the District Representative from measured quantities of work performed based upon the unit price.

TOTAL BID PRICE (BASED ON BID SCHEDULE TOTAL OF UNIT PRICES):

\$ _____
Total Bid Price in Numbers

Total Bid Price in Written Form

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

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

BID SCHEDULE

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

[USE NEXT PARAGRAPH AND SCHEDULE IF ALTERNATES ARE USED - DELETE OTHERWISE**]**

If the Contract Documents specify alternate bid items, the following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above (please check the appropriate box), at the District's sole option. The District can choose to include one or more of the Alternate Bids in the Project. If any of the Alternate Bids are selected by the District, the resulting amount shall be added to or deducted from Total Bid Price for the Project. The District may select one or more of the Alternate Bids at the below stated Bid Price up to sixty (60) days following award of the Contract. The District can award/select Alternate Bid items at any time(s).

ALTERNATE BIDS	BID PRICE (IN WRITTEN FORM)	BID PRICE (IN NUMBERS)
ALTERNATE #1 <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
ALTERNATE #2 <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
ALTERNATE #3 <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
ALTERNATE #4 <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
ALTERNATE #5 <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
ALTERNATE #6 <input type="checkbox"/> Add <input type="checkbox"/> Deduct		

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

Bidder certifies that it is licensed in accordance with the law providing for the registration of Contractors, License No. _____, Expiration Date _____, class of license _____. If the bidder is a joint venture, each member of the joint venture must include the above information.

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

Addenda No. _____

BID SCHEDULE

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Addenda No. _____

Addenda No. _____

1. Attached is the required bid security in the amount of not less than 10% of the Total Bid Price.
2. Attached is the fully executed Non-Collusion Affidavit form.
3. Attached is the completed Designation of Subcontractors form.
4. Attached is the completed Bidder Information Form.
5. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.

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

Name of Bidder _____

Signature _____

Name and Title _____

Dated _____

BID SCHEDULE

- 15 -

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

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

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

BID BOND

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

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated _____, 20 ____, for [**INSERT PROJECT NAME**].

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

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

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

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

(Corporate Seal)

Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

BID BOND

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

DESIGNATION OF SUBCONTRACTORS

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

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater if the work involves streets or highways, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Portion of Work	Subcontractor	Location of Business

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Portion of Work	Subcontractor	Location of Business

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Portion of Work	Subcontractor	Location of Business

Name of Bidder _____

Signature _____

Name and Title _____

Dated _____

[**IF DISTRICT REQUIRES CONTRACTOR TO SELF PERFORM A SPECIFIED PERCENTAGE OF THE WORK, DELETE ABOVE CHART AND INSERT BELOW**]

Portion of the Work	Subcontractor	Location of Business	% of the Work

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Portion of the Work	Subcontractor	Location of Business	% of the Work

Name of Bidder _____

Signature _____

Name and Title _____

Dated _____

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

DESIGNATION OF DVBE SUBCONTRACTORS

Contractor shall identify each subcontractor that is a certified Disabled Veteran Business Enterprise (DVBE). Contractor shall provide the DVBE Reference Number assigned by the Office of Small Business Certification and Resources for each DVBE subcontractor, and shall attach a copy of the subcontractor's certification letter.

Subcontractor	DVBE Reference Number

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

INFORMATION REQUIRED OF BIDDERS

A. INFORMATION ABOUT BIDDER

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

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

1.0 Name of Bidder: _____

2.0 Type, if Entity: _____

3.0 Bidder Address: _____

Facsimile Number

Telephone Number

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

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

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

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

6.1 Date of Incorporation: _____

6.2 State of Incorporation: _____

6.3 President's Name: _____

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

6.5 Secretary's Name: _____

6.6 Treasurer's Name: _____

INFORMATION REQUIRED OF BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

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

7.1 Date of Organization: _____

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

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

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

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

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

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

INFORMATION REQUIRED OF BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

14.0 List Trade References:

15.0 List Bank References (Bank and Branch Address):

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

INFORMATION REQUIRED OF BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

B. LIST OF CURRENT PROJECTS (Backlog)

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

[illegible]

INFORMATION REQUIRED OF BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

C. LIST OF COMPLETED PROJECTS - LAST THREE YEARS

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

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

Project Client	Description of Bidder's Work	Period of Performance	Cost of Bidder's Work

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

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

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

2. Summarize each person's specialized education:

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

4. Summarize such experience:

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

INFORMATION REQUIRED OF BIDDERS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Additional Bidder's Statements:

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

E. VERIFICATION AND EXECUTION

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

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

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

INFORMATION REQUIRED OF BIDDERS

- 8 -

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

ASBESTOS-FREE MATERIALS CERTIFICATION

The undersigned declares that he or she is the person who executed the bid for the _____ (hereinafter referred to as the "Project"), and submitted it to the **[INSERT NAME OF DISTRICT]** (hereinafter referred to as the "District") on behalf of _____ (hereinafter referred to as the "Contractor").

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

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

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

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

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

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

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

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

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

Name of Contractor (Print or Type)

By _____
Signature

Print Name

Title

ASBESTOS-FREE MATERIALS CERTIFICATION

Page 1 of 2

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

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

Notary Public in and for the State of California

My Commission Expires: _____

SAMPLE

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

RECYCLED CONTENT CERTIFICATION

The undersigned declares that he or she is the person who executed the bid for the _____ (hereinafter referred to as the "Project"), and submitted it to the **[INSERT NAME OF DISTRICT]** (hereinafter referred to as the "District") on behalf of _____ hereinafter referred to as the "Contractor").

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

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

_____ % Postconsumer Material _____ % Secondary Material.

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

Name of Contractor (Print or Type)

By

Signature

Print Name

Title

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

Notary Public in and for the State of California

My Commission Expires: _____

RECYCLED CONTENT CERTIFICATION

Page 1 of 1

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

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

Contractor's Representative

Date

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the **[INSERT NAME OF DISTRICT]** ("District") has determined that _____ ("Contractor") is exempt from the criminal background check certification requirements for the Contract dated _____, 20__ by and between the District and Contractor ("Contract") because:

The Contractor's employees will have limited contact with District students during the course of the Contract;

Emergency or exceptional circumstances exist; or

With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2: _____.

School District Official

Date

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

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

Subcontractor's Representative

Date

SUBCONTRACTOR'S EXEMPTION

The **[INSERT NAME OF DISTRICT]** ("District") entered into a Contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract"). Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"), is exempt from the criminal background check certification requirements for the Contract because:

The Subcontractor's employees will have limited contact with District students during the course of the Contract;

Emergency or exceptional circumstances exist; or

With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2: _____.

School District Official

Date

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is part of the Contract made by and between the **[INSERT NAME OF DISTRICT]** (hereinafter referred to as the "District") and

_____ (hereinafter referred to as the "Contractor") for the _____ Project (hereinafter referred to as the "Project"). This form is required from all successful bidders pursuant to the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

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

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in their workplace and specifying actions which will be taken against employees for violations of the prohibition;

B. Establishing a drug-free awareness program to inform employees about all of the following:

1. The dangers of drug abuse in the workplace;
2. The person's or organization's policy of maintaining a drug-free workplace;
3. The availability of drug counseling, rehabilitation and employee-assistance programs; and
4. The penalties that may be imposed upon employees for drug abuse violations.

C. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision "A," and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

NON-COLLUSION AFFIDAVIT

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

A. Publishing a statement notifying employees concerning the prohibition of controlled substance at my workplace;

B. Establishing a drug-free awareness program; and

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

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

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

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

Name of Contractor (Print or Type)

By _____

Signature

Print Name

Title

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

Notary Public in and for the State of California

My Commission Expires:

NON-COLLUSION AFFIDAVIT

**NONCOLLUSION DECLARATION TO BE EXECUTED
BY
BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

I am the ____ of ____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. 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 bid or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this:

_____ day of _____

City of _____ State of _____

Signed: _____

Title: _____

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

CONTRACT

THIS CONTRACT is made this ____ day of _____, 200_, in the County of San Diego, State of California, by and between the District, hereinafter called District, and _____, hereinafter called Contractor. The District and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

[INSERT PROJECT NAME]

The Contractor and its surety shall be liable to the District for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. The Work shall be commenced on the date stated in the District's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within [**INSERT CALENDAR DAYS**] calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. The District shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of _____ Dollars (\$ _____). Payment shall be made as set forth in the General Conditions.

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

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Designation of Subcontractors

CONTRACT

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

Information Required of Bidders
Designation of DVBE Subcontractors
Asbestos-Free Material Certification
Drug-Free Workplace Certifications
Recycled Content Certification
Non-Collusion Affidavit form
Contract
Performance Bond
Payment Bond
General Conditions
Special Conditions
Technical Specifications
Addenda
Plans and Drawings
Approved and fully executed change orders
Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

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

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

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the labor Code which such rates shall be made available at **[**INSERT OFFICE NAME**]** or may be obtained online at <http://www.dir.ca.gov/dlsr>. and which must be posted at the job site.

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

CONTRACT

- 7 -

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

<u>[NAME OF CONTRACTOR]</u>	<u>[NAME OF DISTRICT]</u>
By _____	By _____
Name and Title: _____	
License No. _____	

SAMPLE

CONTRACT

- 8 -

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the District in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's

PERFORMANCE BOND

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

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

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the DISTRICT, when declaring the Contractor in default, notifies Surety of the District's objection to Contractor's further participation in the completion of the Project.

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

[Remainder of Page Left Intentionally Blank.]

PERFORMANCE BOND

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2005.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

PERFORMANCE BOND

- 11 -

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the District (hereinafter designated as the "District"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

(the "Project"); and

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of

PAYMENT BOND

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

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

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

(Corporate Seal of Principal,
if corporation)

Principal (Property Name of Contractor)

By _____
(Signature of Contractor)

(Seal of Surety)

Surety

By _____
Attorney in Fact

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

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

PAYMENT BOND

- 14 -

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

GENERAL CONDITIONS TABLE OF CONTENTS

		<u>Page No.</u>
ARTICLE 1.	DEFINITIONS	15
ARTICLE 2.	CONTRACT DOCUMENTS.....	16
ARTICLE 3.	CONTRACTS DOCUMENTS: COPIES & MAINTENANCE	17
ARTICLE 4.	DETAIL DRAWINGS AND INSTRUCTIONS.....	17
ARTICLE 5.	EXISTENCE OF UTILITIES AT THE WORK SITE.....	18
ARTICLE 6.	SCHEDULE [**DISTRICT SHOULD REVIEW FOR CONSISTENCY WITH ANY SCHEDULING SECTION(S) PROVIDED IN THE TECHNICAL SPECIFICATIONS**] 19	19
ARTICLE 7.	SUBSTITUTIONS	19
ARTICLE 8.	SHOP DRAWINGS	20
ARTICLE 9.	SUBMITTALS	21
ARTICLE 10.	MATERIALS	21
ARTICLE 11.	CONTRACTOR'S SUPERVISION	22
ARTICLE 12.	WORKERS.....	22
ARTICLE 13.	fingerprinting requirements	22
ARTICLE 14.	SUBCONTRACTORS	23
ARTICLE 15.	PERMITS AND LICENSES	23
ARTICLE 16.	UTILITY USAGE	24
ARTICLE 17.	INSPECTION FEES FOR PERMANENT UTILITIES	24
ARTICLE 18.	TRENCHES	24
ARTICLE 19.	REMOVAL OF HAZARDOUS MATERIALS.....	25
ARTICLE 20.	SANITARY FACILITIES.....	25
ARTICLE 21.	AIR POLLUTION CONTROL	25
ARTICLE 22.	COMPLIANCE WITH STATE STORM WATER PERMIT	26
ARTICLE 23.	CLEANING UP.....	26
ARTICLE 24.	LAYOUT AND FIELD ENGINEERING.....	27
ARTICLE 25.	EXCESSIVE NOISE.....	27
ARTICLE 26.	TESTS AND INSPECTIONS	27
ARTICLE 27.	PROTECTION OF WORK AND PROPERTY	28
ARTICLE 28.	CONTRACTORS MEANS AND METHODS	29
ARTICLE 29.	AUTHORIZED REPRESENTATIVES.....	30
ARTICLE 30.	HOURS OF WORK	30
ARTICLE 31.	PAYROLL RECORDS	30
ARTICLE 32.	PREVAILING RATES OF WAGES	31
ARTICLE 33.	LABOR COMPLIANCE.....	32
ARTICLE 34.	EMPLOYMENT OF APPRENTICES	32
ARTICLE 35.	NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY	32
ARTICLE 36.	LABOR/EMPLOYMENT SAFETY	33
ARTICLE 37.	WORKERS' COMPENSATION INSURANCE	33
ARTICLE 38.	EMPLOYER'S LIABILITY INSURANCE	33
ARTICLE 39.	COMMERCIAL GENERAL LIABILITY INSURANCE.....	33
ARTICLE 40.	AUTOMOBILE LIABILITY INSURANCE	34
ARTICLE 41.	BUILDER'S RISK ["ALL RISK"]	35

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

GENERAL CONDITIONS TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE 42. FORM AND PROOF OF CARRIAGE OF INSURANCE.....	35
ARTICLE 43. TIME FOR COMPLETION AND LIQUIDATED DAMAGES	36
ARTICLE 44. COST BREAKDOWN AND PERIODIC ESTIMATES	37
ARTICLE 45. MOBILIZATION	38
ARTICLE 46. PAYMENTS.....	39
ARTICLE 47. PAYMENTS WITHHELD AND BACK CHARGES	40
ARTICLE 48. CHANGES AND EXTRA WORK	40
ARTICLE 49. OCCUPANCY	44
ARTICLE 50. INDEMNIFICATION	44
ARTICLE 51. RECORD (“AS BUILT”) DRAWINGS	44
ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS	45
ARTICLE 53. DISTRICT’S RIGHT TO TERMINATE CONTRACT	46
ARTICLE 54. WARRANTY AND GUARANTEE	48
ARTICLE 55. DOCUMENT RETENTION & EXAMINATION.....	49
ARTICLE 56. SOILS INVESTIGATIONS.....	49
ARTICLE 57. REQUIRED CERTIFICATIONS	49
ARTICLE 58. SEPARATE CONTRACTS	50
ARTICLE 59. NOTICE AND SERVICE THEREOF	51
ARTICLE 60. NOTICE OF THIRD PARTY CLAIMS	51
ARTICLE 61. STATE LICENSE BOARD NOTICE.....	51
ARTICLE 62. INTEGRATION	52
ARTICLE 63. ASSIGNMENT	52
ARTICLE 64. CHANGE IN NAME AND NATURE OF CONTRACTOR’S LEGAL ENTITY	52
ARTICLE 65. ASSIGNMENT OF ANTITRUST ACTIONS	52
ARTICLE 66. PROHIBITED INTERESTS	52
ARTICLE 67. LAWS AND REGULATIONS	53
ARTICLE 68. PATENT FEES OR ROYALTIES.....	53
ARTICLE 69. OWNERSHIP OF DRAWING	53
ARTICLE 70. NOTICE OF TAXABLE POSSESSORY INTEREST	53
ARTICLE 71. COMPLIANCE WITH DTSC GUIDELINES—IMPORTED SOILS	53
ARTICLE 72. DISTRICT’S INSPECTOR.....	54
ARTICLE 73. Inspector’s field office.....	54

GENERAL CONDITIONS

GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of the District Representative and/or the District .
- b. Act of God an Act of God is an earthquake of magnitude 3.5 on the Richter scale and tidal waves.
- c. Approval means written authorization by District Representative and/or District .
- d. Contract Documents includes all documents as stated in the Contract.
- e. Day shall mean calendar day unless otherwise specifically designated.
- f. District and Contractor are those stated in the Contract. The terms District and Owner may be used interchangeably.
- g. District Representative shall mean the [INSERT NAME OF DISTRICT'S REPRESENTATIVE FOR PURPOSES OF OVERSEEING CONSTRUCTION], or his/her designee, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "District's Representative" or "Representative" in the Contract Documents.
- h. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of the District Representative and/or District.
- i. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the District Representative and/or District is intended, unless stated otherwise.
- j. Install means the complete installation of any item, equipment or material.
- k. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- l. Perform shall mean that the Contractor, at Contractor's expense, shall take all actions necessary to complete The Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- m. Project is The Work planned by District as provided in the Contract Documents.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- n. Provide shall include provide complete in place, that is furnish, install, test and make ready for use.
- o. Recyclable Waste Materials [****DISTRICT SHOULD REVIEW THIS DEFINITION FOR COMPLIANCE WITH LOCAL WASTE DIVERSION ORDINANCES****] shall mean materials removed from the Project site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- p. Specifications means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work. Except for Sections 1-9 of the Standard Specifications for Public Works Construction ("Greenbook"), 2003 Edition [****DISTRICT SHOULD DETERMINE WHICH VERSION OF THE GREENBOOK****], which are specifically excluded from incorporation into these Contract Documents, the Work shall be done in accordance with the Greenbook, including all current supplements, addenda, and revisions thereof. In the case of conflict between the Greenbook and the Contract Documents, the Contract Documents shall prevail.
- q. The Work means the entire improvement planned by the District pursuant to the Contract Documents.
- r. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.

ARTICLE 2. CONTRACT DOCUMENTS

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

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

1. Figures govern over scaled dimensions
 2. Detail drawings govern over general drawings
 3. Addenda or Change Order drawings govern over Contract Drawings
 4. Contract Drawings govern over Standard Drawings
 5. Contract Drawings govern over Shop Drawings
- c. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.
- d. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing The Work among subcontractors or in establishing the extent of Work to be performed by any trade.

ARTICLE 3. CONTRACTS DOCUMENTS: COPIES & MAINTENANCE

Contractor will be furnished, free of charge, **[**DISTRICT TO INSERT**]** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

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

ARTICLE 4. DETAIL DRAWINGS AND INSTRUCTIONS

- a. **Examination of Contract Documents.** Before commencing any portion of The Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the District Representative of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.
- b. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the District Representative will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- c. **Quality of Parts, Construction and Finish.** All parts of The Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with The Work without obtaining first from the District Representative such Approval may be necessary for the proper performance of Work.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- d. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the District Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

ARTICLE 5. EXISTENCE OF UTILITIES AT THE WORK SITE

- a. The District has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.
- b. No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the District in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- c. All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of The Work.
- d. Notwithstanding the above, pursuant to Section 4215 of the Government Code, the District has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for bids, District shall assume the responsibility for their timely removal, relocation, or protection.
- e. Contractor, except in an emergency, shall contact the appropriate regional notification center, Southern California Underground Service Alert at 1-800-227-2600 at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by the Contractor.

GENERAL CONDITIONS

ARTICLE 6. SCHEDULE [DISTRICT SHOULD REVIEW FOR CONSISTENCY WITH ANY SCHEDULING SECTION(S) PROVIDED IN THE TECHNICAL SPECIFICATIONS**]**

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

ARTICLE 7. SUBSTITUTIONS

- a. Pursuant to Public Contract Code Section 3400(b) the District may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.
- b. Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, the District may have adopted certain uniform standards for certain materials, processes and articles.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- c. Contractor shall submit requests, together with substantiating data, for substitution of any “or equal” material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of “or equal” requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed “or equal” substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Contractor. The District has the complete and sole discretion to determine if a material, process or article is an “or equal” material, process or article that may be substituted.
- d. Data required to substantiate requests for substitutions of an “or equal” material, process or article data shall include a signed affidavit from the Contractor stating that, and describing how, the substituted “or equal” material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted “or equal” material, process or article, and substantiates that it is an “or equal” to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the District in a timely fashion will result in the rejection of the proposed substitution.
- e. The Contractor shall bear all of the District’s costs associated with the review of substitution requests.
- f. The Contractor shall be responsible for all costs related to a substituted “or equal” material, process or article.
- g. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

ARTICLE 8. SHOP DRAWINGS

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in his own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop or setting drawings, calculations, schedules, and materials list, and all other provisions required by the Contract. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to District Representative. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Contractor shall make any corrections required by the District Representative, and file with the District Representative six (6) corrected copies each, and furnish such other

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

copies as may be needed for completion of the Work. District Representative's approval of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called District Representative's attention to such deviations at time of submission and has secured the District Representative's written Approval. District Representative's Approval of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

ARTICLE 9. SUBMITTALS

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

ARTICLE 10. MATERIALS

- a. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to the District free from any claims, liens, or charges.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- e. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the District or any independent contractor.

ARTICLE 11. CONTRACTOR'S SUPERVISION

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

ARTICLE 12. WORKERS

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

ARTICLE 13. FINGERPRINTING REQUIREMENTS

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

- a. Contracts For Construction, Reconstruction, Rehabilitation Or Repair Of A School Facility Involving More Than Limited Contact With Students.

If the District determines, based on the totality of the circumstances concerning the Project, that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Contractor shall, at Contractor's own expense, (a) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (b) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Contractor and Contractor's employees by a District employee.

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

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

ARTICLE 14. SUBCONTRACTORS

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

ARTICLE 15. PERMITS AND LICENSES

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

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- c. Before Acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the District.

ARTICLE 16. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The Work, Contractor shall remove all temporary distribution systems.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.
- c. All permanent meters Installed shall be listed in the Contractor's name until Project Acceptance.
- d. If the Contract is for construction in existing facilities, Contractor may, with prior written Approval of the District, use the District's existing utilities by compensating the District for utilities used by Contractor.

ARTICLE 17. INSPECTION FEES FOR PERMANENT UTILITIES

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

ARTICLE 18. TRENCHES

- a. Trenches Five Feet or More in Depth. The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.
- b. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 - 1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

- 2) Subsurface or latent physical conditions at the site differing from those indicated.
- 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

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

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

ARTICLE 19. REMOVAL OF HAZARDOUS MATERIALS

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

ARTICLE 20. SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.

ARTICLE 21. AIR POLLUTION CONTROL

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

GENERAL CONDITIONS

ARTICLE 22. COMPLIANCE WITH STATE STORM WATER PERMIT

- a. Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. In bidding on this Contract, it shall be Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- b. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District Representative.
- c. Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- d. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- e. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.

ARTICLE 23. CLEANING UP

- a. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

premises. Upon completion of Work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall also clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.

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

ARTICLE 24. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Layout shall be done by a registered civil engineer Approved by the District Representative. Any required "as-built" drawings of the Work shall be prepared by the registered civil engineer.

ARTICLE 25. EXCESSIVE NOISE

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

[DISTRICT TO INSERT SPECIFIC NOISE RESTRICTIONS IN CONTRACT SPECIAL PROVISIONS, INCLUDING ANY RESTRICTIONS MANDATED BY PROJECT ENVIRONMENTAL DOCUMENT. RESTRICTIVE LANGUAGE SHOULD BE INCLUDED IF PROJECT IMPACTS RESIDENTIAL AREA **]**

ARTICLE 26. TESTS AND INSPECTIONS

- a. If the Contract Documents, the District Representative, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or Approved, Contractor shall provide the District Representative at least two (2) working days notice

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

of its readiness for observation or inspection. If inspection is by a public authority other than the District, Contractor shall promptly inform the District of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for District testing and District inspection shall be paid by the District. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

- b. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- c. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the District, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- d. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the District so that the District may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into The Work.
- e. If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of District, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- f. Reexamination of Work may be ordered by the District. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

ARTICLE 27. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of The Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the District. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

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

ARTICLE 28. CONTRACTORS MEANS AND METHODS

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

GENERAL CONDITIONS

ARTICLE 29. AUTHORIZED REPRESENTATIVES

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

ARTICLE 30. HOURS OF WORK

- a. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
- b. Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m.
- c. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on District-observed holidays, unless otherwise Approved by the District Representative:
 - 1) Powered Vehicles
 - 2) Construction Equipment
 - 3) Loading and Unloading Vehicles
 - 4) Domestic Power Tool.

ARTICLE 31. PAYROLL RECORDS

- a. Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- b. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the District. The Contractor shall also provide the following:

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- 1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2) A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the Department of Industrial Relations ("DIR").
- c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
 - d. Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor shall not be marked or obliterated.
 - e. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the District, forfeit Twenty-five Dollars (\$25.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

ARTICLE 32. PREVAILING RATES OF WAGES

- a. The Contractor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

ARTICLE 33. LABOR COMPLIANCE

[INSERT THE FOLLOWING PROVISIONS IF FUNDS DERIVED FROM THE KINDERGARTEN-UNIVERSITY PUBLIC FACILITIES BOND ACT OF 2002 ("PROPOSITION 47") OR 2004 WILL BE USED]

Pursuant to Labor Code section 1771.7, the District has implemented and shall enforce a Labor Compliance Program (LCP) for this Project. The Contractor shall be required to comply with all the requirements of the District's LCP and applicable provisions of the California Labor Code. In bidding on this Project, it shall be the Contractor's responsibility to evaluate the cost of complying with the District's LCP. The Contractor shall include all costs of compliance with specified requirements in the contract amount.

Contractor shall be responsible for complying with the provisions of the District's LCP, including the standard provisions requiring payment of prevailing wages, more further explained below, maintenance and submission of certified weekly payrolls, and hiring of apprenticeship as appropriate. Contractor shall be required to attend, and invite subcontractors to attend, a pre-construction meeting at which a representative of the District shall discuss labor law requirements. Contractor shall work with the District's staff and consultants to ensure the full compliance with the District's LCP and applicable labor law.

ARTICLE 34. EMPLOYMENT OF APPRENTICES

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

ARTICLE 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

handicap on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

ARTICLE 36. LABOR/EMPLOYMENT SAFETY

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

[**DISTRICT'S RISK MANAGER TO REVIEW INSURANCE PROVISIONS**]

ARTICLE 37. WORKERS' COMPENSATION INSURANCE

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

ARTICLE 38. EMPLOYER'S LIABILITY INSURANCE

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

ARTICLE 39. COMMERCIAL GENERAL LIABILITY INSURANCE

- a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Contractor's operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage.
[**PLEASE NOTE THAT THIS AMOUNT MAY NEED TO BE ADJUSTED

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

UPWARD DEPENDING ON THE NATURE AND SCOPE OF THE WORK TO BE PERFORMED. INSURANCE COVERAGE SHOULD BE EVALUATED ON A CASE-BY-CASE BASIS. ALWAYS DELETE THIS BOX.**] If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- b. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.
- c. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District as a result thereof.
- d. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
- e. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

ARTICLE 40. AUTOMOBILE LIABILITY INSURANCE

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of, at least, one million dollars (\$1,000,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the District. Such insurance shall comply with the provisions of Article 30 below.

GENERAL CONDITIONS

ARTICLE 41. BUILDER’S RISK [“ALL RISK”]

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

ARTICLE 42. FORM AND PROOF OF CARRIAGE OF INSURANCE

- a. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the District Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- b. Contractor shall cause its insurance carrier(s) to furnish the District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the District Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. The District, its Director’s and officers, employees, agents or representatives are named as Additional Insureds and Provide a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the District may terminate or Stop Work pursuant to the Contract Documents, unless the District receives,

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project site, or commence operations under this Agreement until the District has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

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

ARTICLE 43. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. **Time for Completion/Liquidated Damages.** Work shall be commenced within ten (10) days of the date stated in the District's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The District is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the District's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the District (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If The Work is not completed as stated in the Contract Documents, it is understood that the District will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each day of delay until The Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.
- b. **Inclement Weather.** Contractor shall abide the District Representative's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of The Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the District in writing of causes of delay. The District shall ascertain the facts and extent of delay and grant extension of time for completing The Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- d. **No Damages for Reasonable Delay.** The District's liability to Contractor for delays for which the District is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the District be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable District delay, including delays caused by items that are the responsibility of the District pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 44. COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms Approved by the District:

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

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

GENERAL CONDITIONS

ARTICLE 45. MOBILIZATION

- a. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate ("Initial Mobilization"). When no bid item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of The Work.
- b. Payment for Initial Mobilization based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the District Representative. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
 1. Obtaining and paying for all bonds, insurance, and permits.
 2. Moving on to the Project site of all Contractor's plant and equipment required for first month's operations.
 3. Installing temporary construction power, wiring, and lighting facilities.
 4. Establishing fire protection system.
 5. Developing and installing a construction water supply.
 6. Providing and maintaining the field office trailers for the Contractor and the District Representative, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
 7. Providing on-site communication facilities for the Owner and the District Representative, including telephones, radio pagers, and fax machines.
 8. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
 9. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
 10. Arranging for and erection of Contractor's work and storage yard.
 11. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

12. Full-time presence of Contractor's superintendent at the job site as required herein.
13. Submittal of Construction Schedule as required by the Contract Documents.

ARTICLE 46. PAYMENTS

- a. The District shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Contractor shall be paid a sum equal to ninety percent (90%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments.
- b. The Contractor shall, after the full completion of The Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.
- c. Unless otherwise required by law, the final payment of ten percent (10%) of the value of the Work, if unencumbered, shall be paid no later than sixty (60) Days after the date of recordation of the Notice of Completion.
- d. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the District arising from this Contract.
- e. Payments to the Contractor shall not be construed to be an acceptance of any defective work or improper materials, or to relieve the Contractor of its obligations under the Contract Documents.
- f. The Contractor shall submit with each payment request the Contractor's conditional waiver of lien for the entire amount covered by such payment request, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors and materialmen for all work and materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by California Civil Code Section 3262. Prior to final payment by the District, the Contractor shall submit a final waiver of lien for the Contractor's work, together with releases of lien from any subcontractor or materialmen.

[INSERT THIS PARAGRAPH IF STATE FUNDS ARE USED FOR THE PROJECT.]

- g. Prior to, and as a condition precedent for final payment, Contractor shall provide the Construction Manager with written documentation identifying the amount paid to Disabled Veteran Business Enterprises (DVBE), and shall submit the certification letter issued by the Office of Small Business Certification and Resources verifying the DVBE status of the subject subcontractors. This documentation is required regardless of whether DVBE subcontractors were utilized in the performance of the Contract.

GENERAL CONDITIONS

ARTICLE 47. PAYMENTS WITHHELD AND BACK CHARGES

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

- a. Stop Notice Claims.
- b. Defective work not remedied.
- c. Failure of Contractor to make proper payments to its subcontractors or suppliers.
- d. Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
- e. Damage to another contractor or third party.
- f. Amounts which may be due the District for claims against Contractor.
- g. Failure of Contractor to keep the record ("as-built") drawings up to date.
- h. Failure to provide updates on the construction schedule.
- i. Site clean up.
- j. Failure of the Contractor to comply with requirements of the Contract Documents.
- k. Liquidated damages.
- l. Legally permitted penalties.

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

ARTICLE 48. CHANGES AND EXTRA WORK

- a. **Change Order Work.**
 - 1) The District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract amount and Contract time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- 2) All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Contractor. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions and provisions of the original Contract.
- 3) Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract time, within seven (7) Days after receipt of a scope of a proposed change order, unless the District requests that proposals be submitted in less than seven (7) Days.
- 4) Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- 5) Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the District.
- 6) Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the District.
- 7) If the Contractor fails to submit the cost proposal within the seven (7) Day period (or as requested), the District has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the contract price in accordance with the District's estimate of cost. If the change is issued based on the District estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the District's estimate was in error.
- 8) Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:
 - (a) Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

- (b) Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the District Representative shall determine the materials cost, at its sole discretion.
- (c) Tool and Equipment Use. No payment will be made for the use of small tools, tools which have a replacement value of \$1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.
- (d) Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
 - i. "Net Cost" is defined as consisting of costs of labor, materials and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up.
 - ii. For Work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
 - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work to which the Contractor may add five (5%) percent of the subcontractor's Net Cost.
 - iv. For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work to which the subcontractor and general contractor may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.
 - iv. No additional mark up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

and profit payable by District exceed twenty-five (25%) percent of the Net Cost as defined herein.

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

GENERAL CONDITIONS

ARTICLE 49. OCCUPANCY

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

ARTICLE 50. INDEMNIFICATION

Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of District's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

ARTICLE 51. RECORD ("AS BUILT") DRAWINGS

- a. Contractor shall prepare and maintain a complete set of record drawings (herein referred to as "as-builts") and shall require each trade to prepare its own as-builts. 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. Contractor shall mark the as-builts to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, Contractor must record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of The Work.
- b. Contractor shall note related change order numbers where applicable. Contractor shall organize as-builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Contractor to

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

also provide an electronic version of the as-builts. The suitability of the as-builts will be determined by the District Representative.

ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

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

ARTICLE 53. DISTRICT'S RIGHT TO TERMINATE CONTRACT

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) Days after the service of such notice, such condition shall cease or satisfactory arrangements (acceptable to the District) for the required correction are made, this Contract shall be terminated. In such case, Contractor shall not be entitled to receive any further payment until the Project has been finished. The District may take over and complete The Work by any method it may deem appropriate. Contractor and its surety shall be liable to the District for any excess costs or other damages incurred by the District to complete the Project. If the District takes over The Work, the District may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Project site.

- b. **Termination For Convenience:** The District may terminate performance of The Work in whole or, in part, if the District determines that a termination is in the District's interest.

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

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

- 1) Stop Work as specified in the Notice.
- 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
- 3) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
- 4) Terminate all subcontracts to the extent that they relate to the portions of The Work terminated.
- 5) Place no further subcontracts or orders, except as necessary to complete the remaining portion of The Work.
- 6) Submit to the District, within ten (10) Days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

Contractor solely as a result of the District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the District no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by the District's Termination for Convenience."

- 7) These provisions are in addition to and not in limitation of any other rights or remedies available to the District.
- c. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the District may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the District or the Contract is terminated.

ARTICLE 54. WARRANTY AND GUARANTEE

- a. Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.
- b. Unless otherwise stated, all warranty periods shall begin upon the filing of the Notice of Completion. Unless otherwise stated, the warranty period shall be for one year.
- c. The Contractor shall remedy at its expense any damage to District-owned or controlled real or personal property.
- d. Contractor shall furnish the District with all warranty and guarantee documents prior to final Acceptance of the Project by the District.
- e. The District shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the county shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense.
- f. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the District may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Contractor shall:

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

- 1) Obtain for District all warranties that would be given in normal commercial practice;
- 2) Require all warranties to be executed, in writing, for the benefit of the District; and
- 3) Enforce all warranties for the benefit of the District, unless otherwise directed in writing by the District.

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

ARTICLE 55. DOCUMENT RETENTION & EXAMINATION

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

ARTICLE 56. SOILS INVESTIGATIONS

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

ARTICLE 57. REQUIRED CERTIFICATIONS

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

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

- a. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 3. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- b. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- c. **Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Contract, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.

ARTICLE 58. SEPARATE CONTRACTS

- a. The District reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

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

ARTICLE 59. NOTICE AND SERVICE THEREOF

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

ARTICLE 60. NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, the District shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

ARTICLE 61. STATE LICENSE BOARD NOTICE.

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

GENERAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement]

ARTICLE 62. INTEGRATION

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

ARTICLE 63. ASSIGNMENT

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

ARTICLE 64. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

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

ARTICLE 65. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (chapter 2 (commencing with Section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the District makes final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 66. PROHIBITED INTERESTS

No District official or representative who is authorized in such capacity and on behalf of the District to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

GENERAL CONDITIONS

ARTICLE 67. LAWS AND REGULATIONS

- a. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the District Representative in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District Representative, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 68. PATENT FEES OR ROYALTIES.

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

ARTICLE 69. OWNERSHIP OF DRAWING

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

ARTICLE 70. NOTICE OF TAXABLE POSSESSORY INTEREST

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

ARTICLE 71. 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).

GENERAL CONDITIONS

ARTICLE 72. DISTRICT'S INSPECTOR

- a. One or more inspectors employed by District in accordance with requirements of title 19, 21 and/or 24 of the California Code of Regulations will be assigned to the work. His duties are specifically defined in the California Code of Regulations.
- b. Inspector SHALL have access to all plant operations involving work under this contract and shall be provided reasonable advance notice of the time and place of operations which the inspector desires to observe. Inspector shall be provided with all necessary samples of materials and work for testing purposes. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve contractor from any obligation to fulfill this contract. Inspector, after consultation with the construction manager and architect, together, shall have authority to stop work whenever the provisions of the contract documents are not being complied with and contractor shall instruct his employees accordingly.

ARTICLE 73. INSPECTOR'S FIELD OFFICE

- a. The Contractor shall be responsible for providing the inspector's field office. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, and a fax machine at contractor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be provided by contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.
- c. The provisions of this section are intended to be complementary to any requirements provided elsewhere in these Contract Documents, however in the event of conflicts between this section and other provisions of these Contract Documents, this section shall prevail.

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

SPECIAL CONDITIONS

FINGERPRINTING REQUIREMENT. Pursuant to Article 13 of the General Conditions the District's Determination of Fingerprinting Requirement Application is as follows:

The District has considered the totality of the circumstances concerning the Project and as determined that the Contractor and Contractor's employees.

- a. ____ are subject to the requirements of Education Code section 45125.2 and Paragraph (a) of Article 13 of the General Conditions.
- b. ____ are not subject to the requirements of Education Code section 45125.2 and are subject to Paragraph (b) of Article 13 of the General Conditions.

[Insert if the District HAS NOT made specific findings regarding specific materials, products, things or services required to be used on the Project:

The District has not made findings pursuant to Public Contract Code Section 3400(b) regarding the use of specific materials, products, things, and/or services that must be utilized for the Project.]

[Insert if the District HAS made specific findings regarding specific materials, products, things or services required to be used on the Project:

The District has made the following findings as they relate to need for the use of specific material(s), product(s), thing(s), and/or service(s) that must be utilized for the Project:

(INSERT FINDINGS MADE PURSUANT TO PUBLIC CONTRACT CODE SECTION 3400.)

Based on the above described findings, the District requires that the following specific product(s), thing(s), and/or service(s) be utilized for the Project:

[INSERT SPECIFICATIONS OR BRAND NAMES OF MATERIALS, PRODUCTS, THINGS, OR SERVICES REQUIRED BY DISTRICT**]**

SPECIAL CONDITIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

TECHNICAL SPECIFICATIONS



TECHNICAL SPECIFICATIONS

[Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.]

PLANS AND DRAWINGS



PLANS AND DRAWINGS

GROSSMONT UNION HIGH SCHOOL DISTRICT
1100 Murray Drive, El Cajon, CA 92020
619-644-8051 Fax: 619-460-0963

PUBLIC WORKS CONTRACT
(Not to Exceed \$15,000)

THIS CONTRACT made and entered into on, _____, _____, by and between _____, hereinafter called the **CONTRACTOR** and the Grossmont Union High School District hereinafter called the **DISTRICT**.

WITNESSETH; The parties do hereby contract and agree as follows:

1. The **CONTRACTOR** shall furnish labor and materials to the **DISTRICT** in accordance with the **Terms & Conditions set forth in Attachment B hereof and incorporated herein by this reference and any specifications attached** for a total contract price of:

_____ Dollars (\$_____)
(MAY NOT EXCEED \$15,000) to be paid in full within thirty (30) days after completion and acceptance

2. Contractor shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following classification: _____. This contract shall commence on _____ with work to be completed _____ within _____ (____) consecutive _____ days and/or _____ by _____.
3. **SCOPE OF WORK:** By submitting a proposal, contractors warrant that they have made a site examination as they deem necessary as to the condition of the site and certify all measurements, specifications and conditions affecting the work to be performed at the site. Proposals are subject to acceptance by the signing of a contract and issuance of an appropriate purchase order. The District reserves the right to accept or reject any and all quotes and reserves the right to waive any informality in any quote. **CONTRACTOR PROPOSES TO FURNISH LABOR AND MATERIAL IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:** (Describe in detail the scope of the proposed project and materials to be furnished)

SCOPE OF WORK

Note: If contract exceeds \$25,000, per Civil Code Section 3247, Contract shall provide a Payment Bond.

NONCOLLUSION AFFIDAVIT

The party making the foregoing bid certifies 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 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.

SCHOOL SAFETY ACT – COMMUNICATIONS WITH PUPILS

_____ In accordance with Education Code Section 45125.1, the District has determined that fingerprinting and certification will be required of the employees of the contractor who provide services under this contract (certification form attached).

_____ In accordance with Education Code Section 45125.2, the District has determined that an exemption exists under requirements of 45125.1, and that workers may have other than limited contact with students. Therefore, the Contractor is required to provide or agree to one or more of the following: (to be determined by District)

_____ Installation of physical barrier at the work site to limit contact with pupils.

_____ Surveillance of employees of the Contractor by school personnel.

_____ Continual supervision and monitoring of all employees of the Contractor by an employee of the Contractor whom the DOJ has ascertained has not been convicted of a violent or serious felony.

Supervisor's Name: _____

Soc. Sec. No. (last 4 digits or full CDL # _____

_____ In accordance with Education Code Section 45125.1, subdivision c, the District has determined that this contract is not subject to Education Code Section 45125.1 (a), because the contractor's employees, including the employees of any subcontractor, will have only "limited contact" with pupils on the site. Justifications is as follows:

_____ Work will be performed on a day or days when school is not in session (holidays, weekend or non-teaching days – may not include after school hours).

_____ Other. Please describe . _____

Signature: _____ Title: _____ Date: _____

Signature of District Official responsible for assuring selected conditions are met in accordance with Education Code Section 45125.2, if applicable.

Contractor understands that District department staff may monitor and evaluate adherence to these conditions during the performance of their work.

IN WITNESS WHEREOF, the parties hereunto have subscribed to this Contract, including all contract documents listed below, and acknowledge that the provisions of this contract shall prevail over any conflicting provisions of the following contract documents:

Work Specs/Scope of Work Statement

Certificates of Insurance

Non Collusion Affidavit

Purchase Order No. _____

Contractor Certification Form, if applicable (Attachment A)

Terms and Conditions as dated (Attachment B)

Workers' Compensation Certificate (Attachment C)

Payment Bond (for contracts in Excess of \$25,000)

TYPE OF BUSINESS ENTITY

_____ Individual

_____ Sole Proprietorship

_____ Partnership

_____ Corporation

_____ Other

TAX IDENTIFICATION

Employer Identification Number (Attach W-9)

Social Security Number

License No: _____ Classification _____ Expiration Date: _____

(District Use Only: License verified by _____ Date: _____)

I hereby agree to abide by these terms and conditions if awarded the project as described herein. Under penalty of perjury I certify that I am a duly authorized agent/representative of the company providing this proposal. I also certify that none of the individuals identified on attached certification form (if applicable) or any individual identified above as been convicted of a felony as defined in Education Code 45122.1

Contractor: _____

Grossmont Union High School District

Name _____

Name: Bob Kiesling

Title: _____

Title: Executive Dir., School Facilities

Address: _____

City, State, Zip: _____

Signature of District Representative

Phone, Fax, Email: _____

Board Approval: October 11, 2012

Accepted by: _____
Authorized Signature

Date: _____

ATTACHMENT B
TERMS AND CONDITIONS DATED

ARTICLE 1. WAGE RATES: Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, divisions 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies of said determinations are on file at District's principal office and available to any interested party on request Refer to web site (www.dir.ca.gov).

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified. Each worker of the Contractor or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such workers.

Each worker needed to execute the work on the project shall be paid travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code section 1173.8.

The Contractor shall, as a penalty to the District, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or by any subcontractor under him. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his prevailing wage obligations, or the Contractor's willful failure to pay the correct rates of prevailing wages. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor, and the Contractor shall be bound by the provisions of Labor Code section 1775.

Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.

Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and similar purposes.

Contractor shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Contractor and each subcontractor shall keep an accurate payroll record, 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 in connection with the public work.

The payroll records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- b) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- c) A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Contractor.

Contractor shall file a certified copy of the records required above with the District or entity that requested such records within ten days after receipt of a written request. Any copies of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor shall not be marked or obliterated.

Contractor shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

In the event of noncompliance with the requirements of this article regarding maintenance of records, the Contractor shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this article. Should noncompliance still be evident after such ten-day period, the Contractor shall, as a penalty by the District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the

request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due.

ARTICLE 2. APPRENTICES: Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly indentured to the Contract in full compliance with provisions of the Labor Code. The prime contractor shall bear the responsibility of compliance with Labor Code section 1777.5 for all apprenticeable occupations and agrees that he will comply with said section which reads: "Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered."

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070), of Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.

When the contractor to whom the contract is awarded by the District, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contact award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate date the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

The Contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in the section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand (\$15,000) or 20 working days. This section shall not use any work performed by a journeyman in excess of eight hours per day or 40 hours per week to calculate the hourly ratio.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met: a) Unemployment for the previous three-month period in such area exceeds an average of 15 percent. b) The number of apprentices in training in such area exceeds a ratio of 1-to-5. c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis, or on a local basis. d) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life, or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him who, employs journeymen or apprentices in any apprenticeable craft or trade to perform work under the contract and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do. Where the trust fund administrators are unable to accept the fund, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. This contractor or subcontractor may add the amount of the contributions in computing his bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code Section 227.

The District awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor. All decisions of the joint apprenticeship committee under this section are subject to Labor Code Section 3081.

ARTICLE 3. WORK HOURS: 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 hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

The Contractor and every subcontractor shall keep accurate record showing the name 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 the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this contract by the Contractor or by any subcontractor or by any 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.

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

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

ARTICLE 6. WORKERS' COMPENSATION INSURANCE: The Contractor shall provide, during the life of this contract, workers' compensation insurance for all its employees engaged in work under this contract, or at the site of the project, and if 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. The Contractor shall provide to the District a Certificate regarding Workers' Compensation available from the District prior to performing the work of the contract.

ARTICLE 7. PROOF OF INSURANCE: Contractor must provide Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than \$1,000,000 per occurrence (combined single limit) and \$1,000,000 Project Specific Aggregate (for this project only). Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of Trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, the architect, and the architect's consultants, if applicable, individually and collectively as additional insured.

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

Contractor and any subcontractor shall not commence work nor shall he allow any subcontractor to commence work under this contract until all required insurance certificates have been delivered to and approved by District.

ARTICLE 8. INDEMNIFICATION: District shall not be liable for, and Contractor shall defend and indemnify District against any and all claims, demands, liability, judgements, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees 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 contractors, 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 defend or indemnify District from a Claim if its 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 9. MATERIALS: Contractor warrants good title to all material, supplies and equipment installed or including in the work. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within specified time. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.

ARTICLE 10. 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 11. GUARANTEE: Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

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

ARTICLE 12. PROTECTION OF WORK AND PROPERTY: The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for safety of employees on the work and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of the organization on the work, whose duty shall be prevention of accidents. Contractor shall report name and position of person so designated to District.

ARTICLE 13. DISTRICT'S RIGHT TO TERMINATE CONTRACT: If the Contractor 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 fails to complete said work within such time, or if the Contractor should be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor 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 should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or instructions of District, or otherwise be guilty of a substantial violation of any provision of the contract, or if Contractor or subcontractors should violate any of the provisions of this contract, then District may, without prejudice to any other right or remedy, serve written notice upon Contractor and surety of its intention to terminate this contract, such notice to contain the reasons for such intention to terminate, and unless within ten days after the service of such notice such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall upon the expiration of said ten (10) days, cease and terminate.

ARTICLE 14. COMPLIANCE WITH STORM WATER PERMIT

Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") – General NPDES Permit No. CAS000004 adopted by the State Water Resources Control Board. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit and include all costs in the Contract amount. Contractor shall be responsible for procuring, implementing and complying with the provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District Representative. Failure to comply with the Permit is in violation of federal and state law.

ARTICLE 15. CLEAN UP: Contractor at all times shall keep premises free from debris such as waste, rubbish and excess materials and equipment caused by his work; debris shall be removed from premises. Contractor shall not leave debris under, in, or about the premises. Upon completion of work Contractor shall clean interior and exterior of building including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site.

ARTICLE 16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provisions is not inserted, or is not correctly inserted then upon application of either party the contract shall forthwith be physically amended to make such insertion or correct.

ARTICLE 17. EXCAVATION 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 apply:

- a. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. (2) Subsurface or latent physical conditions at the site differing from those indicated. (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractors' cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this contract, but shall proceed with all work to be performed under the contract. A contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protest between the contracting parties.

ARTICLE 18. REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES: The Contractor shall not be assessed for liquidated damages for delay in completion of this project, when such delay was caused by the failure of the awarding authority of this contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with section 4215 of the Government Code, if the Contractor while performing the contract discovers any existing main or trunkline 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 owners, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work.

ARTICLE 19. CHANGE ORDERS: Change orders may not cause the total aggregate cost of the project to exceed \$15,000 or the project will become subject to competitive bidding. The District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the contract 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. In giving instructions, Contractor agrees that the District shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from District, and no claim for an addition to the contract sum shall be valid unless so ordered.

ARTICLE 20. RESOLUTION OF CONSTRUCTION CLAIMS OF \$375,000 OR LESS: For public work claims of \$375,000 or less between Contractor and District, if District has not elected to resolve disputes by arbitration pursuant to article 7.2 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code, the provisions of article 1.5 (commencing with section 20104) of chapter 1 of part 3 of the Public Contract Code apply ("Article 1.5").

For purposes of Article 1.5, "public work" has the same meaning as in section 3100 and 3106 of the Civil Code. "Claim" means a separate demand by Contractor for a time extension, or payment of money or damages for work done by or for Contractor, payment for which is not otherwise expressly provided in the contract or to which Contractor would not otherwise be entitled, or a payment disputed by District.

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

Within fifteen (15) days of receipt the District's response, if claimant disputes District's written response or within fifteen (15) days of the District's failure to respond within the time prescribed, the claimant shall provide written notification to District demanding an informal conference to meet and confer ("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 conference") to be scheduled by the District within

30 days. If the claim or any portion of the claim remains in dispute following the meet and confer conference, the claimant may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim until the time the claim is denied, including time utilized as a result of the meet and confer process.

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

If the material 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.

Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates not to exceed their customary rate. Such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall state or county funds pay these fees or expenses. Any party who, after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgement, 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 judgement.

ARTICLE 21. DRUG FREE/SMOKE FREE/ALCOHOL FREE POLICY: All District sites are designated drug free/smoke free/alcohol free. The use or abuse of controlled substances, tobacco products and alcohol will not be tolerated.

THIS CONCLUDES THE GENERAL TERMS AND CONDITIONS DATED _____
consisting of Article 1 through Article 21



GROSSMONT UNION HIGH SCHOOL DISTRICT

1100 Murray Drive, El Cajon, CA 92020

CONTRACTOR CERTIFICATION

I, _____, am (an authorized representative of/doing business as) _____ (Name of Contractor/Consultant) and hereby certify that, pursuant to Education Code Section 45125.1, this business entity has conducted the required criminal background check(s) of all persons who will be providing services to the Grossmont Union High School District on behalf of this business entity, and that none of those persons have been reported by the Department of Justice ("DOJ") as having been convicted of a serious or violent felony as specified in Penal Code Sections 667.5 and/or 1192.7(c). I understand that this Certificate is not to be signed and submitted until I have received clearance from DOJ regarding those persons named.

As further required by Education Code Section 45125.1, attached hereto and incorporated herein is a list of the names of the person(s) who will be providing services to Grossmont Union High School District and who may come in contact with pupils. I agree to keep this list current and to notify the Grossmont Union High School District of any additions/deletions as they occur.

Name

4-digits of SSN or full CDL#

(Attach additional page if necessary)

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

Executed this _____ day of _____, 20____, in San Diego County, California.

Name of Contractor/Consultant

Name/Title of Authorized Representative

(Signature)

WORKERS' COMPENSATION CERTIFICATE

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:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations, of ability to self-insure and to pay any compensation that may become due to employees.

I am aware of the provisions of Labor Code section 3700 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 provision before commencing the performance of the work of this contract.

Proper Name of Bidder

By: _____

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.

DVBE Instructions

Steps / Instructions

Document the GFE efforts on the forms in this package entitled "Good Faith Effort".

Do not delay until the final days before your bid is due to start this process.

1. Dial (619) 644-8051 (if no answer, leave voicemail with caller's name, company name, company address, telephone number plus area code, District's bid number) to obtain assistance with any of the following:
 - a. A referral to another state agency that provides DVBE listings and publication resources
 - b. Assistance in completing the DVBE forms in this package.
 - c. Answers to questions about DVBE participation and/or GFE documentation requirements.
2. Contact other state AND federal agencies AND local DVBE organizations for assistance in identifying potential DVBE service providers or suppliers.
 - a. Contact one or more California state agencies. The Department of General Services, Procurement Division (DGS-PD), Office of Small Business and DVBE Services (OSDS) qualifies as one of these contacts. Verbally contact DGS at (800) 559-5529 or (916) 375-4940 during normal business hours to obtain a list of certified DVBEs. This information can also be accessed by searching the online database at www.pd.dgs.ca.gov/smbus. Begin the search by selecting "Find Certified SBs and DVBEs." Then search using Keywords or by clicking on "Include SIC Codes in Search."
 - b. Contact one or more local California DVBE organizations listed in the DVBE Resource Packet to identify DVBEs. Visit this website to access DGS' current DVBE Resource Packet: <http://www.pd.dgs.ca.gov/publications/resource.htm>.
 - c. Search the U.S. Small Business Administration's (SBA) Central Contractor Registration (CCR) on-line database at www.ccr.gov/ to identify potential DVBEs and click on the "Dynamic Small Business Search" button. Telephone inquiries are not accepted. First time users should access the on-line "help" instructions. Before claiming use of a CCR firm, verify the named DVBE is registered with DGS.
 - d. Enter on the form entitled "**Good Faith Effort**": Date/time of contact; name of organization contacted; contact method; and telephone number, email, or Internet address. Print out and attach a copy of each Internet website page visited (e.g., DGS' OSDS and federal SBA) to prove contacts made via the Internet.
3. Unless GFE advertising is placed by the Construction Manager, advertisements for DVBE service providers, subcontractors or suppliers must be placed in at least:
 - a. One "trade" publication related to a trade or industry, and
 - b. One "focus" publication whose ads are specifically distributed and focused to reach DVBE firms, or
 - c. A single publication that qualifies as both a "trade" and "focus" publication. See DGS' DVBE Resource Packet for a listing of applicable publications.
 - 1) Ad placement may be specifically directed to publications that distribute their ads to businesses in the geographical areas where the work will be performed.
 - 2) **Ads should appear in publications 10–14 calendar days** prior to the date the bid or proposal response is due to be submitted.
 - 3) Give potential subcontractors/suppliers ample time (approximately 3-5 working days) to respond to the ad(s), while allowing sufficient time to seriously consider each firm that submits a response.
 - 4) **Ads should contain** information similar to the following:

[Enter name of bidding firm]
Is seeking qualified DVBE vendors to provide
[Enter description/list of services/supplies that qualify as a commercially useful function.]
in [Enter geographical service areas/locations, if applicable]
for Project Name and Bid Number
Contact: [Enter a contact name, address, telephone and fax number, and/or email address]
Submit qualifications by: [date/time] or
Submit bids by: [date/time]__
- 5) Ads placed in general circulation newspapers including the *S.D. Union* or the *Reader* are not acceptable.

(Continued on next page)

DVBE Instructions

GFE Steps / Instructions (continued)

Document the GFE efforts on the forms in this package entitled "Good Faith Effort".

Do not delay until the final days before the bid is due to start this process.

Participation and GFE forms appear in the pages that follow.

- 6) Attach to the form entitled "**Good Faith Effort**" a copy of the placed ad(s) indicating, in Step 3 on the Good Faith Effort form, the publication date, whether the publication is a trade publication, focus publication, or both, and whether an ad copy or written ad content is attached.
4. **Transmit direct solicitations or invitations to bid to potential DVBEs, identified in Steps 2 and/or 3, by way of mail, telephone, email, fax, or other method.**
 - a. Submit a **one or more examples of direct solicitation**. Solicitations should contain: company name; contact name, address, telephone and fax number (if applicable), District's bid name and number; a description of commercially useful goods and/or services for which subcontractors are sought; location of service area; and response date.
 - b. If contact with DVBE firms is verbal or by telephone, document in writing the date of contact, person contacted, and business/subcontract opportunities discussed.
 - c. Submit a list of DVBE firms to whom direct solicitations were transmitted (i.e., DVBE bidders list). Include each DVBE firm's name, mailing address, contact name/title (if applicable), telephone/fax number, and email address (if applicable).
5. **Show that DVBE firms that responded to the ad(s) and/or direct solicitations were considered.** Bidding firms are encouraged to achieve full or partial DVBE participation. Review the Program Preference section of the bid document for information about the DVBE Incentive that is available to eligible bidders/proposers that achieve participation.
 - a. List each DVBE firm that responded with interest to the bidding firm's ad(s), telephone/fax/email contacts, or direct solicitations. If no responses were received, indicate "none", as instructed in Step 5 on page 3.
 - b. **For each DVBE listed in Step 5 on page 3, indicate if the bidding firm:**
 - 1) **WILL USE** the DVBE to perform a commercially useful function. For each DVBE that will be used, do the following:

Enter the name of the DVBE on the form entitled "**Actual DVBE Participation**". Indicate whom the DVBE will contract with, the commercially useful function the DVBE will provide or perform. Attach a copy of the DVBE's current DGS certification.
 - 2) **WILL NOT USE** the DVBE after giving consideration to such things as the DVBE's qualifications, availability when needed, capacity to perform/deliver the full range of services/supplies, location or proximity to the service area, results of reference checks, and/or the nature of the services offered by the DVBE or the nature of the goods that can be supplied by the DVBE, etc.

For each DVBE firm that will not be used, indicate, in Step 5 on page 3, the business reason(s) for choosing not to use the DVBE.

Mandatory Use of Identified DVBEs

If awarded the contract, the Contractor must faithfully use each DVBE identified for use and listed on the form entitled "**Actual DVBE Participation**" and provide a statement as called for in the Certification of Compliance with DVBE Policy contained in the Bid Documents.

Actual DVBE Participation

NAME OF DVBE FIRM IDENTIFIED FOR USE (Prime is to enter its own name, if the Prime is a certified DVBE)	FIRM THAT DVBE WILL CONTRACT WITH (Prime is to enter "Self", if the Prime is a certified DVBE)	COMMERCIALLY USEFUL FUNCTION TO BE PERFORMED OR PROVIDED BY THE IDENTIFIED DVBE	DVBE % Claimed	TIER (See legend below)

DVBE % Claimed:

Enter the percentage level of actual DVBE participation achieved, even if the amount of participation achieved is less than a full three percent (3%) of the total bid amount. Participation may be expressed as a partial/fractional decimal percentage. **Do not enter dollar figures in the "DVBE % Claimed" column.**

TIER = 0 = Prime Contractor

1 = Subcontractor/Supplier to the Prime Contractor

2 = Subcontractor/Supplier to a Level 1 Subcontractor/Supplier

3 = Subcontractor/Supplier to a Level 2 Subcontractor/Supplier, etc.

Attach to this form, a copy of the current DVBE certification issued by DGS for each DVBE listed in the first column. If a new or renewed certification request was recently approved by DGS, but confirmation of DVBE certification has not yet been received, place a footnote next to the DVBE's name and indicate on this form "DVBE Cert Pending" or "DVBE Cert to Follow".

Bidding/Proposing Firm's Name	Signature
Printed Name/Title of Person Signing Above	Date Signed

Good Faith Effort

Steps 1 and 2

Show the date and form of contact with GUHSD **and** show the contacts made with one or more other California state agencies **and** the Federal SBA **and** one or more California local DVBE organizations (see DGS' Resource Packet).

DATE OF CONTACT	TIME OF CONTACT	NAME OF AGENCY OR ORGANIZATION CONTACTED	CONTACT METHOD (Enter voice mail, internet access, or name of person contacted)	PHONE NUMBER, EMAIL OR WEB ADDRESS
		Awarding Agency - GUHSD		(619) 644-8051
		Dept. of General Services' Small Business and DVBE Services	Voice mail	(916) 375-4940 or (800) 559-5529
		Dept. of General Services' Small Business and DVBE Services	Internet access **	http://www.pd.dgs.ca.gov/smbus/contact.htm
		U.S. SBA Central Contractor Registration (CCR)	Internet access only **	http://www.ccr.gov
			** Attach one copy of each Internet website page that is visited as proof of this portion of the good faith effort.	

Step 3

Show proof of advertising in one trade and one DVBE focus publication, **OR** one publication qualifying as both a trade and a DVBE focus publication. Be certain to attach the CM's advertisement if advertisement was made by Construction Manager.

NAME OF PUBLICATION SOURCE	PUBLICATION DATE(S)	TYPE OF PUBLICATION Check the one that applies.			COPY OF AD ATTACHED	AD CONTENT ATTACHED
		Trade	Focus	Both	Check the one that applies.	

Step 4

Show proof that direct invitations to bid were transmitted to potential DVBEs by way of mail, email/fax, telephone, or other method.

A. At a minimum attach, to this form, one or more examples of invitations to bid or solicitations that were transmitted directly to potential DVBEs. Bidding firm's may attach:

- One or more examples of the direct solicitations used to solicit bids from potential DVBE subcontractors/suppliers, **and/or**
- One or more copies of the narrative content of an emailed invitation to bid that was transmitted to potential DVBE subcontractors/suppliers **or** one or more copies of a faxed invitation to bid that was transmitted to potential DVBE subcontractors/suppliers, **and/or**
- A description of the verbal dialog held with a potential DVBE subcontractor/supplier via telephone or personal meeting, including date of contact, person spoken to, and potential business opportunities discussed.

B. Attach to this form a copy of the DVBE bidder list. This is the list of certified DVBE firms to whom direct solicitations or invitations to bid were transmitted and may include the DVBE firms that responded to the bidding firm's published ad(s).

- Include each certified DVBE firm's name, mailing address, email address (if applicable), telephone and fax number.

(Continued on the next page)

Step 5

Show that the bidding firm has considered the interested DVBE firms that responded to the bidding firm's ad(s), direct solicitations, and/or personal contacts. If no responses were received from DVBEs, indicate "None" on the first line of Column 1.

[illegible]

For each entry in Column 2A, transfer the firm's name and claimed percentage value of use to the form entitled “**Actual DVBE Participation**”. Complete Column 2A, only for those DVBEs that the bidding firm intends to subcontract with. An entry in Column 2A will impose an obligation on the bidding firm to use the DVBE firm identified for the percentage value claimed. DVBE participation may be expressed as a partial/fractional decimal percentage.

Complete Column 3 for each "X" placed in Column 2B. In Column 3, indicate the business reason(s) for electing not to use the DVBE firm.

Sole authority rests with GUHSD to determine whether or not a bidder/proposer has successfully documented actual DVBE participation and/or whether a bidder/proposer has made an adequate GFE to achieve participation. Bidders/proposers may, at their sole option, choose to submit both forms in this package (documenting both full participation and a GFE) as insurance against a finding that the actual participation claimed is unacceptable.

Forms are to be submitted with your bid documents.

Bidding/Proposing Firm's Name		Signature	
Printed Name/Title of Person Signing Above			Date Signed



PUBLIC WORKS CONTRACTORS' GUIDEBOOK



DISCLAIMER: Nothing contained in this guidebook is to be construed as legal advice. It is highly recommended that contractors that are not familiar with a procedure or law obtain information directly from the agency responsible for enforcement or seek legal counsel.

Guiselle Carreon, Director of Purchasing, 619-644-8051

TABLE OF CONTENTS

California Uniform Public Construction Cost Accounting	1
Contract Requirements	4
Fingerprinting & Badging Procedures	5
Insurance Requirements	6
Payment & Performance Bonds.....	8
Escrow Instructions	9
Bid Protests.....	10
Stop Payment Notices	11
Change Orders	13
Labor Compliance.....	14
Disabled Veteran Business Enterprise (DVBE)	16
Contact Names & Numbers	17

INTRODUCTION

The Uniform Public Construction Cost Accounting Act enacted in 1983 under Public Contract Code Section 22000 et seq. The intent was to “promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state.” CUPCCAA authorizes alternate bidding procedures by establishing higher threshold amounts for force-account and work required to be formally bid. In addition, it sets limits between the force-account and formal bid thresholds.

CUPCCAA BID LIMITS

Projects of \$45,000 or Less:

Public projects of thirty thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

Projects of \$45,001 to \$175,000:

An informal bidding process is required for public projects exceeding \$45,000, but falling below \$175,000.

Notices for informal bid process are to be mailed, faxed, or emailed to registered contractors and/or trade or focus papers ten (10) day prior to bid opening.

Public Projects in Excess of \$175,000:

A formal bidding process is required for all contracts estimated to exceed \$125,000:

1. A Notice Calling for bids must be published in a paper of general circulation not less than fourteen (14) days prior to opening of bids.
2. The Notice must also be send to the specified construction trade journals for your locality not less than **fifteen (15)** days prior to opening of bids.

CONTRACT REQUIREMENTS

The Grossmont Union High School District would like to inform all contractors that under Public Contract Code Section 22002, subdivision, all contracts for public works of \$45,000 or more must be competitively bid. Construction contracts **greater than \$1,000** are subject to public works regulations including prevailing wage. Therefore, it is imperative that no construction, alterations, repairs, improvements, or renovations be performed on any property or facility owned, leased, or operated by the Grossmont Union High School District without an executed agreement signed by an authorized signatory of the District.

The Governing Board of the Grossmont Union High School District has given signatory authority for capital improvement contracts to the following:

Ralf Swenson, Superintendent
Scott Patterson, Deputy Superintendent, Business Services
Bob Kiesling, Executive Director School Facilities

Public works contracts require additional documentation prior to construction including, but not limited to, certificates of insurance; certifications of compliance with fingerprinting, drug free workplace, and asbestos regulations; workers' compensation certificate; non-collusion affidavit; and a performance bond. A payment bond is required by law for any public works project in excess of \$25,000.

All contracts require approval by the Governing Board to make them valid. Any contract signed by anyone other than the aforementioned, may be considered null and void. It is the responsibility of the contractor to be familiar with Public Contract Code, Labor Code, Civil Code and all other codes or regulations governing public works contracts. Any contractor who performs services without meeting state and/or federal legal requirements of those of the District is working under an invalid contract and is at risk of non-payment.

Public Contract Code and codes governing bidding may be viewed at: <http://www.leginfo.ca.gov>

It is in your best interests to contact the Purchasing Department at 619-644-8051 to verify that you are in compliance with contracting procedures prior to commencing any work at any of the Grossmont Union High School District sites.

FINGERPRINTING & BADGING PROCEDURES

The District has adopted new fingerprinting and ID Badge procedures for non-employees.

Fingerprinting

The District will only fingerprint a contractor or a contractor's employees if that contractor has an ORI Number (origination number). Contractors may obtain an ORI number by completing the process to become an applicant agency. Information is available at the Department of Justice website: (<http://ag.ca.gov/fingerprints/agencies.htm>). All LiveScan offices require an ORI number to obtain FBI Background Checks and DOJ clearances. Any person who is to be fingerprinted must be able to provide the Request for Livescan Form, ORI number, their name, valid California identification such as a driver's license (out-of-state ID requires a Social Security Card), and payment in the form of a money order, cashier's check, Visa or Mastercard.

Construction Contractor Badge Procedures

Badges will be provided by our LiveScan office as follows:

Cleared Badges: Upon completion of fingerprinting and clearance by the DOJ, the Contractor shall provide the District and/or the Construction Manager (for CM projects) with a written, **employer-certified** list of DOJ CLEARED employees. A RED badge will be issued showing CLEARED status.

Restricted Badges: Contractor shall also provide a list of employees that have not been fingerprinted. An orange badge (Restricted Access) will be issued to non-cleared employees.

The lists shall have the full name of the employee and for identification purposes, their California Driver's License number or the last four digits of their Social Security Number should the employee not have a CDL. Red I. D. Badges for cleared employees. Badges should be obtained at least five (5) working days prior to start of work.

Contractor **SHALL NOT** permit any employee who does not have a badge to enter school premises or be on any Grossmont Union High School District jobsite. Submission of a list of DOJ cleared employees shall constitute acknowledgment by the Contractor that the employees listed are eligible to provide supervision services for non-cleared employees on a school site campus.

Sample certification and badge request letters are available at:

<http://portal.guhds.net/GUHSD/depts/busserv/purchasing>

Fingerprinting and Department of Justice clearance is the responsibility of the awarded contractor as noted in the Fingerprinting Certifications submitted with your bid documents.

Questions regarding the application for an ORI number can be referred to the Dept. of Justice, 916-227-9508.

Call Guiselle Carreon, Director of Purchasing, at 619-644-8051 if you need assistance.

INSURANCE REQUIREMENTS

Insurance. Comply with insurance requirements as provided in **Section 11.1 PRIME CONTRACTOR'S LIABILITY INSURANCE** of the General Conditions. Before the commencement of the Work, the Prime Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California with a financial rating of at least **A-** status as rated in the most recent edition of Best's Insurance Reports such insurance as will protect the District from claims set forth below, which may arise out of or result from the Prime Contractor's operations under the Contract and for which the Prime Contractor may be legally liable, whether such operations are by the Prime Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

For Contracts up to \$500,000 the following limits apply:	Contractor	Subcontractor
Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:	\$ 1,000,000.00	\$ 1,000,000.00
Project Specific Aggregate (for this project only)	\$ 2,000,000.00	\$ 2,000,000.00
OR		
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:		
(a) Per occurrence (combined single limit)	\$ 1,000,000.00	\$ 1,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 2,000,000.00	\$ 2,000,000.00
(c) Products/Completed Operations	\$ 1,000,000.00	\$ 1,000,000.00
(d) Personal & Advertising Injury limit	\$ 1,000,000.00	\$ 1,000,000.00
For Contracts from \$500,000 - \$1 Million the following limits apply:	Contractor	Subcontractor
Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:	\$ 2,000,000.00	\$ 2,000,000.00
Project Specific Aggregate (for this project only)	\$ 3,000,000.00	\$ 3,000,000.00
OR		
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:		
(a) Per occurrence (combined single limit)	\$ 2,000,000.00	\$ 2,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 3,000,000.00	\$ 3,000,000.00
(c) Products/Completed Operations	\$ 2,000,000.00	\$ 2,000,000.00

(d) Personal & Advertising Injury limit	\$ 2,000,000.00	\$ 2,000,000.00
For Contracts greater than \$1 Million the following limits apply:		
	Contractor	Subcontractor

Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:	\$ 3,000,000.00	\$ 3,000,000.00
Project Specific Aggregate (for this project only)	\$ 5,000,000.00	\$ 5,000,000.00
OR		
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:		
(a) Per occurrence (combined single limit)	\$ 3,000,000.00	\$ 3,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 5,000,000.00	\$ 5,000,000.00
(c) Products/Completed Operations	\$ 3,000,000.00	\$ 3,000,000.00
(d) Personal & Advertising Injury limit	\$ 3,000,000.00	\$ 3,000,000.00

Certificate Holder: Certificate Holder shall be Grossmont Union High School District and _____, [Construction Manager](#).

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

- a. Automotive and truck where operated in amounts as above
- b. Material hoist where used in amounts as above

Additional Insured Endorsement: Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Governing Board, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, _____ (Construction Manager), the Construction Manager's consultants, Architect, and the Architect's consultants, individually and collectively, as additional insureds. (see General Conditions).

PAYMENT & PERFORMANCE BONDS

Contractors will be required to provide both a payment bond and a performance bond, each in an amount equal to 100% of the total contract amount. The forms of the bonds are set forth in the Contract Documents and cannot be altered in any way. Bonds must be issued by a California-admitted surety as defined in California Code of Civil Procedure Section 995.120

Payment Bond: Pursuant to Civil Code 3247 and 3248, payment bonds are required when the expenditure for public work **exceeds \$25,000**. The purpose of the bond is to insure that payment will be made for labor and material claims against the contractor and subcontractors.

Performance Bond: Construction bonds usually involve a type of bond called a surety bond. A surety bond is not an insurance policy. A surety bond is a guarantee, in which the surety guarantees that the contractor, called the “principal” in the bond, will perform the “obligation” stated in the bond. For example, the “obligation” stated in a bid bond is that the principal will honor its bid; the “obligation” in a performance bond is that the principal will complete the project; and the “obligation.” Both the principal and the surety are jointly and severally liable for completion of the work. The purpose of the performance bond is to protect the district from default by a contractor or subcontractor on a public works project.

ESCROW ACCOUNTS

California Public Contract Code 10263 provides that any invitation for bid allow the substitution of securities for monies held (retention) by the public agency. The contractor may request that payments be made directly to the escrow agent. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. (See PCC 10263 for complete code).

ESCROW ACCOUNT INSTRUCTIONS

When using the option of having retentions deposited into an escrow account, please execute three (3) copies of the Escrow Account Forms. Once the Contractor and the Bank have signed the agreements, forward all three copies to:

Guiselle Carreon
Director of Purchasing
Grossmont Union High School District
PO Box 1043
La Mesa, CA 91944-1043

The Deputy Superintendent, Business Services will sign the three originals and will forward the Bank's and Contractor's copy to the Bank and Contractor and retain one for the District's records.

Contractor shall submit separate payment requests for retention. Payments will be forwarded directly to the bank for deposit to the escrow account.

RELEASE OF ESCROW RETENTION: Upon completion of a project, please forward a letter requesting release of the Escrow Account funds to the above address. Include the name of your bank contact and your Escrow Account Number. The District will send a request for release to the Bank not less than 35 calendar days following the filing of the Notice of Completion.

PROTESTS BY BIDDERS

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board policy or the bid's specifications or was not in compliance with law.

A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract.

Any bidder submitting a Bid Proposal may file a protest of the District's intent to award the Contract provided that each and all of the following conditions are met:

1. The protest must be submitted in writing to the District (e-mail is not acceptable), before 4 p.m. of the FIFTH business day following bid opening.
2. The initial protest document must contain a complete statement of any and all bases for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence
3. The protest must refer to the specific portions of all documents which form the bases for the protest.
4. The protest must include the name, address and telephone number of the person representing the protesting party.
5. Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Deputy Superintendent, Business Services, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District's Deputy Superintendent, Business Services or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Governing Board will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid award as reflected in the written statement of the Deputy Superintendent, Business Services or his/her designee. Action by the District's Governing Board relative to a bid award shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Governing Board. The rendition of a written statement by the Deputy Superintendent, Business Services (or his/her designee) and action by the District's Governing Board to adopt, modify or reject the disposition of the bid award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals.
6. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

STOP PAYMENT NOTICES

If a lien or stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity which has supplied material or services at Prime Contractor's request, the Prime Contractor and its Surety shall promptly, on demand by District and at Prime Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or stop payment notice to be released or discharged immediately therefrom.

If the Prime Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or stop payment notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Prime Contractor under the Contract.

When filing a Stop Payment Notice, contractors/suppliers must send the notice to:

Guiselle Carreon
Director of Purchasing
Grossmont Union High School District
1100 Murray Drive,
El Cajon, CA 92020

Filing a Stop payment notice:

NOTE: Effective July 1, 2012, significant changes to the Stop Notice procedures became effective. It is the responsibility of the subcontractor to use the proper forms and follow the proper codes when filing a stop payment notice.

A stop payment notice claimant who had no direct contractual relationship with the contractor must give a 20-day preliminary notice within 20 days of commencing work as a condition of filing the stop payment notice. California Civil Code Section 8200..

The notice must be served upon the public entity responsible within 30 days of recording notice of completion or cessation, or 90 days after actual completion or cessation. The stop payment notice must be served personally or by certified mail on the contractor and the director of the department which let the contract for the state of California, or the public disbursing officer responsible to make payments under the contract, or with the body by whom the contract was awarded.

The claimant on the stop payment notice cannot sue for 10 days after service and must file suit within 90 days of the period that the stop payment notice could be filed, 30 days after recording of notice of completion or notice of acceptance, or 90 days after completion or cessation. If no timely suit is filed, there is a mandatory duty to release the funds. A claimant can file the notice before the payment due date. The claimant must give the public entity notice of commencing the action within five days, by personal service or certified mail.

If the claim is disputed, the contractor can file a 125 % release bond, enforceable against the contractor and surety, but not the entity. (CC 8510). The contractor can also file a summary

proceeding within 20 days to resolve the issue. If a release bond is filed, it makes the stop payment notice period moot, and releases the public entity. A suit on the release bond is against the contractor and surety, and is subject to a three-year statute of limitations.

When a subcontractor submits payment in the amount of \$10 in conjunction with the filing of a stop payment notice, the District shall notify the subcontractor within 10 days of recording the Notice of Completion.

CHANGE ORDERS

General Conditions:

A Change Order is a written instrument prepared by the Architect and signed by the District (as authorized by the Governing Board), the Prime Contractor, the Construction Manager, the Architect, and the DSA (if necessary), stating their agreement upon all of the following:

- (I) A description of a change in the **Work**;
- (ii) The amount of the adjustment in the Contract Price, if any; and
- (iii) The extent of the adjustment in the Contract Time, if any.

Once a bid is submitted and accepted by the District, the price is fixed for the life of the contract. Price escalations for fuel charges, increases in material costs, sales taxes, or other charges are not permitted and will not be considered a change in work.

DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION PROGRAM

The Grossmont Union High School District participates in the DVBE program when projects involve state bond monies.

The Department of General Services outlines the DVBE Participation Program as follows:

The Disabled Veteran Business Enterprise (DVBE) Participation Program was established to acknowledge disabled veterans for their service and to further DVBE participation in state contracting, promote competition and encourage greater economic opportunity.

The state established a DVBE participation goal of at least three percent. The goal applies to the total contract dollars expended each year by an awarding department. Each state agency establishes their own method for attaining the goal and they have the discretion to include the program goal within individual contracts. Every year, state agencies must also report to the governor and the legislature their total DVBE contracting participation. If the minimum three percent goal is not met, the state agency must provide their reasons for not meeting the goal and an implementation plan for future DVBE participation improvement. They may also be required to stand before a legislative panel to further clarify their results and efforts.

Added DVBE Incentive, Effective 10/09/07

The Department of General Services (DGS) established a DVBE incentive pursuant to Senate Bill 115 chaptered October 3, 2005 and the Military and Veterans Code section 999.5(a). The new regulations apply to all competitive solicitations for public works, services, goods, and information technology goods and services posted or released after October 09, 2007. The DVBE incentive is required in solicitations that include DVBE program requirements and may be offered in other competitive solicitations.

The DVBE incentive offers state agencies a tool to increase their DVBE participation while still allowing the flexibility to exempt a contract from the participation requirement should the department deem it necessary. Each state agency should incorporate the use of the DVBE incentive into their plan or strategy to ensure achievement of at least three percent DVBE participation on their total contract dollars.

The DGS has a searchable database for DVBEs, which can be found at:

<http://www.bidsync.com/DPXBisCASB>

MATERIAL SUBSTITUTION REQUEST

Project: _____ Substitution Request Number: _____

 To: _____ From: _____
 _____ Date: _____
 Re: _____ A/E Project Number: _____
 _____ Contract For: _____

Specification Title: _____ Description: _____
 Section: _____ Page: _____ Article/Paragraph: _____

Proposed Substitution: _____
 Manufacturer: _____ Address: _____ Phone: _____
 Trade Name: _____ Model No.: _____
 Installer: _____ Address: _____ Phone: _____
 History: ☐ New Product ☐ 2-5 Years Old ☐ 5-10 Years Old ☐ More Than 10 Years Old
 Differences between proposed substitution and specified product: _____

☒ Point-By-Point comparative data sheet attached – REQUIRED BY A/E FOR THIS REQUEST.

Attached data includes product description, specifications, drawings, photographs, and performance and test data adequate for evaluation of the request, applicable portions of the data are clearly identified.

Attached data also includes a description of changes to the Contract Documents that the proposed substitution will require for its proper installation.

The Undersigned certifies:

Proposed substitution has been fully investigated and determined to be equal or superior in all respects to the specified products performance.
 Same warranty will be furnished for proposed substitution as for specified product.
 Proposed substitution will have no adverse effect on other trades and will not affect or delay progress schedule.
 Proposed substitution does not affect dimensions and Functional Performance Values.
 Payment will be made for changes to building design, including A/E design, detailing, and construction costs caused by the substitution.

Submitted by: _____
 Signed by: _____
 Firm: _____
 Address: _____
 Telephone: _____

A/E's REVIEW AND ACTION

- ☐ Substitution approved - Substitution approved as noted - Make submittals in accordance with Specification Section 0 2370-1.6.
☐ Substitution rejected - Use specified materials.
☐ Substitution Request received too late - Use specified materials.

Signed by: _____

Date: _____

Supporting Data Attached: ☐ Drawings ☐ Product Data ☐ Samples ☐ Tests ☐ Reports ☐ Other

Prequalification

Under Public Contract Code section 20111.5, school districts may prequalify prospective bidders. Public Contract Code section 20651.5 contains a similar authorization for community college districts.

Commencing on January 1, 2014, prequalification became mandatory for school districts with an average daily attendance of 2,500 or more awarding a construction project of \$1,000,000 or more that is funded in whole or in part with state bond funds. (Pub. Contract Code, § 20111.6(a), (l).) Contractors who must prequalify for such projects include general contractors, as well as mechanical, electrical and plumbing subcontractors. (Pub. Contract Code, § 20111.6(i).) Districts may elect to prequalify contractors or subcontractors on a project-by-project basis, or establish a process for prequalifying prospective bidders on a quarterly or annual basis, in which case contractors that satisfactorily prequalify will remain prequalified for one year. (Pub. Contract Code, § 20111.6(g).) Some districts are also adopting 'rolling' prequalification, where contractors and subcontractors may prequalify throughout the year and remain prequalified for one year from the date of their prequalification.

Contractor prequalification must include the submission of a standardized prequalification questionnaire and financial statement verified under oath, and a uniform system for rating the bidders on the basis of the questionnaire and financial statement. (Pub. Contract Code, § 20111.6(b), (c).) The questionnaire, financial statement, and bidder rating system must at a minimum include the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations (DIR). (Pub. Contract Code, § 20111.6(d).)

A district must also provide prospective bidders with a standardized proposal form, which must be submitted as the bid. (Pub. Contract Code, § 20111.6(e).) A school district cannot accept a proposal form from a contractor if the contractor or any of the contractor's listed subcontractors who are required to prequalify has failed to submit a completed standardized questionnaire and financial statement within ten business days prior to the bid opening date, or has not been prequalified for at least five business days prior to the bid opening date. (Pub. Contract Code, § 20111.6(f).) A school district must also make available to all bidders a list of district prequalified general contractors and electrical, mechanical, and plumbing subcontractors, at least five business days prior to the bid opening date. (Pub. Contract Code, § 20111.6(j).)

School districts and community college districts that are not required to use prequalification under the new law may still elect to do so, as was previously the law.

Sample Prequalification Packets:

Division of Industrial Relations:

http://www.dir.ca.gov/od_pub/prequal/PubWksPreQualModel.doc

Association of General Contractors – Contact your local AGC

QualityBidders.com (Web Based Prequalification Services)

None of these are endorsed by CASBO. These are listed for reference purposes only.

LABOR COMPLIANCE PROGRAMS

Labor Code sections 1770, et seq., require the payment of prevailing wages to all workers employed on public works projects. The Director of the DIR is generally tasked with monitoring and enforcing compliance with the state's prevailing wage law for any public works project paid for in whole or in part out of public funds. In recent years, awarding bodies have been required directly to pay the DIR's Compliance Monitoring Unit (CMU) for the costs of monitoring and enforcing compliance with the prevailing wage law as a cost of construction. Implementation of this statutory and regulatory scheme was problematic, however. As part of the annual state budget in June, the California Legislature passed Senate Bill (SB) 854, which attempts to address the failings of the outgoing monitoring and enforcement mechanism. SB 854 took effect immediately but the changes affecting awarding bodies, contractors, and subcontractors are phased in gradually.

SB 854's new requirements apply to all public works projects, not just those supported by state funds. Effective immediately, all awarding bodies are required to provide notice to the Department of Industrial Relations (DIR) of any public works contract within five days of the award and must post – or require the prime contractor to post – job site notices. SB 854 will require all contractors and subcontractors intending to bid or perform work on public works projects annually to register and pay a fee to the DIR for purposes of monitoring and enforcing compliance with the state's prevailing wage law. Consequently, the Department will no longer directly charge awarding bodies for prevailing wage monitoring and enforcement by the CMU.

The registration programs began on July 1, 2014, and all contractors and subcontractors submitting bids on public works projects must be registered by March 1, 2015. However, the requirement for awarding bodies to use only registered contractors and subcontractors on public works projects does not take effect until April 1, 2015.

Through registration, the DIR will collect fees from contractors and subcontractors to fund the DIR's duties, including oversight of the state's prevailing wage law, compliance monitoring and enforcement, determinations of prevailing wage and public works coverage, and enforcement appeals hearings. The current fee is \$300, though the Director of the DIR has the authority annually to adjust the fee. Contractors and subcontractors are also required to meet minimum qualifications to register, allowing them to bid and work on public works projects. The DIR will post a list of registered contractors and subcontractors on its web site.

PWC 100: <https://www.dir.ca.gov/pwc100ext/>

Note that as of 08-25-2014, the DIR had not updated its requirements on the website with the changes made by SB854.

PROFESSIONAL SERVICES AGREEMENTS

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

**AGREEMENT FOR
PROFESSIONAL SERVICES
BETWEEN
[INSERT NAME OF SCHOOL DISTRICT]
AND
[INSERT NAME OF CONSULTANT]**

1. Parties and Date.

This Agreement ("Agreement") is made and entered into this ____ day of _____, 2006, by and between the [INSERT NAME OF SCHOOL DISTRICT] ("District") and [INSERT CONSULTANT'S NAME] ("Consultant"), a [INSERT CONSULTANT'S TYPE OF BUSINESS] (collectively referred to as the "Parties" and each individually as "Party").

2. Recitals.

2.1 **Consultant.** Consultant is a professional consultant, experienced and properly certified/licensed to provide the professional services required by the District and is familiar with the plans of District.

2.2 **Project.** District desires to engage Consultant to render the services for the [INSERT NAME OF PROJECT] (the "**Project**").

3. Terms.

3.1 Scope of Services, Qualifications and Term.

(a) **General Scope of Services.** Consultant promises and agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional services, as are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 **Term.** The term of this Agreement shall be from [INSERT DATE] until [INSERT DATE], unless earlier terminated as provided herein. The Parties may mutually agree to extend this term by written amendment. Should the Parties agree to extend the term of this Agreement, the fee for services described in Exhibit "B" shall remain the same.

3.3 Responsibilities of Consultant.

(a) **Control and Payment of Consultants and its Subordinates.** District retains Consultant on an independent contractor basis and Consultant is not an employee of District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of

FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

Services under this Agreement and as required by law including, but not limited to, the payment of prevailing wage, as applicable, and in accordance with Labor Code sections 1720 et seq. and 1770 et seq. The Consultant shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed under this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the District shall provide Consultant with a copy of the prevailing rates of per diem wages. Consultant shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

If the District is using funds derived from the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 for this Project, then the Consultant is required to enforce the District's Labor Compliance Program ("LCP").

(b) Conformance to Applicable Requirements. All work prepared by Consultant is subject to the approval of District and any and all applicable regulatory State agencies, and shall be the property of District.

(c) Reports. Consultant shall provide copies of all reports required to be submitted to applicable regulatory State agencies to District, whether or not such reports must be submitted to the District.

(d) Work Authorization. Consultant shall obtain from District a work authorization for the Project. Such work authorization shall reiterate Consultant's duties outlined herein. The work authorization shall be written in the amount set forth in Exhibit "B."

(e) Maintenance of Construction Records. Consultant shall maintain complete and accurate testing and inspection records with respect to all records related to the Project. These records shall be maintained by Consultant and made available at all reasonable times during any period which services are provided for the Project and for four (4) years from the date of Notice of Completion for the Project as contracted for inspection by the District.

(f) Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

(g) Standard of Care. Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors or subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

(h) Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all California Code of Regulations Title 24 and Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

[DISTRICT RISK MANAGER TO REVIEW INSURANCE REQUIREMENTS. REQUIREMENTS MUST MATCH INSURANCE REQUIREMENTS IN REQUEST FOR PROPOSALS]

(i) Insurance.

(i) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to District that the subcontractor has secured all insurance required under this Section.

(ii) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(1) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional Liability:* Coverage which is appropriate to the Consultant's profession, or that of its consultants or subcontractors.

(2) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by

FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability*: Not less than \$1,000,000 per claim/ \$2,000,000 aggregate.

(3) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

b. Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

c. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

d. Professional Liability. Consultant and its sub-consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to District, its directors, officials, officers, employees, agents and volunteers.

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

(iii) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

(iv) Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-: ~~XVII~~, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the District.

(v) Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by District if requested. District reserves the right to require complete, certified copies of all required insurance policies, at any time.

(j) Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and life saving equipment and procedures; (2) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures.

(k) Project Staffing. Consultant shall provide adequate staff and resources to facilitate all contractor's activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party inspection services and back charge Consultant for all third party fees.

3.4 Fees and Payments.

(a) Compensation. Consultant shall receive compensation, including reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

(b) Reimbursement of Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

(c) **Payment of Compensation.** Consultant shall submit to District an itemized statement which indicates work completed and hours of Services rendered by Consultant. District shall pay Consultant within a reasonable time and in accordance with this Agreement.

(d) **Extra Work.** At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any Services which are determined by District to be necessary, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written supplemental work authorization from District.

3.5 Maintenance of Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.6 General Provisions.

(a) **Suspension of Services.** The District may, in its sole discretion, suspend all or any part of Services provided hereunder without cost; provided, however, that if the District shall suspend Services for a period of ninety (90) consecutive days or more and in addition such suspension is not caused by Consultant or the acts or omissions of Consultant, upon recession of such suspension, the compensation will be subject to adjustment to provide for actual costs and expenses incurred by Consultant as a direct result of the suspension and resumption of Services under this Agreement. Consultant may not suspend its service without District's express written consent.

(b) **Termination of Agreement.**

(i) **Grounds for Termination.** District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(ii) **Effect of Termination.** If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

(iii) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

(c) Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

[INSERT NAME]

[INSERT ADDRESS]

Attn: **[INSERT NAME]**

DISTRICT:

[INSERT NAME]

[INSERT ADDRESS]

Attn: **[INSERT NAME]**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

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

(e) Ownership of Materials and Confidentiality.

(i) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(ii) All such materials and data shall be provided to the District, or such other agency or entity as directed by District or required by law, rule or regulation, immediately upon completion of the term of this Agreement as directed by District. Should District wish to obtain possession of any such materials or data during the term of this

FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

Agreement, it shall make its request in writing. Such information shall be provided to the District within forty-eight (48) hours of its request.

(f) Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

(g) Indemnification. Consultant shall defend, indemnify and hold the District, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, volunteers, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all attorneys fees and other related costs and expenses. Consultant shall reimburse District and its directors, officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

(h) Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements

(i) Governing Law. This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California.

(j) Time of Essence. Time is of the essence for each and every provision of this Agreement.

(k) District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project. However, Consultant shall be the exclusive consultant for purposes of the Services as noted within this Agreement, unless terminated as provided herein.

(l) Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of District.

(m) Amendments. This Agreement may not be amended except by a writing signed by the District and Consultant.

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

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

(o) Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.

(p) Conflict of Interest. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

(q) Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Consultant must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Agreement.

(r) Fingerprinting Requirements. Consultant hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. The Consultant shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the Consultant must provide for the completion of a Fingerprint Certification form, in the District's required format, prior to any of the Consultant's employees, or those of any other consultants, coming into contact with the District's pupils.

(s) Drug/Tobacco-Free Facilities. All District facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of District facilities.

(t) Exhibits and Recitals. All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

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

[Signatures located on the following page.]

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]
Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

[INSERT NAME OF SCHOOL DISTRICT] [INSERT NAME OF CONSULTANT]

By:

By:

Name: _____

Name: _____

Title: _____

Title: _____

Federal Tax I.D. Number: _____

Attest: _____

Attest: _____

By:

Name:

Title:

By:

Name:

Title:

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

EXHIBIT "A"
SCOPE OF SERVICES

To Be Provided By Consultant Based On Proposal/Bid. District Must Review and Approve Scope Of Services.

SDCOE Recommends Consulting Legal Counsel For Input On Scope Of Services For Each Professional Discipline.

[FOR GENERAL CONSULTANT SERVICES NOT TESTING/INSPECTION]

Please be advised that this agreement is in sample form. SDCOE highly recommends that school districts consult with legal counsel prior to utilizing this agreement.

EXHIBIT "B"
COMPENSATION FOR SERVICES

[To Be Provided By Consultant Based On Proposal/Bid. District Must Review And Approve Compensation. SDCOE Recommends Use of a Not-to-Exceed Amount. SDCOE Recommends Consulting Legal Counsel Regarding Different Methods of Structuring Consultant Compensation.]

SAMPLE

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

FOR TESTING/INSPECTION SERVICES ONLY

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

**AGREEMENT FOR
MATERIALS TESTING AND INSPECTION SERVICES
BETWEEN
[INSERT NAME OF SCHOOL DISTRICT]
AND
[INSERT NAME OF CONSULTANT]**

1. Parties and Date.

This Agreement ("Agreement") is made and entered into this [INSERT DATE], by and between the [INSERT NAME OF SCHOOL DISTRICT] ("District"), and [INSERT NAME OF CONSULTANT] ("Consultant"), a corporation (collectively referred to as the "Parties" and each individually as "Party").

2. Recitals.

2.1 **Consultant.** Consultant is a professional consultant, experienced and properly certified/licensed in providing material testing and inspection services as required by the Division of the State Architect ("DSA") for public construction projects, and is familiar with the plans of District.

2.2 **Project.** District desires to engage Consultant to render general inspection and testing services on the [INSERT NAME OF PROJECT] (the "Project").

3. Terms.

3.1 Scope of Services, Qualifications and Term.

(a) **General Scope of Services.** Consultant promises and agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional inspection and testing services, including, but not limited to registered special inspection services, mechanical and electrical inspection services, soil and asphaltic concrete inspection and testing services, and materials sampling and laboratory testing services, as required under California Code of Regulations, Title 24 and other state law ("Services"). The Services shall include all required materials testing and inspections including, but not limited to, soil tests, geotechnical services except for hazardous materials tests (e.g. lead, asbestos, mold) and are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 **Term.** The term of this Agreement shall commence on the date first written above and shall continue until Owner's acceptance of all work and final payment to Consultant or June 30, 2006, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term by written amendment. Should the Parties agree to extend the term of this Agreement, the fee for services described in Exhibit "B" shall remain the same. All

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

indemnification provisions contained in the Agreement shall survive beyond expiration of this Agreement.

3.3 Responsibilities of Consultant.

(a) Control and Payment of Consultants and its Subordinates. District retains Consultant on an independent contractor basis and Consultant is not an employee of District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law including, but not limited to, the payment of prevailing wage, as applicable, and in accordance with Labor Code sections 1720 et seq. and 1770 et seq. The Consultant shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed under this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the District shall provide Consultant with a copy of the prevailing rates of per diem wages. Consultant shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

If the District uses funds derived from the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 for this Project, it is required to enforce the District's Labor Compliance Program ("LCP"). The Consultant shall abide by the District's LCP, if applicable.

(b) Conformance to Applicable Requirements. All work prepared by Consultant is subject to the approval of District and any and all applicable regulatory State agencies, and shall be the property of District.

(c) Reports. Consultant shall provide copies of all reports required to be submitted to applicable regulatory State agencies to District, whether or not such reports must be submitted to the District.

(d) Work Authorization. Consultant shall obtain from District a work authorization for the Project. Such work authorization shall reiterate Consultant's duties outlined herein. The work authorization shall be written in the amount set forth in Exhibit "B."

(e) Maintenance of Construction Records. Consultant shall maintain complete and accurate testing and inspection records with respect to all records related to the Project. These records shall be maintained by Consultant and made available at all reasonable times during any period which services are provided for the Project and for four (4) years from the date of Notice of Completion for the Project as contracted for inspection by the District.

(f) Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

(g) Standard of Care. Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors or subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

(h) Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all California Code of Regulations Title 24 and Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

[DISTRICT RISK MANAGER TO REVIEW INSURANCE REQUIREMENTS. REQUIREMENTS MUST MATCH INSURANCE REQUIREMENTS IN REQUEST FOR PROPOSALS.]

(i) Insurance.

(i) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to District that the subcontractor has secured all insurance required under this Section.

(ii) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(1) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional*

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

Liability: Coverage which is appropriate to the Consultant's profession, or that of its consultants or subcontractors.

(2) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability:* Not less than \$1,000,000 per claim/\$2,000,000 aggregate.

(3) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

b. Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

c. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

d. Professional Liability. Consultant and its sub-consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to District, its directors, officials, officers, employees, agents and volunteers.

(iii) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

(iv) Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the District.

(v) Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by District if requested. District reserves the right to require complete, certified copies of all required insurance policies, at any time.

(j) Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and life saving equipment and procedures; (2) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures.

(k) Project Staffing. Consultant shall provide adequate staff and resources to facilitate all contractor's activity. Should Consultant fail to adequately staff a project, the District

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

may, at its sole discretion, retain third party inspection services and back charge Consultant for all third party fees.

3.4 Fees and Payments.

(a) Compensation. Consultant shall receive compensation, including reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

(b) Reimbursement of Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

(c) Payment of Compensation. Consultant shall submit to District an itemized statement which indicates work completed and hours of Services rendered by Consultant. District shall pay Consultant within a reasonable time and in accordance with this Agreement.

(d) Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any Services which are determined by District to be necessary, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written supplemental work authorization from District.

3.5 **Maintenance of Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.6 General Provisions.

(a) Suspension of Services. The District may, in its sole discretion, suspend all or any part of Services provided hereunder without cost; provided, however, that if the District shall suspend Services for a period of ninety (90) consecutive days or more and in addition such suspension is not caused by Consultant or the acts or omissions of Consultant, upon recession of such suspension, the compensation will be subject to adjustment to provide for actual costs and expenses incurred by Consultant as a direct result of the suspension and resumption of Services under this Agreement. Consultant may not suspend its service without District's express written consent.

(b) Termination of Agreement.

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

(i) Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(ii) Loss of Construction Inspector Certification. This Agreement shall automatically terminate and payment shall cease should the Consultant fail to provide a properly certified inspector for the project for which Consultant is providing services to the District.

(iii) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(iv) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

(c) Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

**[INSERT NAME OF CONSULTANT
ADDRESS AND TELEPHONE/FAX NUMBERS]**

Attn: _____
Phone: () _____
Fax: () _____

DISTRICT:

**[INSERT NAME OF DISTRICT
ADDRESS AND TELEPHONE/FAX NUMBERS]**

Attn: _____
Phone: () _____
Fax: () _____

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

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

(e) Ownership of Materials and Confidentiality.

(i) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(ii) All such materials and data shall be provided to the District, or such other agency or entity as directed by District or required by law, rule or regulation, immediately upon completion of the term of this Agreement as directed by District. Should District wish to obtain possession of any such materials or data during the term of this Agreement, it shall make its request in writing. Such information shall be provided to the District within forty-eight (48) hours of its request.

(f) Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

(g) Indemnification. Consultant shall defend, indemnify and hold the District, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, volunteers, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all attorneys fees and other related costs and expenses. Consultant shall reimburse District and its directors, officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

(h) Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements

(i) Governing Law. This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California.

(j) Time of Essence. Time is of the essence for each and every provision of this Agreement.

(k) District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project. However, Consultant shall be the exclusive consultant for purposes of the Services as noted within this Agreement, unless terminated as provided herein.

(l) Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of District.

(m) Amendments. This Agreement may not be amended except by a writing signed by the District and Consultant.

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

(o) Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.

(p) Conflict of Interest. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

(q) Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Consultant must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Agreement.

(r) Fingerprinting Requirements. Consultant hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. The Consultant shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the Consultant must provide for the completion of a Fingerprint Certification form, in the District's required format, prior to any of the Consultant's employees, or those of any other consultants, coming into contact with the District's pupils.

(s) Taxpayer I.D. The Consultant shall deliver the Consultant's Federal IRS Taxpayer I.D. number to the District prior to any payments being made by the Owners under this Agreement.

(t) Drug/Tobacco-Free Facilities. All District facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of District facilities.

(u) Exhibits and Recitals. All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

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

[INSERT NAME OF DISTRICT]

[INSERT NAME OF CONSULTANT]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Federal Tax I.D. # _____

Attest:

Attest:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to Form:

[INSERT NAME OF FIRM]

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

By: _____

Counsel for the District

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

EXHIBIT "A"
SCOPE OF SERVICES

[To Be Provided By Consultant Based On Proposal/Bid. District Must Review And Approve Scope Of Services. We Recommend Consulting Legal Counsel For Input On Scope Of Services For Each Professional Discipline.]

[THIS IS A SAMPLE ONLY. THE REQUIRED SCOPE OF TESTING SERVICES MUST BE REVIEWED BY THE ARCHITECT AND APPROVED BY THE DISTRICT.]

Consultant shall provide the services set forth herein, as well as any incidental services necessary for the full and adequate completion of Project Services in strict accordance with all applicable local, state and federal laws rules and regulations, including but not limited to, the State Building Code, California Code of Regulations, Title 24 and Instructions on Division of the State Architect ("DSA"), Structural Tests and Inspections form SSS 103-1 (as provided for the project), and instructions included herein. Special Inspectors and testing staff shall be prepared to attend Project progress meetings and other specially called meetings as determined by the Project Inspector. Consultant shall respond to the Project Inspector's scheduling and coordination for Inspections and Sampling and Testing services. Consultant shall provide daily and/or individual occurrence reports of Special Inspections and Testing results on previously approved forms and provide sufficient copies to the Project Inspector for his/her distribution to the Construction Contractor, and Architect. The Services shall be performed at the hourly billing rates and/or sampling and testing unit prices included in Exhibit "B."

I. Geotechnical Engineer of Record and Soils Observation and Testing

The geotechnical portions of this project shall be performed under the direction of a Geotechnical Engineer, which shall be the Geotechnical Engineer of Record for the project. A technician with a nuclear gauge shall perform density and moisture testing in the field during grading, utility trench backfilling, and pavement operations utilizing ASTM D2922, D3017, and ASTM D1556 methods. Laboratory maximum density and optimum moisture determination shall be performed in accordance with ASTM D1557 or D698. Asphalt pavement placement and testing shall be performed in accordance with Caltrans methods.

A. Consultant shall provide:

1. Perform a site reconnaissance, reviewing the geotechnical engineering report for this project, reviewing the drawings, and preparing a transfer of geotechnical engineer of record responsibility letter;
2. Project management, consultation during construction, preparation of daily field, foundation excavation observation, and final grading reports;
3. Ensure soils conditions are in conformance to soils report
4. Foundation Inspection
5. Caisson, drilled piers or driven piles inspection
6. As-graded soils report
7. Observation and testing during site clearing and mass grading;

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

8. Observing the foundations excavations for structures;
9. Observation and testing during backfilling of utility trenches;
10. Observation and testing during backfilling around retaining walls;
11. Observation and testing during subgrade preparation and base rock placement in asphalt paved areas;
12. Observation and testing during asphalt concrete placement.
13. Perform the following Sampling and Testing of Materials and Testing of Work-in-Place as may be required by the DSA Testing and Inspection Listing, and as required by the District. The Testing shall be performed in accordance with ASTM test methods and California test methods as appropriate. All Laboratory testing shall be accomplished in a DSA certified laboratory:
 - a. Soil, Aggregate & Asphalt
 - b. Maximum Dry Density
 - c. Expansion Index (ASTM D4318)
 - d. R-Value
 - e. Sand Equivalent
 - f. Sieve Analysis (ASTM C136)
 - g. Hveem Stability
 - h. Asphalt Extraction (ASTM 2172)
 - i. Hardness and Abrasion
 - j. Atterberg limits (ASTM 4318)
 - k. No. 200 Sieve Analysis (ASTM D422)
 - l. Specific Gravity C127/C128
 - m. Asphalt and Asphaltic Concrete Gradation (ASTM C136)
 - n. Asphalt and Asphaltic Concrete Specific Gravity (ASTM D1188)
 - o. Asphalt and Asphaltic Concrete Stability & Flow Marshall (ASTM D1559)
 - p. Asphalt and Asphaltic Concrete Abrasion (ASTM C131)
 - q. Asphalt and Asphaltic Concrete Unit Weight (ASTM D2726)
 - r. Asphalt Cores

- B. Observation and testing shall consist of visual observation of earthwork activities and taking field density and moisture tests for the purpose of ascertaining that the work is in substantial conformance with the contract documents. Such observation and testing shall not be relied upon by others as acceptance of the work nor shall it be construed to relieve the contractor in any way from his obligation and responsibilities under the construction contract. Specifically, but without limitations, observation and testing shall not require the technician and engineer to assume responsibilities for the means and methods of construction nor for safety on the jobsite.

II. CONCRETE/MIX DESIGN REVIEW

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

- A. Inspection services shall be provided for concrete, prestressed concrete, reinforcing steel and prestressing steel, batch plant, insulating concrete, lightweight concrete, field sampling (slump, air entertainment, unit weight and yield tests), concrete coring, proof testing (installed epoxy & nonshrink grout bolts) and proof testing (installed wedge and expansion anchors).
- B. Consultant shall review the proposed concrete mixes in its laboratory for conformance with the specifications.
- C. Consultant shall perform the following tests:
 - 1. Concrete Compression Tests:
 - a. Concrete Cylinders (ASTM C29)
 - b. Concrete Cores (ASTM C39)
 - c. Lightweight Concrete (ASTM C495)
 - d. Insulating Concrete (ASTM C332)
 - 2. Concrete Flexural Tests:
 - a. Flexural Test (ASTM C293/C78)
 - 3. Steel Reinforcing:
 - a. Tensile (ASTM A615)
 - b. Bend (ASTM A615)
 - 4. Concrete Aggregate:
 - a. Conformance Test (ASTM C33)
(Sieve Analysis, Deleterious Substances & Soundness)

III. REINFORCING STEEL PLACEMENT

Prior to the pours, Consultant shall inspect the reinforcing steel placement to determine that it is according to plans and specifications. Consultant shall check:

- 1. Size and spacing of bars;
- 2. Location and length of splices;
- 3. Clearances;
- 4. Cleanliness of bars;
- 5. Spacing tolerances;
- 6. Proper support of steel with ties.

IV. CONCRETE PLACEMENT

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

During the pours, Consultant shall be on-site continuously, as required by Code, to monitor placement. Consultant shall:

1. Determine that no bars are displaced during the pouring;
2. Observe cleanliness of steel;
3. Determine adequacy of placement and vibratory equipment;
4. Determine proper delivery rate of concrete and monitor batch times;
5. Determine the correct mix is being utilized;
6. Monitor slump of each truck;
7. Record temperature of air and concrete;
8. Cast cylinders for compression tests at the specified frequency;
9. Perform air checks, if required by specifications, during concrete placement;
10. Observe anchor bolt/dowel installation operations to determine hold depth, embedment and cleanliness, as well as materials and workmanship. Consultant shall inspect to determine all dowels are installed in accordance with contract documents and/or manufacturer's requirements.

V. COMPRESSION TESTING

Consultant shall transport all samples to our laboratory for compression testing in strict accordance with ASTM requirements. Compression test reports shall be distributed to the appropriate parties.

VI. MIX DESIGN REVIEW

- A. Consultant shall review the proposed grout and mortar mixes in our laboratory for conformance with the specifications.
- B. During preparation of masonry wall prisms, sampling & placing of all Masonry units, placement of reinforcement, inspection of grout space immediately prior to closing or cleanouts & during all grouting operations.
- C. Laboratory Tests
 1. Masonry Compression Tests:
 - a. Mortar (UBC 21 - 16)
 - b. Grout (UBC 21 - 18/ASTM C1019)
 - c. Masonry Prism (ASTM E447)
 - d. Masonry Cores (ASTM C42)
 - e. Shear Tests - Masonry Cores (UBC 2405(c)4.C)
 - f. Dry Shrinkage - Masonry Units (ASTM C426)
 - g. Sample Pick-up & Delivery
 2. Steel Reinforcing:

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

- a. Tensile (ASTM A615)
 - b. Bend (ASTM A615)
 - c. Steel Tagging, Pick-up & Delivery
3. Concrete Aggregate:
 - a. Conformance Test (ASTM C404)
(Sieve Analysis, Deleterious Substances & Soundness)
- D. Consultant's duties shall include the following:
 1. Review mill test certifications of block and reinforcing steel;
 2. Inspect to determine size and spacing of dowels;
 3. Inspect to determine that cleanouts are provided for high-lift grouting methods;
 4. Inspect proper lay-up of block units;
 5. Inspect reinforcing steel prior to grouting;
 6. Inspect dowels, anchor bolts and inserts, to make sure they are in place and properly secured prior to grouting;
 7. Inspect to determine proper consolidation of grout;
 8. Check that curing requirements are being followed.

VII. STRUCTURAL STEEL

- A. Consultant shall provide inspection services for the following:
 1. Field Welding
 2. High Strength Bolting
 3. Metal Decking
 4. Welded Stud Connectors
 5. Fabrication Shop
- B. Consultant shall provide the following Non-Destructive Examinations (Field Testing) in strict conformance with ASTM standards:
 1. Ultrasonic Examination
 2. Magnetic Particle Examination
 3. Liquid Penetrant Examination
 4. Radiographic Examination
- C. Consultant shall provide the following Non-Destructive Examinations (Fabrication Shop Testing):
 1. Ultrasonic Examination
 2. Magnetic Particle Examination

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

3. Liquid Penetrant Examination
4. Radiographic Examination

D. Laboratory Tests

1. High strength bolts:
 - a. Hardness Test (ASTM A325)
 - b. Tensile Strength (ASTM F606)

[FOR TESTING/INSPECTION SERVICES ONLY]

Please be advised that this agreement is in sample form. We highly recommend that school districts consult with legal counsel prior to utilizing this agreement.

EXHIBIT "B"
COMPENSATION FOR SERVICES

[To Be Provided By Consultant Based On Proposal/Bid. District Must Review And Approve Compensation. We Recommend Use of a Not-to-Exceed Amount. We Recommend Consulting Legal Counsel Regarding Different Methods of Structuring Consultant Compensation.]

The Consultant's compensation for its services shall not exceed _____/100 DOLLARS (\$ _____), and will be billed to the District at the hourly rates attached hereto.

**[HOURLY RATE SCHEDULE TO BE ATTACHED
HERETO BY THE DISTRICT]**

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, is entered into this ____ day of Month, 20__, by and between the GROSSMONT UNION HIGH SCHOOL DISTRICT, herein called "DISTRICT," and _____, herein called "CONSULTANT."

WHEREAS, the DISTRICT has a need for Services needed with respect to the work described herein; and

WHEREAS, CONSULTANT warrants that it is fully licensed and qualified to perform such Brief Description of Project, and specially trained, experienced, an expert and competent to perform such services;

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. **Scope of Work.** CONSULTANT shall commence providing any particular services only upon receipt from the District of a Project Authorization Letter for those services in accordance with this Agreement. In the absence of an applicable Project Authorization Letter, CONSULTANT shall not undertake any work or services ostensibly pursuant to this Agreement and the District shall have no obligation to compensate the CONSULTANT for any such work or services. Project Authorization Letters shall be deemed and construed as authorizing the work to be performed pursuant to this Agreement and not as modifying or amending this Agreement. In the event of any conflict between the provisions of this Agreement and any Project Authorization Letter, the Agreement shall control with respect to terms and conditions for provision of the services and the Project Authorization Letter shall control with respect to the scope, type and manner of services, compensation for services, and similar matters set forth in the Project Authorization Letter.

(Scope of work)

All work shall be performed to the degree of skill and care ordinarily exercised under similar conditions by reputable members of Consultants profession practicing in the same or similar locality at the time of performance. CONSULTANT shall, at its own cost and expense, provide all the services, equipment and materials necessary to complete the work described in a Project Authorization Letter. Nothing in this paragraph shall require District to use CONSULTANT for any services and District may use other consultants for any such work.

Consultant shall:

- Contract or employ at Consultant's expense, Sub Consultants or personnel to the extent deemed necessary for the work authorized by a Project Authorization Letter. District reserves the right to reject the use of any Sub Consultant.
- Consult, as necessary, with normal and customary employees, agencies, and/or representatives of the District regarding the work of each Project Authorization Letter.
- Attend meetings with the District, other professionals employed by the District and local and regional agencies, as needed, and directed by the District to perform the work.
- Cooperate with other professionals employed by the District for other work related to the Project Authorization Letter.

- Abide by all regulations imposed by funding sources, such as auditing requirements and payoff affidavits.
- Be responsible for the professional quality, technical accuracy and the coordination of Consultant's entire work product and provide a professional level of review of all deliverables to assure quality and professional accuracy of all documents furnished by Consultant. Consultant shall, without additional compensation, correct or revise any errors in its documents or other services.

Each Project Authorization letter will identify the campus and project name(s), the project specific scope of services and the required deliverables.

Consultant shall submit an estimated cost breakdown based upon the project specific scope which shall include all necessary hours to perform the project specific scope of services, all estimated hours for labor and the corresponding hourly rate, along with any other estimated costs for services including, but not limited to, any Sub Consultants, research, travel time or other expenses for which Consultant seeks reimbursement.

The District will review Consultant's cost estimate and negotiate, as needed. A Project Authorization letter may issue authorizing the start of work if the estimated cost is reasonable.

The District may, at its discretion, coming two (2) or more projects to be handled as single Project assignment. If a Project assignment includes multiple projects, Consultant shall provide a separate invoice for each individual Project for which services are provided under a single Project Authorization Letter.

Consultant may be assigned various projects and tasks which have different funding sources.

Each Project Authorization Letter shall incorporate Consultant's budget for the assigned task. On a regular basis, but not less than weekly, the Consultant shall report to the District's Project Manager on the status of the assigned work including, but not limited to, the percentage of the work performed under the Project Authorization Letter, the percentage of the budget consumed, to date, (whether or not billed or paid) and the percentage of the budget remaining, for each line item set out in the task order, and the schedule of tasks contemplated for the following week. Notification by e-mail will be acceptable, provided that all of the required information is included. No invoices will be paid if the required reports are not timely filed. Filing of the reports does otherwise require the District to pay for the services described in the reports.

2. **Time for Completion of Work.** No work shall be commenced prior to CONSULTANT'S receipt of the DISTRICT'S Project Authorization Letter. All work shall be completed no later than the date agreed upon by the parties for each matter or project, provided, however, that extensions of time may be granted in writing by the District, which said extensions of time, if any, shall be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the District to be good and sufficient cause for such extensions.
3. **Term.** The term of this Agreement shall be from _____ through _____. This Agreement may be renewed, at the option of the District, for up to four (4) additional one (1) year terms.

4. Payment for Services.

- a. **Compensation- Fees.** CONSULTANT'S compensation will be primarily based upon fixed fees negotiated for a specific project including, but not limited to, cost of travel and all incidentals necessary to complete the project scope of work. The District may, at its discretion, negotiate either hourly rates or fixed fee rates for the described services. Rates may be based on actual services performed at the rates set forth for each task in the Exhibit A or in an amount otherwise agreed to by the DISTRICT in a Project Authorization Letter. Consultant's compensation will be \$190.00 per hour. Consultant's associate attorney will be compensated at \$160.00 per hour.
- b. **Reimburseables-Costs.** If authorized in writing, in advance, by the District in a Project Authorization Letter, the following costs and expenses may be invoiced by Consultant and reimbursed by the District:
 - i) Outside copying charges/reprographics- at cost + 5%
 - ii) Subconsultants- at cost + 10%
 - iii) Mileage- at the I.R.S. rate at the time of travel or \$25 per day, whichever is less. Mileage will only be reimbursed for personnel based out of town, whose assignment to the job location has been previously approved, in writing, by the District, and then only if: a) the trip from the out-of town office to the job location is more than 50 miles one way and b) then only with respect to those dates that they are on the job site.

No costs or expenses will be reimbursed or due unless specifically allowed in a Project Authorization Letter.

Any request for a Project Authorization Letter must include a itemization of any anticipated reimburseable costs under this paragraph and specify a not-to-exceed estimate for such costs.

- c. **Reports and Billing Invoices.** CONSULTANT shall submit to the DISTRICT, on a task completion basis, a detailed statement of services performed and work accomplished during that preceding period, including the number of hours of work performed and the personnel involved. For the purpose of timely processing of invoices, the CONSULTANT'S invoices are not regarded as received until the applicable deliverable is submitted. Any anticipated problems in performing any future work shall be noted in the billing invoice transmittal letter. The CONSULTANT shall also promptly notify the District of any perceived need for a change in the scope of work or services.

5. Accounting Records.

- a. CONSULTANT shall maintain accounting records in accordance with generally accepted accounting principles. The CONSULTANT shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. The CONSULTANT shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal and payroll journal.
- b. CONSULTANT shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the DISTRICT. The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to

produce billings, all entries should be documented and clearly traceable to the CONSULTANT'S cost accounting records.

- c. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. CONSULTANT shall safeguard the accounting records and supporting documentation.
 - d. CONSULTANT shall make accounting records and supporting documentation available on demand to the DISTRICT and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the DISTRICT. The DISTRICT may require having the CONSULTANT'S accounting records audited, at CONSULTANT'S expense, by an accountant licensed by the State of California.
6. **Changes in Scope of Service.** No change in the character or extent of the work to be performed by CONSULTANT shall be made except through a signed written amendment to this Agreement. The amendment shall set forth the proposed changes in work, adjustment of time, and adjustment of the sum to be paid by DISTRICT to CONSULTANT, if any. Any amendment must be approved by the Governing Board of the DISTRICT.
7. **Non-Assignment of Agreement.** Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or sublet any interest herein without the prior written consent of DISTRICT and any such assignment, transfer, delegation, or sublease without the DISTRICT'S prior written consent shall be considered null and void.
8. **Insurance.** CONSULTANT shall procure the following required insurance coverages at its sole cost and expense and maintain in full force and effect for the period covered by this Agreement such insurance. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A- VII and are admitted insurance companies in the State of California, or (2) insurers of equivalent documented quality.
- a. Professional Liability Insurance: CONSULTANT shall maintain in full force and effect during the entire term of this Agreement, professional liability "errors and omissions" insurance with limits of liability of not less than \$1,000,000.00 per claim and \$2,000,000.00 in aggregate to cover all services rendered by CONSULTANT pursuant to this Agreement.
 - b. If coverage is on Claims Made basis, CONSULTANT promises to maintain such coverage for four (4) years following completion of construction of project designed hereunder.
 - c. Commercial General Liability (CGL): CONSULTANT shall maintain in full force and effect, for the period covered by this Agreement, insurance including the following coverages:
 - i) Commercial General Liability covering the following
 - (1) Personal Injury and Bodily Injury, including death resulting therefrom.
 - (2) Property Damage.
 - d. Automobile coverage which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, property

damage, and automobile coverage in the amount of \$1,000,000.00 single limit, \$2,000,000.00 aggregate.

The following endorsements must be provided in the CGL policy:

1. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
2. The policy must cover personal injury as well as bodily injury.
3. Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. Broad Form Property Damage Liability must be afforded.
5. Products and Completed Operations coverage must be provided.
6. The Grossmont Union High School District, its officers, employees and agents shall be named as additional insured under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the DISTRICT, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing contained in this Agreement shall be construed to require CONSULTANT'S insurance to indemnify DISTRICT in contravention of Insurance Code 11580.04.

e. Workers' Compensation Insurance: In accordance with the provision of

Labor Code Section 3700, CONSULTANT, if CONSULTANT has any employees, is required to be insured against liability for Workers' Compensation or to undertake self-insurance. CONSULTANT agrees to comply with such provisions before commencing the performance of the work of this Agreement.

f. Employer's Liability Insurance: CONSULTANT shall maintain Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

g. The following requirements apply to all insurance to be provided by CONSULTANT:

- i) A certificate of insurance shall be furnished to DISTRICT prior to commencement of work. Upon request by the DISTRICT, CONSULTANT shall provide a certified copy of any insurance policy to the DISTRICT within ten (10) working days.
- ii) Certificates and policies shall state that the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to DISTRICT.
- iii) Approval of the insurance shall not relieve or decrease the extent to which the CONSULTANT may be held responsible for payment of damages resulting from CONSULTANT'S services or operations pursuant to this Agreement.

9. **Indemnification.** Consultant shall indemnify District, and shall hold District harmless, against and from any and all claims, demands, actions and other proceedings, damages, losses, costs, expenses (including, without limitation, reasonable attorneys fees and expenses), and other liabilities of any nature attributable to the injury or death of any person(s) or the damage to any property arising out of or in any way connected with the negligent performance of this Agreement by Consultant or its officers, agents, employees or subConsultants. Consultant shall reimburse District for all damages, expenses and losses incurred by District as a consequence of any claim, demand, or cause of action that may be

brought against District resulting from, arising out of, or in any way connected with the performance of this Agreement or of the services by Consultant or its officers, agents, employees or subConsultants, including disputes between Consultant and any of its subConsultants. The Consultant shall not be responsible pursuant to this Section to the extent of any contributing negligence or willful misconduct of the District or its officers, employees or subConsultants.

- 10. Insurance and Indemnification as Material Provisions.** The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to CONSULTANT by the indemnification and insurance clauses.
- 11. CONSULTANT'S Endorsement on Reports, etc.** CONSULTANT shall endorse all reports, maps, plans, documents, materials and other data in accordance with applicable provisions of the laws of the State of California.
- 12. Documents, Information and Materials Ownership.** All documents, information and materials of any and every type including intellectual property, prepared or produced by the CONSULTANT pursuant to this Agreement shall be the property of the DISTRICT. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing work under this Agreement, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.
- 13. Termination of Agreement Without Cause.** DISTRICT may terminate this Agreement at any time by giving the CONSULTANT twenty (20) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, CONSULTANT shall be entitled to no further compensation or payment of any type from the DISTRICT.
- 14. Termination of Agreement for Cause.** If CONSULTANT fails to perform CONSULTANT'S duties to the satisfaction of the DISTRICT, or if CONSULTANT fails to fulfill in a timely and professional manner CONSULTANT'S obligations under this Agreement or if CONSULTANT violates any of the terms or provisions of this Agreement, or if CONSULTANT, CONSULTANT'S agents or employees fail to exercise good behavior, either during or outside of working hours, that is of such a nature as to bring discredit upon the DISTRICT, then DISTRICT shall have the right to terminate this Agreement effective immediately upon the DISTRICT giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. CONSULTANT shall be paid for all work satisfactorily completed prior to the effective date of such termination. If DISTRICT'S termination of the Agreement for cause is defective for any reason, including but not limited to DISTRICT'S reliance on erroneous facts concerning CONSULTANT'S performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause on the twentieth day following the DISTRICT'S written notice of termination for cause to the CONSULTANT, and the DISTRICT'S maximum liability shall not exceed the amount payable to CONSULTANT under paragraph 12 above.

15. Compliance with Laws. CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the work of this Agreement. Any required statutory provision is deemed incorporated by this reference.

16. Covenant Against Contingent Fees. CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. Disputes & Claims.

- a. **Notice of Potential Claim.** The CONSULTANT shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the DISTRICT, or for the happening of any event, thing, occurrence, or other cause, unless CONSULTANT has provided the DISTRICT with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the DISTRICT prior to the time that the CONSULTANT shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the DISTRICT, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the DISTRICT at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the Director of Public Works.
- b. **Processing of Actual Claim.** In addition to the above requirements for Notice of Potential Claim, a detailed, Notice of Actual Claim must be submitted in writing to the DISTRICT on or before the date of final payment under this Agreement. All such claims shall be governed by the procedures set forth in section 20104.2 and 20104.4 of the Public Contract Code, except that the word "claim" as used in said sections shall be construed as referring to any claim relating to this Agreement. The CONSULTANT shall not be entitled to any additional compensation unless CONSULTANT has (1) provided the DISTRICT with a timely written Notice of Actual Claim and (2) followed the procedures set forth in Public Contract Code section 20104.2 and 20104.4.
- c. **Claim is No Excuse.** Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the DISTRICT, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

18. CONSULTANT is an Independent Consultant. It is expressly understood that in the performance of the services herein provided, CONSULTANT shall be, and is, an independent CONSULTANT, and is not an agent or employee of DISTRICT. CONSULTANT has and shall retain the right to exercise full control over the employment,

direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of the services rendered hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of his employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

19. Entire Agreement and Modification. This Agreement constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others.

20. Enforceability. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

21. Warranty of CONSULTANT. CONSULTANT warrants that CONSULTANT and each of the personnel employed or otherwise retained by CONSULTANT for work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

22. SubConsultants.

- a. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the DISTRICT.
- b. Any subcontract entered into by CONSULTANT relating to this Agreement shall contain all the provisions contained in this Agreement.
- c. Any substitution of subConsultants must be approved in writing by the DISTRICT in advance of assigning work to a substitute subConsultant.

23. Applicable Law and Venue. This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Diego County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

24. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to DISTRICT at:

R. F. Kiesling
Executive Director, Facilities Management
9600 ½ Milden Street
La Mesa, California 91944

to the CONSULTANT at:
[Consultant Address](#)

25. Cost Disclosure - Documents and Written Reports. Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs,

which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

- 26. Findings Confidential.** No reports, maps, information, documents, or any other materials given to or prepared by CONSULTANT under this Contract which DISTRICT requests in writing to be kept confidential, shall be made available to any individual or organization by CONSULTANT without the prior written approval of DISTRICT.
- 27. Quality Control and Quality Assurance.** The CONSULTANT shall provide a description of their Quality Control procedure. The process shall be implemented for all facets of work and a QC-QA statement and signature shall be placed on all submittals to the DISTRICT.
- 28. Fingerprinting Requirements.** Consultant agrees to provide the District with written certification that Consultant has complied with the fingerprinting and criminal background investigation requirements of the California Education Code with respect to all Consultant's employees who may have contact with District students in the course of providing said services, and that the California Department of Justice has determined that none of those employees has been convicted of a felony, as defined in Education Code Section 45122.1 through 45125.5.

IN WITNESS THEREOF, DISTRICT and CONSULTANT have executed this Agreement on the day and year first hereinabove set forth.

GROSSMONT UNION HIGH SCHOOL
DISTRICT

CONTRACTOR

Signature of Authorized Agent

Signature of Authorized Agent

Robert F. Kiesling

Typed or Printed Name

Typed Name

Executive Director Facilities Management
Title

Social Security or Taxpayer I.D. No.

Board Approval Date: _____

(Area Code) Telephone Number

CONSULTANT CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE SECTION 45125.1

The District has determined under Education Code Section 45125.1, subdivision (c), that in performing services to this contract, Consultant's employees may have contact with pupils. As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any subConsultant, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

Consultant shall not permit any employee to perform services who may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has not criminal charges pending for a felony as defined in Section 45122.1.

Consultant shall certify in writing to the District that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1.

Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant for using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

It is understood that by signing this document Consultant agrees that they are familiar with Education Code Section 45122.1. The following individuals are employees of Consultant who may come in contact with pupils in the performance of services in this contract.

Name	Social Security No.
------	---------------------

I certify that none of the individuals identified above has been convicted of a felony as defined in Education Code Section 45122.1.

Company: _____

Name: _____ Title: _____

Signature: _____ Date: _____

REQUEST FOR PROPOSALS

_____ **SCHOOL District**

REQUEST FOR PROPOSALS

FOR

_____ **SERVICES**

_____ **School District**

[Insert Address]

RFP Issued: _____, 200_
Pre-Submittal Conference: _____, 200_
RFP Due: _____, 200_ at __:__ p.m.

Table of Contents

1. Introduction	3
2. Critical Dates	3
3. Project Description	3
4. Scope of Required Services.....	4
♦ Insert Important Milestones	
5. Public Disclosure	4
6. Submittal Format and Content	4-6
♦ Submittal Cover	4
♦ Table of Contents.....	4-6
I. Cover Letter	
II. Methods and Strategic Plan	
III. Qualifications and Experience	
IV. List of Project Personnel	
V. Organizational Chart	
VI. Location	
VII. Other Information	
VIII. Schedule of Rates	
IX. Exceptions to this RFP	
7. Submittal Schedule.....	6
8. Submittal Selection Process	7
9. Submittal Evaluation Criteria	7
10. Agreement Terms and Conditions	7
11. District Contact.....	8

REQUEST FOR PROPOSALS

SERVICES

INTRODUCTION

The _____ School District (District) is issuing this RFP requesting Statements of Proposals from _____ qualified to provide to the District proper guidance and assistance for the following **[Insert Project Description and Description of Services]**.

This Request for Proposals describes the required scope of services, the selection process and the minimum information that must be included in the proposal. Failure to submit information in accordance with the RFP's requirements and procedures may be cause for disqualification.

CRITICAL DATES

Pre-Submittal Conference:

A Pre-Submittal Conference will be held on the date and time referenced below. At the Pre-Submittal Conference, District Representatives will distribute information and materials **[Insert a Description of Materials and Information That Will be Distributed at the Meeting]**. Respondents shall consider and address the materials and information distributed at the Pre-Submittal Conference in their submittals.

_____, 200_, at __:00 __.m.
[Insert Location and Address]

Submittal Due Date:

_____, 200_, at __:00 __.m.

DESCRIPTION OF SERVICES

The selected Consultant will perform the services acting as the District's representative and agent to **[Insert Project Description and Description of Services]**. The selected Consultant shall provide evidence to demonstrate expertise for the services.

An agreement will be awarded to the highest rated respondent with whom a successful agreement can be negotiated. The District reserves the right to reject any or all proposals at the District's sole discretion at any time prior to an award.

SCOPE OF REQUIRED SERVICES

The scope of work includes, but is **not limited** to, the following:

[Insert a Summary of the Scope of Work]

PUBLIC DISCLOSURE

Under the California Public Records Act (California Government Code Section 6250 et seq.) records in the custody of a public entity generally have to be disclosed unless the information being sought falls into one or more of the exemptions to disclosure set out in Government Code Sections 6254 through 6255. To the extent provided under the law, the District may be obligated to disclose your submittal to any party that requests it. Regardless of assertions of confidentiality, submittal contents may still be disclosed if District, or a court with jurisdiction, determines that such submittal is a public record requiring disclosure.

SUBMITTAL FORMAT AND CONTENT

The Proposal should be concise, well organized and demonstrate Respondent's qualification. The Proposal may be no longer than **[insert number of pages, we suggest 40 pages]** 8 ½" x 11" paper, inclusive of resumes, forms, and pictures.

All respondents are required to follow the format specified below. The content of the submittal must be clear, concise, and complete. Each section of the submittal shall be tabbed according to the numbering system shown below to aid in expedient information retrieval (NOTE: Respondents shall base their submittals on the "Scope of Required Services," the information and materials distributed at the Pre-Submittal Conference, and the draft project schedule enclosed).

Ten copies of the submittal shall be delivered no later than :00 .m. on _____, _____, 200_ to:

[Insert Address and Contact Information]

Submittal Cover

Include the RFP's title and submittal due date, the name, address, fax number, and the telephone number of principal firm (or firms if there is a joint venture or association).

Table of Contents

Include a complete and clear listing of headings and pages to allow easy reference to key information.

- I. **Cover Letter** - The cover letter should be brief (two pages maximum). Describe how the delivery of services will be provided to District, including the location of the firm's offices and the response time to District's requests. Describe those conditions, constraints, or problems that are unique to the scope of work that may adversely affect either the cost or work progress; identify the team members (i.e., joint partners and sub-consultants); and include the title and signature of the firm's contact person for this procurement. If the firm is proposing to co-respond with another principal firm, the cover letter must specify the type of services to be provided by each firm and the proposed percentage allocated to that phase or function of the service. Any changes to the District's requested format or deletions of requested materials should be explained in the cover letter. The signatory shall be a person with official authority to bind the company.
- II. **Methods and Strategic Plan** - Describe in detail your methods and plan for carrying out the Scope of Work.
- III. **Qualifications and Experience** - This section shall contain the following: A description of the applicant's experience in providing like services for public entities and/or the private sector. Experiences in the past three years specifically related to the scope of work shall be listed consecutively with the awarding and completion dates noted. Each listed experience shall include the name(s) and telephone number(s) of the firm's project manager and the client's project manager. When listing team members or sub-consultants describe the listed experience and the exact tasks that each firm performed. For similar projects, please list the total cost of each project.
- IV. **List of Project Personnel** - This list should include the identification of the contact person with primary responsibility for this project, other project personnel, including partners and/or sub-consultants, and their individual areas of responsibility. A resume for each professional and technical person assigned to the project, including partners and/or sub-consultants, shall be submitted. The resumes shall include at least two references from previous assignments.
- V. **Organizational Chart** - An organizational chart containing the names of all key personnel, joint venture partners, and sub-consultants with titles and their specific task assignment for this project shall be provided in this section. The District's evaluation will consider entire team. Therefore, no changes in the team's composition will be allowed without prior written approval of the District.
- VI. **Location** – Proximity of local office (s) in San Diego County to the District including the types and quantities of professionals employed by the firm locally. Firms with local offices and staff are preferred and will be given preference in the evaluation process.
- VII. **Other Information** - This section shall contain all other pertinent information regarding this procurement in the following order:
 - A. Description of insurance coverage for prime respondent and co-venture partner(s) (types of coverage and policy limits, deductible, exclusions, and outstanding claims).

- B. Description of in-house resources for prime respondent and co-venture partner(s) (i.e., computer capabilities, software applications, modem protocol, and modeling programs, etc.).
- C. Respondents should provide, on a strictly confidential basis, the following information:
 - 1) Audited financial statements for the last three years
 - 2) List of projects completed in the last three years and current projects with the San Diego County projects delineated
 - 3) List of projects currently under development with status, service development schedule and financial commitment
 - 4) List of projects currently involved in litigation or unresolved claims
- D. Description of community involvement in San Diego County.
- E. Description of previous involvement with the _____ District.

VIII. **Schedule of Rates** - The respondent shall provide a Schedule of Rates for the principal firm (or firms if there is a joint venture or association). The schedule of rates shall consist of a list of project staff by title (not name) with hourly billing rates. All Direct costs, handling charges and profit/overhead shall be included in the hourly billing rates provided. Any proposed reimbursable expenses should also be listed. If the respondent prefers a particular compensation structure (e.g. time and materials not to exceed, lump sum, percentage of project costs, or other, etc.) this should be indicated.

IX. **Exceptions to this RFP**

The Proposal shall certify that the Respondent takes no exceptions to this RFP, including, but not limited to the District's standard Professional Services Agreement (attached).

SUBMITTAL SCHEDULE

The solicitation receipt and evaluation of submittals and the selection of the provider of consultant services will conform to the following schedule (Note: Dates are subject to change):

◆ Distribution:	_____, 200_
◆ Pre-Submittal Conference:	_____, 200_
◆ Submittal of Qualifications Deadline:	_____, 200_
◆ Submittal Review:	_____, - __, 200_
◆ Oral Interviews:	_____, 200_
◆ District Approval:	_____, 200_
◆ Notice to Proceed:	_____, 200_

SUBMITTAL SELECTION PROCESS

Respondents may be requested to provide additional information on their proposed approach to the project in advance of the interviews. The finalists will be ranked and staff will negotiate with the top ranked firm or, if those negotiations fail, with the second-ranked firm, and so forth.

SUBMITTAL EVALUATION CRITERIA

Submittals received by District will be evaluated according to the criteria listed below:

- ◆ Conformance to the specified RFP format;
- ◆ Organization, presentation, and content of the submittal;
- ◆ Specialized experience and technical competence of the firm(s), (including principal firms, joint venture-partners, and sub-consultants) considering the types of service required; the complexity of the project; record of performance; and the strength of the key personnel who will be dedicated to the project;
- ◆ Proposed methods and overall strategic plan to accomplish the work in a timely and competent manner;
- ◆ Knowledge and understanding of the local environment and a local presence for interfacing with the District;
- ◆ Financial resources and stability of the principal consultant and/or a consultant team;
- ◆ Ability to meet the insurance requirements unless District, at its sole discretion, decides to modify or waive the insurance requirements or elects to provide project insurance;
- ◆ Competitive rates.

AGREEMENT TERMS AND CONDITIONS

Issuance of this RFP does not commit District to award any agreement, or to pay any costs incurred in the preparation of a response to this request. District retains the right to reject any or all submittals. All respondents should note that the execution of any agreement pursuant to this RFP is dependent upon the approval of the _____ School District in its sole discretion.

The selected Respondent shall execute the District' standard Professional Services Agreement. The form of compensation shall be negotiated. The District reserves the right to propose a variety of compensation structures, including: 1) time and materials not to exceed, 2) guaranteed lump sum, and 3) a percentage of project costs.

Each submittal shall be valid for not less than one hundred and twenty (120) days from the date of receipt. The firm(s) selected to perform the work described in this RFP will be required to provide evidence of insurance as set out in the Professional Services Agreement attached hereto.

DISTRICT CONTACT

The District looks forward to receiving a submittal from you. If you have any questions regarding this RFP, please contact:

[Insert District Contact and Address]

Note: Incomplete submittals, incorrect information, or late submittals may be cause for immediate disqualification.



Grossmont Union High School District

REQUEST FOR QUALIFICATIONS/ PROPOSALS CONSTRUCTION MANAGEMENT SERVICES

**March 10, 2010
Facilities Department**



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

**REQUEST FOR QUALIFICATIONS (RFQ)/
REQUEST FOR PROPOSAL (RFP) -
CONSTRUCTION MANAGEMENT SERVICES**

March 10, 2010

Grossmont Union High School District (hereinafter District) is requesting proposals for Construction Management services from interested firms for services related to modernization, new construction, modular buildings, and/or other capital projects related to Proposition H/U Bond Measures, and other school construction projects as needed. It is the intention of the District to identify a list of firms that can provide full service Construction Management Services

The Request for Qualifications (RFQ) / Request for Proposals (RFP) **must be received by 2:00 PM on April 5, 2010**, at Grossmont Union High School District, in the Bond Trailer (Facilities Management Department), located at 9600 ½ Mildred Street, La Mesa, California 91942. Attention: Mr. Bob Kiesling, Executive Director Facilities Management.

A. INTRODUCTION

Since the District's first schools opened in 1922, Grossmont Union High School District has provided quality educational programs and services for hundreds of thousands of students. The Grossmont Union High School District currently serves approximately 22,000 students in grades 9-12 and thousands of adult learners in East San Diego County communities including El Cajon, La Mesa and Santee.

B. PROPOSITIONS H/U

In November 2004, the voters passed Proposition H for \$274 million and in 2008 voters also passed Proposition U for \$417 million. Together these bond programs will allow the district to fund modernization, new construction, replacement of relocatables, and/or other capital projects to ensure that students attending Grossmont Union High School District schools are housed in safe, healthy, and quality learning environments. Further information about projects is available on the district's web site at: <http://www.guhdsd.net>.

C. SCOPE OF SERVICES

In keeping with the District's desire to promote accountability, efficiency, and cost effectiveness the District is seeking the services of "Construction Manager(s)" to provide construction management services for one or more schools targeted for modernization; or one or more new building construction projects. The District is seeking a firm with "CM-Multiple Prime" and "Agency CM" experience in the K-12 Schools arena, as there are unique challenges to each project delivery method, depending on the size, complexity, time constraints, and bid climate.



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

D. SUBMITTAL INFORMATION AND FORMAT

In order to be considered for selection as a Construction Manager, the respondent firm or firms or team will submit the following items in the specified order. Interested firms or respondents are requested to respond in accordance with the direction provided below. The RFQ/RFP shall not exceed fifteen (15) pages, excluding front and back covers, tabs and appendices but not including a separate sealed envelope containing the fee proposal. **Please provide only one (1) envelope containing one (1) copy of fee proposal.**

1. Cover Letter

This letter should introduce the team and **must be signed by an authorized officer of the lead firm or organization:**

- a. If submitting as a team, note which team member (company) is the prime consultant or lead joint venture partner, or if it will be a prime-subconsultant(s) contractual relationship.
- b. Identify individual (person) or individual(s) who will be responsible in oversight capacity for work within the District; and identify individual (or individuals, if more than one school site) whom will be leading the Construction Management team or Construction Management teams and to which entity they are employed, and for how long employed with current company.

2. Team Profile

Consultant Company History including:

- a. Number of Years in business
- b. Annual Revenues
- c. Number of Employees (company-wide)
- d. Number of Employees located in Southern California Counties (San Diego, Orange, Los Angeles, Riverside, San Bernardino)
- e. Current Work Backlog
- f. Work load by Previous Calendar Year Ending December 2009, broken down by a) CM (For Fee); b) CM (Multiple Prime); c) CM "At Risk" (if any); d) General Contracting.

3. Project Team

Please provide resumes of the Key Project Personnel that will be assigned to work if your firm is selected. These resumes must represent projects over the last 10 years. Please also indicate number of years employed by firm, or joint venture team member, or sub-consultant. Indicate by Key project team member, their respective availability.

Key resumes shall include: Project Executive; Project Managers; Construction Managers; Project Superintendents; Estimators, and Schedulers.



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

4. Project Experience & References

Please provide a brief and concise description of educational facility, K-12, community college, or university projects completed or in progress within the last 5 years. This description should demonstrate your Firm (or your team's, which can include subconsultants) combined experience as a Prime Consultant hired to perform Construction Management services.

Description should include:

- a. Services provided (indicated completed or in progress)
- b. Identify Project delivery method (Construction Management (For Fee) or CM Multiple Prime)
- c. Number of buildings per project and sq. ft.
- d. Construction value
- e. Construction duration
- f. References (please include name, title, organization/entity (school district; identify if individual named is district employee or consultant), address, current phone number, email address. If using a subconsultant's experience, please indicate.
- g. Only projects that include all of the above information will be considered.

5. Project Controls

Demonstrate your Firm (or your team's) abilities in:

- a. Estimating
- b. Scheduling (Critical Path Method (CPM) Scheduling using Primavera Project Planner (P3) or equivalent)
- c. Cost Control
- d. Document Management/Controls (utilizing document management systems such as Primavera, Expedition, Prolog or equivalent)
- e. Quality Control Procedures

6. Financial Strength:

Indicate the dollar value of the three largest projects (within the past (5) five years) that the Prime Consultant has served in a Construction Management capacity in the K-12 market in Southern California.

7. Litigation

Provide specific information on termination for default, litigation filed, settled or judgments entered within the last (5) five years related to your firm, joint venture partners. Also, provide information relative to any convictions for filing false claims within the past 5 years.

8. Forms

Please include in this section all required SOQ forms as well as any Small, Local, Emerging, and Disabled Veteran Business Enterprises (S,L,E, DVBE) certifications. The completion of the attached form in the RFQ is not a condition for qualification submittal, but is a condition of award of a contract. See Item K for more information.



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

9. Declaration

- a. Type of organization or company structure.
- b. Number of years the firm has been in business.
- c. General Contracting License (if applicable, that it is current)
- d. Location of principal office that will be responsible for the implementation of this contract; # of employees working in this same principal office, # of licensed engineers, # of licensed architects, # of Certified Construction Managers (CCM) working out of this principal office.
- e. Certification that the Construction Management firm is legally permitted to conduct business in the State of California.
- f. Capacity and capability of firm: The Construction Manager or firm must demonstrate an ability to be able to draw upon a multidisciplinary staff to address the services outlined in this RFQ;

10. Fee Proposal

Submit a Fee Proposal in a separate sealed envelope in the following format.

Note: The basis of compensation will be on an approved Staffing Plan and Reimbursables Schedule which once negotiated becomes the Task Order Budget for Construction Management Services. Provide hourly rate sheet for all personnel and positions that could be assigned to the work.

A. Fee Proposal - CM Multiple Prime Project – Modernization (Phased)

Assume a \$7.5M Construction Value (High School Site)

Duration: (indicate duration of construction)

Labor (Staffing)	FT/ Hourly Rates*	Hr/ PT	Wk	# of Weeks	Amount
Project Manager	\$				\$
Site Superintendent	\$				\$
Project Engineer	\$				\$
Project Controls	\$				\$
Administrative	\$				\$
Subtotal:					\$

* Hourly Rates are inclusive of Direct Labor, Overhead, Burden, Fringes & Profit

Non-Labor General Conditions/Reimbursables	Unit Cost	No. of Weeks/ Months	Subtotals
Fencing			
Portable Restrooms			
Site Trailer			
Trailer Installation			
Equipment Lease			
Other			
Subtotal:			\$

Total Estimated CM (Labor, Non-Labor General Conditions, Reimb. Costs: \$
Estimated % of Construction Value:

B. Fee Proposal - AGENCY CM – Modernization (Phased)



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

Assume a \$7.5M Construction Value (High School Site)

Duration: (indicate duration of construction)

Labor (Staffing)	Hourly Rates*	FT/ PT	Hr/ Wk	# of Weeks	Amount
Project Manager	\$				\$
Project Engineer	\$				\$
Project Controls	\$				\$
Administrative	\$				\$
SubTotal:					\$

*** Hourly Rates include Overhead, Burden, Fringes & Profit**

Reimbursables	Unit Cost	Months	No. of Weeks/ Subtotals	
Site Trailer				
Trailer Installation				
Equipment Lease				
Other				
Subtotal:				\$
Total Estimated CM (Labor, Non-Labor General Conditions, Reimb. Costs:				\$
Estimated % of Construction Value:				

E. SUBMITTAL REQUIREMENTS

The individual or official of this firm who has the power to bind the firm contractually must sign the SOQ.

The SOQ preparation and associated direct costs are the sole responsibility of the Consultant and will not be reimbursed by the District.

Ten (10) copies of the Statement of Qualifications & One Sealed Envelope containing Proposal (Fee Proposal) shall be submitted on or before 2:00p.m., April 5, 2010 at the Bond Trailer, Facilities Management Offices, Grossmont Union High School District, Attention: Bob Kiesling, Executive Director, Facilities Management; 9600 ½ Mildred Street; La Mesa, CA 91944.

F. QUESTIONS

All questions, interpretations or clarifications, either administrative or technical must be requested in writing and directed to:

GROSSMONT UNION HIGH SCHOOL DISTRICT
Attn: Bob Kiesling bkiesling@guhsd.net
Executive Director, Facilities Management
With cc to gcarreon@sdcoe.net
9600 ½ Mildred Street
La Mesa, CA 91942
(619) 644-8159

G. BASIS OF SELECTION OR RANKING OF QUALIFIED FIRMS



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

The SOQs will be evaluated based on each firm's qualifications, relevant experience with similar K-12 work, and K-12 School or Community College District references. All SOQs will be evaluated and take into account strengths in performing modernization and new school construction related work.

H. OPENING SEALED ENVELOPE CONTAINING FEE PROPOSAL

Following the selection of qualified firms (and after Governing Board approval) the sealed fee proposal for the selected firms will be opened and negotiations will commence necessary to place the firm (or team) under contract for a specific project or projects if needed.

I. SCHEDULE

RFQ – solicitation date	March 10, 2010
Questions (deadline by 4:00 p.m.)	March 19, 2010
(Submit via email to bkiesling@guhdsd.net)	
(Copy to gcarreon@sdcoe.net)	
Response to Questions	March 26, 2010
Deadline for submission of SOQs/Proposal	April 5, 2:00 pm
(Submit Fee Proposal (1 original): <i>in a separate sealed envelope</i>)	
Notification of Finalists	April 23, 2010
Interview of Finalists	Mid-May 2010
Board Approval, Authorize to Negotiate	June 10, 2010

J. CONFLICTS OF INTEREST

Any qualified firm that is ultimately selected for “construction management services” on a particular School (or Schools) will be prohibited from bidding on any work or responding to any separate RFQ related work i.e. architect/engineering services; at that same School or other Schools in the District.

K. OUTREACH

The Governing Board recognizes the importance of promoting economic growth in the communities it serves and therefore encourages the involvement of Small, Local, Emerging, and Disabled Veteran Business Enterprises (S,L,E, DVBE) in every aspect of the execution of Proposition H Bond work, including the Construction Management services addressed by this RFQ. The completion of the attached form is not a condition for qualification submittal, but is a condition of award of a contract. Column D of applicable form (attached, herewith) should not be completed at time of submittal of response to this RFQ.



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

L. EVALUATION & ACCEPTANCE OF STATEMENT OF QUALIFICATIONS

The District reserves the right to reject any and all Statements of Qualifications, to amend the Request for Qualification and the process itself, or to discontinue the process at any time.

M. WITHDRAWAL OF STATEMENT OF QUALIFICATIONS

The Consultant or team may withdraw his/her SOQ at any time prior to the specified time for receipt of SOQs by delivering a written request signed by an authorized officer of the Consultant organization to the attention of Mr. Bob Kiesling, Executive Director, Facilities Management. All consultants must present their written request for withdrawal in person with proof that they are representatives of the company withdrawing the SOQ.

N. INSURANCE

- (a) Consultant shall, at all times during the term of this Agreement, carry, maintain and keep in full force and effect, a policy or policies as follows:

For Contracts above \$1 Million the following limits apply:	Contractor
Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:	\$ 2,000,000.00
Project Specific Aggregate (for this project only)	\$ 4,000,000.00
OR	
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:	
(a) Per occurrence (combined single limit)	\$ 2,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 4,000,000.00
(c) Products/Completed Operations	\$ 2,000,000.00
(d) Personal & Advertising Injury limit	\$ 2,000,000.00

- (b) Consultant agrees to maintain in force, at all times, during the performance of work under this Agreement, Worker's Compensation Insurance as required by law of the State of California.
- (c) Consultant agrees to maintain in full force and effect during the performance of work under this Agreement, Professional Liability (Errors and Omissions) insurance in the amount of \$1,000,000. Further, if such insurance is on a claims made basis, Consultant agrees to maintain in full force and affect such insurance for one year after the performance of work under this agreement, including warranty periods, is completed.
- (d) All insurance policies shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days prior written notice to the District. Consultant agrees that it will not cancel or reduce said insurance coverage.



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

- (e) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, District may either immediately terminate this agreement or, if insurance is available at a reasonable cost, District may take out necessary insurance and pay, at Consultant's expense, the premium thereon.
- (f) At all times during the term of this Agreement, Consultant shall maintain on file with the District a certificate of insurance, showing that the aforesaid policies are in effect in the required amounts. The policies shall contain an endorsement naming the District as an additional insured (except for the workers compensation and professional liability policies), providing that the policies cannot be canceled or reduced, except on thirty (30) days written notice to the District, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions set forth in this Agreement. Consultant shall promptly file with the District such certificate or certificates.
- (g) The insurance provided by Consultant shall be primary to any coverage available to District. The insurance policies (other than workers compensation) shall include provisions for waiver of subrogation.

P. FINGERPRINTING

The Construction Manager shall comply with Education Code section 45125.1 which stipulates that none of its employees that come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c). All Construction Management personnel must be fingerprinted and badged prior to the commencement of work on any campus.

Q. TOBACCO AND DRUG-FREE WORKPLACE POLICY

The District and all District projects are "tobacco" and "drug free" workplaces and, as such, require that all persons on District Property be subject to the requirements mandated by California Government Code section 8350, et seq. when on Project site.

R. NON-DISCRIMINATION

The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

COMPLETED BY ALL PRIME CONSULTANTS

Consultant Name: _____

Identify those Businesses with which you intend to sub-consult; the work to be sub-consulted, the percentage of work to be sub-consulted and the type of subcontractor i.e. Small, Local, Emerging, Disabled Veteran or other/decline to state. Definition of these categories can be found on the accompanying form.

“A” Business Name	“B” Work Scope	“C” Percentage	“D” Type of Subcontractor

*****DUPLICATE THIS FORM AS NECESSARY*****



**Grossmont Union
High School District
FACILITIES MANAGEMENT**

TO BE COMPLETED BY ALL CONSULTANTS AND SUBCONSULTANTS

Consultants/Subconsultant Name: _____

I declare under penalty of perjury that my business is (check all that apply):

- ☐ Small Business – A Small Business is one whose gross sales are less than \$1 million annually.
- ☐ Local Business – A Business headquartered in San Diego County.
- ☐ Emerging Business – An Emerging Business is one who has been business less than five years. I started my business on _____.
- ☐ Disabled Veteran-Owned Business – A Disabled Veteran-Owned Business is one that has a current certification from a California public agency. Certification must be attached.
- ☐ Other Businesses – A business, which does not meet any of the other definitions above, or for which the consultant or sub-consultant declines to state its category.

If it is determined that the information contained herein is not true and correct, I will not be allowed to do work (begin, finish, complete) for the Grossmont Union High School District.

Consultant/Sub-consultant: _____

Address: _____

City, State, Zip Code: _____

Phone Number: _____

Fax Number: _____

Name, Title: _____

Signature: _____

GROSSMONT UNION HIGH SCHOOL DISTRICT



REQUEST FOR PROPOSALS

**for
Photography Services
(Yearbook)**

**Advertised in the San Diego Daily Transcript
May 9 & May 15, 2012**

**Photography Services
for the
Grossmont Union High School District**

SUBMITTALS: Four (4) copies must be received on or **before 2:00 PM., May 24, 2012**

ADDRESSED TO: Guiselle Carreon
Director of Purchasing

MAILING ADDRESS: Grossmont Union High School District
1100 Murray Drive,
El Cajon, CA, 92020

RFP SUBMITTAL: Mark envelope:

PROPOSAL – PHOTOGRAPHY SERVICES FOR THE
GROSSMONT UNION HIGH SCHOOL DISTRICT:

CATEGORY 1: Yearbook & Senior Pictures

and/or

CATEGORY 2: Sports Photography

Proposals shall be submitted in sealed packages with the name of the Firm submitting the Proposal, clearly marked on the front. Submission of the proposal by facsimile or e-mail is unacceptable. The respondent is entirely responsible for delivering the Proposal to the aforementioned office, on time. **Late Proposals will not be accepted.**

PROPOSALS RECEIVED AFTER THE TIME AND DATE STATED ABOVE SHALL BE RETURNED UNOPENED TO THE PROPOSER.

INQUIRIES: Questions or clarifications for the Request for Proposal documents can be directed in writing to:

Guiselle Carreon
Director of Purchasing
gcarreon@sdcoe.net
Fax: 619-460-0963

Submit questions no later than May 18, 2012.

NOTICE TO PROPOSERS

NOTICE IS HEREBY GIVEN that the Grossmont Union High School District of San Diego County, California, acting by and through its Governing Board, hereinafter referred to as the "the District" will receive up to, but not later than 2:00 pm, May 24, 2012, sealed proposals for:

Category 1: **Senior Pictures and Yearbook Photos**

Category 2: **Sports Photography**

Proposals shall be received by the Grossmont Union High School District, Purchasing Department, at 1100 Murray Drive, El Cajon, CA 92020.

All interested parties may obtain a copy of the RFP by contacting the Grossmont Union High School District, Purchasing Department, 1100 Murray Drive, El Cajon, CA 92020-5664, 619-644-8051 or online at: <http://portal.guhds.net/index.php/rfp>

Any proposal received later than the specified time, whether delivered in person or mailed, shall be disqualified.

The evaluation criteria specified herein will be used to determine which of the proposals provide the best quality for Grossmont Union High School District at the most economical cost. The District reserves the right to accept or reject any or all proposals, to waive all technicalities, and to accept the proposal(s) that is determined to be the most favorable to the District. Recognizing that there are important considerations other than price, the District may not necessarily award to the lowest proposer.

Proposals must be effective for sixty (60) days following deadline for the receipt of proposals.

Clerk of the Governing Board
Grossmont Union High School District,
of San Diego County, California

Publication: San Diego Daily Transcript
May 9 & 15, 2012

INFORMATION AND CONDITIONS

General Conditions

1. Certain specifications are set forth herein for the purpose of establishing minimum standards. Variations which in the opinion of the Governing Board fall below the standards of these specifications will not be allowed, or accepted. Proposers may propose any material or process equal or superior to those specifications herein, but each deviation from the specifications listed must be set forth in detail, and the District shall be the sole judge as to whether such deviation is in fact equal or superior to those set forth herein. The opinion of the District shall be final.
2. Wherever in these specifications any material or process is indicated or specified by patent or proprietary name or by the name of a manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the materials or process desired and shall be deemed to be followed by the words "or equal".

Conditions and Instructions

1. **Securing Documents:** Specifications and other contract document forms are available without charge to prospective Proposers at the Purchasing Department, Grossmont Union High School District, 1100 Murray Drive, El Cajon, Calif. 92020-5664 or can be downloaded from the District's website at: <http://portal.guhdsd.net/index.php/rfp>
2. **Taxes:** The district shall not be responsible for any taxes with the exception of sales tax or use taxes where applicable. Applicable taxes shall be added by the Proposer to his invoice(s), and shall not be included in the proposal.
3. **Assignment of Contract:** The successful Proposer shall agree not to assign, transfer, convey, sublet, or otherwise dispose of the items appearing on this proposal form, which he may be awarded, or any rights accruing thereunder, title or interest therein, funds to be received hereunder, or any power to execute the same without the consent in writing of the District Governing Board. Notice is hereby given that the District will not honor any assignment made by the Contractor unless the consent in writing, as indicated above, has been given.
4. **Addenda or Bulletins:** Any addenda or bulletins issued by the District during the time of proposal or forming a part of the documents loaned to the Proposer for the preparation of this proposal shall be covered in the proposal and shall be made a part of the contract.
5. **Withdrawal of Proposals Prior to Opening:** Any Proposer may withdraw his proposal, either personally or by a written request, at any time prior to the scheduled time for opening of Proposals.
6. **Withdrawal of Proposals after Opening:** A Proposer may not withdraw his proposal for a period of sixty (60) days after the date set for the opening thereof.
7. **Interpretation of Documents:** If any person contemplating submitting a proposal for the proposed contract is in doubt as to the true meaning of any part of the contract documents or finds discrepancies, in or omissions from, the Specifications, he may submit to the Director of Purchasing of the Grossmont Union High School District a written request for an interpretation or correction hereof. The person submitting the request will be

responsible for its prompt delivery. Any interpretation or addendum duly issued by said Director of Purchasing and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The District will not be responsible for any other explanation or interpretation of the proposed documents.

8. **Liquidated Damages:** The District shall hold the successful Proposer liable and responsible for all damages which may be sustained because of his failure to comply with any conditions herein. If the successful Proposer fails to furnish or deliver any material, supplies, equipment, or services at the prices quoted, or at the times and places stated, or otherwise fails to comply with the terms of the documents in their entirety, the District may purchase the items herein specified elsewhere, without notice to the successful Proposer. Additional costs accrued by the District through this purchase may be deducted from unpaid invoices or must be paid to District by the successful Proposer. Prices paid by the District shall be considered the prevailing market prices at the time such purchase is made.
9. **District Inspection:** All items shall be subject to the inspection of the District. Inspection of the items shall not relieve the Proposer from any obligation to fulfill this contract. Defective items shall be made good by the Proposer, and unsuitable items may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the District and accepted. If any item shall be found defective at any time before final acceptance of the complete delivery, the Proposer shall immediately remedy such defect in a manner satisfactory to the District.
10. **Restricted Proposal:** Only those companies fully licensed, equipped and experienced in the work being performed, with skilled personnel immediately available, able to obtain necessary components immediately, shall be considered qualified Proposers for this contract.
11. **Equal Employment Opportunity:** In connection with the execution of this contract, Proposer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Proposer shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off, termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. Proposer must sign the AFFIRMATIVE ACTION POLICY which must be attached and become a part of the proposal. **See Attachment C.**
12. **Public Liability and Property Insurance:** Successful Proposer shall maintain during the life of this contract Public Liability and Property Damage Insurance to protect themselves and the District from all claims for personal injury, including accidental death, as well as from all claims for Property Damage arising from the operations under this Contract. The minimum amounts of such insurance shall be as hereinafter set forth. Successful Proposer will be required to furnish certificates of insurance prior to start of work.
 - 12.1. Amounts of Insurance: Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): \$1,000,000/\$1,000,000 Aggregate.
 - 12.2. Property Damage Liability Insurance including auto (both owned and non-owned): \$1,000,000 Aggregate.

- 12.3. Insurance certificate must name Grossmont Union High School District as additional insured, loss payee.
- 12.4. Certificate to be submitted by successful Proposer prior to start of work.
- 13. **Hold-Harmless Clause:** Proposer shall indemnify and hold Grossmont Union High School District, its officers, agents, and employees harmless from and against any and all loss, liability and expense (including Attorney's fees) of any nature or kind whatsoever, on account of use by the publisher or author, manufacturer or agent of any copyrighted or non-copyrighted composition, secret process, trademark, patented or unpatented invention, article or appliance furnished or used under this quotation.
- 14. **Tobacco-Free District:** The Grossmont Union High School District has been designated as a tobacco-free District. Tobacco use (smoked or smokeless) is prohibited at all times on all areas of District property and in District vehicles.
- 15. **IRS Requirements:** The District shall view the legal position of the Proposer as an "independent contractor" and that all persons employed to furnish services are employees of the Proposer and not of the District.
 - 15.1. The District shall not be liable for any of the contractor's acts or omissions performed under the contract to which the Proposer is party.
 - 15.2. The Proposer will complete IRS form W-9 providing tax payer identification number and also indicate whether Proposer is a corporation, sole-proprietor, partnership, individual, etc. This form must be on file with the District within ten (10) days from the date of the contract start date.

DISTRICT PHILOSOPHY AND OBJECTIVE

Grossmont Union High School District's underlying philosophy is that by granting an exclusive contract(s) for the program, the District improves its potential for reasonable prices for students and consistently high quality services and products.

As used in this RFP, the word "District" represents all entities of the Grossmont Union High School District and may include schools, Associated Student Body (ASB), school-based student programs, and district-wide programs for students.

SCOPE OF PROPOSAL

The Grossmont Union High School District (the District) is soliciting proposals from photography service vendors in order to execute a limited exclusive contract or contracts for the **2012-2013** fiscal year with three options to renew for an additional one-year term. The purpose of this Request for Proposal (RFP) is to evaluate respondent's experience relative to Photography services.

The District reserves the right to award a contract to one or more proposers providing the best value that is most advantageous to the District for **one or both** categories called for in the scope of the RFP. In order to ensure continuity of appearance, Category 1 and Category 2 photos shall be provided by the respective firms with no cross-over between scopes unless both Categories are awarded to one firm.

All proposals must be received no later than **2:00 pm, May 20, 2012.**

1. **OBJECTIVE:** The objective of the District is to select a supplier that provides our students with quality products in a timely fashion with courteous customer service. The District intends to select a proposer to provide Photography services that can provide:

- Quality of items as compared to past practices and products.
- Quantity of products available that are commonly purchased by the District.
- Service (i.e. delivery time to the District campuses and troubleshooting).
- Error correction and turn-around time.
- Reasonable pricing for products provided.
- **PROPOSED STUDENT PRICING:** Proposer will furnish a list of proposed prices or transaction fees for all services/materials. The price schedules shall include all costs associated with providing photography services for the term of the contract. Proposals are not to include sales tax.

Providing the highest quality service at the best price for the students is our highest priority. Any additional services offered by proposer will be taken into consideration and weighed per the evaluation criteria.

2. **PERIOD OF CONTRACT:** The contract period will be effective from **July 1, 2012 through June 30, 2013**, with the option to renew annually for three (3) additional one-year periods, upon mutual agreement of both parties. Subsequent contract periods will be July 1 through June 30 of each following year, respectively. It is the District's intent for this RFP, any addenda, Firm's proposal, any additional information requested, and negotiated changes to be incorporated by reference into the contract.

If the contract is renewed beyond the first option year, that option year and each additional option year can be subject to a price increase with proper documentation by the firm and approval of District not to exceed 5% per year. Any price increase must be submitted by March 30 prior to renewal.

3. **SCOPE OF SERVICES:** Grossmont Union High School District has determined that it would be advantageous to establish a contract(s) that can be used by individual schools and school organizations. This will eliminate the need for each school to issue its own RFP and for firms to submit separate proposals to each school.

- 3.1. Establish a contract with a responsible firm that can provide yearbook and photographic services to its high schools (Category 1).
- 3.2. Establish a contract with a responsible firm that can provide sports photography services to its high schools (Category 2).
- 3.3. Obtain the highest quality photographic services and products for the District's students at the best price.
- 3.4. Provide for increased efficiency in managing photographic service contracts and to limit the disruption to students' educational programs.

4. **CONTRACT ADMINISTRATOR:** The following employee of District is identified to use all powers under the contract to enforce its faithful performance. All orders from District shall be transmitted and communicated through the Contract Administrator.

Guiselle Carreon
Director of Purchasing

5. **PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:**

5.1. **GENERAL REQUIREMENTS:**

5.1.1. RFP Response:

In order to be considered for selection, Proposers must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal shall be submitted to District as indicated on the cover sheet. No other distribution of the proposal shall be made by the Proposer.

5.1.2. Proposal Preparation:

5.1.2.1. Proposals shall be signed by an authorized representative of the Proposer. All information requested must be submitted as called for in the instructions for submission on the bid form and conform to all the requirements of this RFP. Failure to submit all information requested may result in the Purchasing Department requiring prompt submission of missing information and/or giving a lower evaluation of the proposal.

5.1.2.2. Ownership of all data, materials and documentation originated and prepared for the District pursuant to the RFP shall belong exclusively to the District and be subject to inspection in accordance with the California Freedom of Information Act.

- 5.1.2.3. The District may make a final determination regarding a proposal's acceptability solely on the basis of the proposal submitted. However, the District may request additional information from firms and may discuss any facet of the proposal with any firm.
 - 5.1.2.4. Sample photographs shall be free of firm's logos, name, or any identifying marks.
- 5.1.3. Oral Presentation: Proposers who submit a proposal in response to this RFP **may** be required to give an oral presentation of their proposal to the District. This provides an opportunity for the Proposer to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The Contract Administrator will schedule the time and location of these presentations. Oral presentations are an option of the District and may or may not be conducted.
- 5.2. **SPECIFIC REQUIREMENTS:** Proposals should be as thorough and detailed as possible so that the District staff may properly evaluate the firm's capabilities to provide the required services.
-
- 5.3. **PRICING:**
 - 5.3.1. The subsequent contract shall be a firm fixed price contract.
 - 5.3.2. All prices shall be F.O.B. Destination and shall include all charges incurred in fulfilling the terms of this contract.
 - 5.3.3. The Proposer shall submit an itemized list of all proposed costs for the products and services being offered. Pricing Schedules must be provided with your proposal and will be used in the evaluation of process. Proposer shall complete the pricing schedule and additionally provide a complete detail of all proposal products and services offered. New products added after the execution of the contract shall be similar in nature to what is called for in the RFP. Products not falling within the items listed in your response will need to be approved by the Contracts Administrator.
- 6. **SUBMISSION OF PROPOSAL:**
 - 6.1. Sample photographs that are of the quality your firm is proposing to provide. Photographs for senior pictures must display the background(s) intended for use by your firm at the prices submitted. Size not to exceed 8.5 x 11.
 - 6.2. Proposals must be submitted on 8 1/2" x 11" white paper and shall include a table of contents properly indicating the section and page number of the information included.
 - 6.3. The proposal signature page must accompany your proposal, with all information supplied and signatures applied as required. The authorized signature should show the title of the person signing the proposal. A person authorized to act on behalf of the vendor must sign the proposal in ink.
 - 6.4. A list of at least three (3) references from jobs with school districts, colleges, and/or public agencies including name, address, and telephone number. (**Attachment D**). Do not list any Grossmont Union High School District ASB Advisors, Principals, or Vice-Principals as references.
 - 6.5. Pricing information

Time is of the essence and any proposal received after the announced time and date for submittal, whether by mail or otherwise, will be rejected and returned unopened. Proposals sent by facsimile will not be accepted. Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for proposals shall be considered non-responsive and deemed unacceptable.

7. GUARANTEE/WARRANTY:

7.1. Proposer shall provide a detailed statement of guarantee, replacement policy, **and refund policy. Failure to do so will obligate the proposer to a full** unlimited warranty at the discretion of the District.

8.0 GENERAL COMPANY INFORMATION:

- 8.1 State the name of your company, home office address, and the name, phone number, fax number, e-mail address, and title of the primary contact person for your proposal.
- 8.2 Describe the organizational structure of your firm, including any relationship with a parent, subsidiary, or affiliated company.
- 8.3 Provide general information regarding your company's financial strength and stability.
- 8.4 How long has your company been providing yearbooks and/or photography services?
- 8.5 How long has your company been providing sports photography services?
- 8.6 Indicate your experience in Photography services including the total number of employees and participants you currently service.
- 8.7 Does your company intend to subcontract any services? If yes, list name and general information of subcontractor(s).
- 8.8 Does your company have a website? If so, provide the universal resource locator (URL).
- 8.9 Number of years in business under current name.
- 8.10 How many projects have you worked on concurrently within the past five years?

9.0 RECORD KEEPING AND REPORTING

- 9.1 Describe your basic photography services record keeping system with particular reference to control, audit, and the assurance of timeliness and accuracy of records.
- 9.2 Do your system capabilities allow for real-time transactions?
- 9.3 Describe your back-up and disaster recovery procedures.

10.0 IMPLEMENTATION PLAN

- 10.1 Indicate the responsibilities of the District in the implementation and transition process and the estimated time the District resources will need to dedicate to the project during implementation of Category 1 and/or Category 2 contracts.
- 10.2 How long would the implementation process and issuance take?
- 10.3 Describe the assistance provided to the District staff including time and expected knowledge level of the District staff.
- 10.4 Will your representatives be available on-site for initial implementation meetings and on-going informational meetings?

- 10.5 Will courtesy complimentary Photography services be provided to each high school?
- If yes, how many?
If no, please explain.
- 10.6 Will courtesy complementary Photography services be provided to economically disadvantaged students (low-income students qualifying for free or reduced meals)?
- If yes, define the process and limitation.
If no, please explain.
- 10.7 Are the company and all employees bonded? Provide details.
- 11.0 **MISCELLANEOUS:** Provide any additional information you feel may be relevant in evaluating your proposal.
- 12.0 **EVALUATION AND AWARD CRITERIA:** Proposals shall be evaluated based on the criteria listed hereunder. Information and/or factors gathered during interviews, discussions, and/or negotiations shall also be utilized in the final selection decision. the District reserves the right to waive any and all irregularities and award the contract to the firm or firms, which, in the sole opinion of the District, best fulfills the terms and conditions of this request.
- 12.1 **QUALIFICATIONS OF STAFF:** Applicants are to provide information adequately describing their specific areas of expertise and other background information, which may be useful in the evaluation process. This section should include résumés of essential individuals who would, in all probability, be involved providing the services requested. Résumés should adequately describe an individual's experience and area(s) of expertise. Information pertaining to professional licenses or certifications held by individuals who will be providing services should also be included in response to this Request for Proposal.
- 12.2 **MANAGERIAL CAPABILITIES:**
- 12.2.1 Experience and qualifications of the firm and person(s) assigned to the project.
- 12.2.2 Demonstrated satisfactory completion of similar work.
- 12.2.3 Capability of firm to provide required service given their other existing obligations.
- 12.2.4 Ability to meet desired schedule.
- 12.3 **PAST PERFORMANCE RECORD AND RELEVANT EXPERIENCE:**
- 12.3.1 References: reliability, reputation, experience, and efficiency of the firm. District administrative employees represented on the evaluation committee (SB Advisors, Principals, Vice-principals) cannot be listed or provide references.
- 12.3.2 Quality of work, service, and ability to meet desired schedule.

- 12.3.3 Pricing information provided, i.e., schedule of fees.
- 12.3.4 The number and scope of conditions attached to the proposal.

12.4 EVALUATION CRITERIA ASSIGNED WEIGHTS:

<u>Evaluation Criteria</u>	<u>Assigned Weight</u>
Proposed Pricing	40%
Proposed Services/Products	20%
Quality of Materials & Samples	20%
Qualifications & Ability to Perform	15%
Valued Added Services/Items	05%

13.0 PHOTOGRAPHY SPECIFICATIONS - CATEGORY 1 YEARBOOK & SENIOR PICTURES

13.1 GENERAL CATEGORY 1 REQUIREMENTS (EXCLUDING CATEGORY 2: SPORTS PHOTOGRAPHY):

- 13.1.1 Proposals should be based on a minimum price for black & white photography, a minimum price for all color photography, and /or supplying optional photograph pages for use.
- 13.1.2 All Category 1 photography must be available digitally to site and yearbook staff and be compatible with the existing PIMS badge software and equipment or Proposer shall furnish equipment and software for the purpose of creating ID cards/badges.
- 13.1.3 Badge software must allow for customization of ID cards/badges for specialty groups including addition of logos, color choice, etc.
- 13.1.4 The photographer must be able to communicate effectively with staff and students.
- 13.1.5 Category 1 photographs for the must be returned to the school within fourteen (14) days of being taken, for publisher deadline purposes. Excessive and repeated late deliveries will result in enforcement of Article 8 of the Conditions and Instructions.
- 13.1.6 All packages should be returned to the campus alphabetized by the student's name and packed per teacher or as requested by individual schools.
- 13.1.7 All re-takes and make-up photographs will be taken at each campus. The successful proposer will contact the principal or representative to schedule a date. Proposer will contact the site within thirty (30) days of execution of contract.
- 13.1.8 The successful Category 1 proposer will provide the school, at no charge, personnel, and proper equipment to take all group pictures (staff, club, etc.) for the yearbook excluding sports team pictures. Also, these pictures will be taken according to the school's schedule.
- 13.1.9 Advance advertising shall be required using handouts, posters, and package examples, etc. Although the photographer will work in conjunction with the yearbook staff advisor on this, the photographer will be ultimately responsible for selling all photography packages.

13.2 CATEGORY 1 PHOTOGRAPHY REQUIREMENTS FOR SENIORS:

- 13.2.1 The yearbook requires digital photographs of each senior student for the yearbook.
- 13.2.2 The awarded proposer will contact the yearbook advisor at each school in order to obtain yearbook deadline dates.
- 13.2.3 The awarded proposer will schedule with the principal or representative a time to meet with the junior class to arrange for senior portraits to be taken during the summer before their senior year.
- 13.2.4 Senior portraits will be taken during the summer at a studio or site to be located within a ten-mile radius of the GUHSD District Office, 1100 Murray Drive, El Cajon, CA.
- 13.2.5 Background poses and clothing for senior portraits for the yearbook will be decided by the advisor, principal, and photographer.
- 13.2.6 Seniors will get at minimum **six poses**/proofs from which to choose their final portrait selections.
- 13.2.7 Seniors will be allowed to order extra photographs other than the designated packages.
- 13.2.8 Re-takes and make-up pictures will be of the same quality and taken under the same setting as all other senior pictures.

**13.3 CATEGORY 1 PHOTOGRAPHY REQUIREMENTS FOR UNDERCLASS-
PERSON:**

- 13.3.1 The yearbook requires digital photographs for each underclassman. Each student must be identified on the photography
- 13.3.2 Underclassperson photographs will be taken during the school year at each campus. Dates will be decided by the photographer, advisor, and principal(s) and may flow over a 2-3 day period.

13.4 CATEGORY 1 PHOTOGRAPHY REQUIREMENTS - GENERAL

13.4.1 INDIVIDUAL STUDENT & CLASS GROUP PICTURES:

- 13.4.1.1 Pictures will be taken twice a year at each site. Dates to be coordinated with Principal or ASB Advisor.
- 13.4.1.2 All pictures will be packed and alphabetized by students and teacher for delivery.
- 13.4.1.3 All pictures will be guaranteed to the satisfaction of the school and parents.
- 13.4.1.4 The photography company must offer optional retouching at the parents/student's request and delineate charges on the pricing package for said service.
- 13.4.1.5 The photography company will handle all complaints and adjustments on pictures.
- 13.4.1.6 All individual picture package prices will include applicable sales tax.
- 13.4.1.7 The school will be provided displays and take home notices for all students and staff approximately two weeks prior to the picture taking date. The chosen picture date will be decided upon by the principal. All other time schedules and the delivery of pictures will be discussed with the principal. All information

concerning picture covers (photo covers, photo sleeves, or picture sleeves) for group pictures will be discussed with the principal.

- 13.4.1.8 A representative(s) of the photography company will handle all monies involving the pictures.
- 13.4.1.9 All prices on re-orders to be the same as original price.
- 13.4.1.10 Each faculty member will receive a complimentary group picture package.
- 13.4.1.11 Proposer will furnish risers, background curtain, and name board for class group pictures.

13.4.2 **CLASSROOM IMAGE REQUIREMENTS**

- 13.4.2.1 The District will provide required student information for I.D. cards and specifications for CD-Rom Image CDs.

13.4.3 **EVENT PHOTOGRAPHY REQUIREMENTS**

- 13.4.3.1 Event schedules are subject to change; therefore Proposer shall be prepared to provide personnel for rescheduled events with 72-hour notice.
- 13.4.3.2 Proposer shall provide a photographer at all extra-curricular activities as necessitated by the Principal and/or ASB Advisor, including dances and special events, excluding sporting events.

13.4.4 **PACKAGES**

- 13.4.5 Firm must offer pre-paid packages as defined below. Other photographic options and packages may be offered so long as the packages defined are included in the proposal:

Package A:	Package B:	Package C:	Package D:
2 - 3" x 5"	1 - 5" x 7"	2 - 5" x 7"	1 - 8" x 10"
2 - 2" x 3"	2 - 3" x 5"	2 - 3" x 5"	2 - 5" x 7"
8 - 1.5" x 2.5"	4 - 2" x 3"		2 - 3" x 5"
	8 - 1.5" x 2.5"		4 - 2" x 3"
			8 - 1.5" x 2.5"

14.0 **CATEGORY 2: SPORTS PHOTOGRAPHY REQUIREMENTS**

14.1 **INDIVIDUAL ATHLETE & TEAM PICTURES:**

- 14.1.1 A minimum of two (2) of each type of sporting event will be photographed for yearbook purposes. (e.g. Two varsity football games, two junior varsity footballs, two varsity basketball games, two junior varsity basketball games, etc.)
- 14.1.2 The successful proposer for Category 2 will provide team photos as directed by the principal or designee. All Category 2 photography must be available digitally to site.
- 14.1.3 The Category 2 proposer will provide all sports photography for yearbook purposes. Sport photographers holding a valid press pass or

on assignment for the California Interscholastic Federation (CIF) will be permitted on the field, but will not have resale rights on campus. The successful Category 2 may sell pictures to students off campus.

- 14.1.4 The successful proposer for Category 2 will provide the school, at no charge, personnel, and proper equipment to take all sports team photos for the yearbook. These pictures shall be taken in accordance with the school's schedule.
- 14.1.5 All pictures will be guaranteed to the satisfaction of the school and parents.
- 14.1.6 The photography company will handle all complaints and adjustments on pictures.
- 14.1.7 All individual picture package prices will include applicable sales tax.
- 14.1.8 All other time schedules and the delivery of pictures will be discussed with the principal or designee.
- 14.1.9 A representative(s) of the photography company will handle all monies involving the pictures.
- 14.1.10 All prices on re-orders to be the same as original price.
- 14.1.11 Each head coach will receive a complimentary team picture.

15.0 **VALUE ADDED:**

Because the costs associated with public education have been increasing while state and local funding have been decreasing, we are asking that Proposers who do business with the District help bridge the gap. As part of this Request for Proposal, the District is seeking voluntarily, at your own discretion, any "value added" services or support that you, the proposer, feel would be helpful to our schools.

The District considers "value added" to include, but not limited to, the following:

1. Donations of service such as mentoring students, volunteering in schools or departments, and performing in-kind services to supplement services the District already provides.
2. Tangible items such as dance bids and the design and print services for such bids (Category 1 firm)
3. Funding assistance such as scholarships, donations of money to District schools or programs, donations of money to the District, sponsorship, and/or advertising of District schools or programs.
4. Photos of all district administrators for administration purposes (estimated 100) (Category 1 firm)
5. Donations of new and usable supplies and/or equipment.
6. Other: Innovative considerations.

DISCLAIMER: Nothing in this contract shall preclude any parent from requesting a private photography session or purchasing items outside the scope of this limited exclusive agreement from the awarded firm or firms.

RENEWAL

If mutually agreeable, the Grossmont Union High School District reserves the right to consider the extension of this contract for a one-, two-, or three-year period. A price increase, if exercised, shall be fully justified by vendor and proved by a test of the market and/or submission of documents. Price increases shall **not exceed more than 5%** per year.

Bidder to indicate in space provided if it would accept option to renew for the following periods and at what percentage:

Category 1: **Senior Pictures and Yearbook Photos**

Dates	Yes	No	Max. % Increase
7-1-13 to 6-30-14	_____	_____	_____
7-1-14 to 6-30-15	_____	_____	_____
7-1-15 to 6-30-16	_____	_____	_____

Category 2: **Sports Photography**

Dates	Yes	No	Max. % Increase
7-1-13 to 6-30-14	_____	_____	_____
7-1-14 to 6-30-15	_____	_____	_____
7-1-15 to 6-30-16	_____	_____	_____

Having carefully examined the Proposal Notice, Terms, Conditions, Specifications, and Proposal Form, the undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the specifications and conditions at the prices quoted unless noted in writing.

The undersigned affirms that they are duly authorized to execute this proposal and that this company, corporation, firm, partnership, or individual has not prepared this proposal in collusion with any other proposer.

ADDENDA (if any): Issued in accordance with the Instructions to Proposers, the undersigned acknowledges receipt of Addenda Nos. _____ dated _____
_____.

The undersigned hereby proposes and agrees to furnish, and deliver the goods and services in accordance with the terms, conditions, specifications and prices herein quoted.

Corporate Seal
(if a corporation)

Proper name of Individual, Company or Corporation

Authorized Signature

Type or Print Signer's Name

Title

Address

Telephone

Date

PROPOSAL FORM

Submission Instructions: The District will be conducting a blind review process in order to perform an objective evaluation. Proposers are to submit their responses as follows:

1. Proposal form, proposal response including methodology of proposed services, and samples are to be placed in an unmarked envelope. None of the documents are to identify Proposer in any way. Any image that may depict the proposer's identifying marks, logo, name, etc. will have their proposal deemed to be non-responsive.
2. Information about the Proposer such as General Company Information, References, Resumes, and any other information that includes the identity of the Proposer shall be sealed in a second envelope and placed in the envelope containing responses listed under Item 1.

ATTACHMENT A**CATEGORY 1: SENIOR PICTURES AND YEARBOOK PHOTOS**

PACKAGE	DESCRIPTION	PRICE
Package A	2 - 3" x 5" 2 - 2" x 3 8 - 1.5" x 2.5"	
Package B	1 - 5" x 7" 2 - 3" x 5" 4 - 2" x 3 8 - 1.5" x 2.5"	
Package C	2 - 5" x 7" 2 - 3" x 5"	
Package D	1 - 8" x 10" 2 - 5" x 7" 2 - 3" x 5" 2 - 2" x 3 8 - 1.5" x 2.5"	
Additional Packages Offered		
Package ____		
Package ____		
Package ____		

Attach additional pages if necessary.

ATTACHMENT B

CATEGORY 2: SPORTS PHOTOGRAPHY

PROPOSAL FORM

PACKAGE	DESCRIPTION	PRICE
Individual Photo	Size:	
Individual Photo	Size:	
Individual Photo	Size:	
Individual Photo	Size:	
Individual Photo	Size:	
Individual Photo	Size:	
Team Photo	Size:	
Team Photo	Size:	
Additional Photos Offered: (Please list)		

Attach additional pages if necessary.

Value Added:

List any value added services proposer is willing/able to provide based on the above pricing.
Note: Pricing to students is of the utmost importance and will have a weight of up to 40 points out of 100 total possible points. Value Added items will be scored at no more than 5 total points.

1.0	
2.0	
3.0	
4.0	
5.0	
6.0	
7.0	

ATTACHMENT C

AFFIRMATIVE ACTION POLICY

The Affirmative Action Policy adopted by the Governing Board of the Grossmont Union High School District on April 17, 1990 requires that a copy of the statement below be on file in the Purchasing Department for every person, firm, company or corporation with whom the District does business, regardless of the dollar value of the contract.

"Contractor hereby certifies to the Grossmont Union High School District that I (if individual) or we (if company or corporation) do not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex as outlined in California Government Code Section 12940."

CORPORATE SEAL

Proper name of Individual, Company or Corporation

By _____

Title _____

Address _____

Telephone _____

Email _____

Date _____

ATTACHMENT D

REFERENCES

Per Article 6.4, list at least three references of contracts with school districts, colleges, and/or public agencies within the last five years.

Name of Organization

Address

City

State

Zip Code

Telephone

Fax Number

Name of Organization

Address

City

State

Zip Code

Telephone

Fax Number

Name of Organization

Address

City

State

Zip Code

Telephone

Fax Number

ATTACHMENT E

Agreement for Access to Student Information for the Purposes of Conducting Contracted Work for the District

_____ (hereafter referred to as "Contractor"), hereby acknowledges and agrees that the personally identifiable student information ("Student Information"), a detailed description of which is attached, being disclosed to it by Grossmont Union High School District ("District") is for the limited purpose of conducting work as described in the attached agreement and will be used only for that purpose.

Further, the Contractor is subject to compliance with all relevant laws and regulations pertaining to the possession and maintenance of such Student Information, including, but not limited to the Federal Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g and 34 CFR Section 99 et. seq., and in particular 34 CFR 99.33 pertaining to the disclosure of personally identifiable information from education records, and the Washington RCW 28A.605.030 and RCW 42.17.310.

The Contractor further is required to maintain the confidentiality of the Student Information provided and not to disclose personally identifiable information about a student including photos to any other party without the prior written consent of the parent or eligible student or as is otherwise authorized by law or regulation. The Contractor also agrees to defend, indemnify and hold harmless the District, its officers, employees and agents, from any and all complaints, charges, causes of action, claims, or damages of every kind and nature whatsoever relating to an improper release of the Student Information by the Contractor or its employees or agents.

It is further acknowledged and agreed that when the work contracted with the District has been completed, all Student Information will be destroyed and no copies or other retention of the personally identifiable Student Information will be maintained.

The undersigned hereby certifies that he/she has the authority to execute this document on behalf of the Contractor.

Company

By: _____
(Signature

Name

Date

ATTACHMENT F

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, by and between the Grossmont Union High School District, San Diego County, California, hereinafter called _____ the _____ District, _____ and hereinafter called the Contractor.

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. THE CONTRACT DOCUMENTS: The complete contract consists of the following documents: The Notice to Proposers, the Information to Proposers, the Accepted Proposal, the Specifications, and the Agreement, including all modifications thereof duly incorporated therein. Any and all obligations of the District and the Contractor are fully set forth and described therein or are reasonably inferable that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in said documents. The documents comprising the complete Contract are sometimes hereinafter referred to as the Contract Documents, or the Contract.

2. SERVICES, MATERIALS AND SUPPLIES: The contractor agrees to furnish the service or services, the item or items of the stated proposal listed herein, and all transportation, service, labor, and material necessary to furnish and deliver same in good condition, in the manner designated in, and in strict conformity with the specifications and other contract documents, at the price or prices hereinafter set forth. It is understood by the Contractor that all items or service will be promptly delivered to the District.

3. PAYMENTS. The contractor shall receive payment resulting from the sale of photo packages to the individual. The District is not liable for any unmade payments to Contractor.

4. TERMINATION FOR DEFAULT: If the said Contractor fails or neglects to supply or deliver any of said goods, articles, or service at the prices named and at the times and places above stated, the District may, without further notice or demand, cancel and rescind this contract or may purchase said goods, supplies, or services elsewhere, and hold said Contractor responsible and liable for all damages which may be sustained thereby, or on account of the failure or neglect of said Contractor in performing any of the terms and conditions of this contract; it being specifically provided and agreed that time shall be the essence of this agreement.

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

5. EXTRA AND/OR ADDITIONAL SPECIFICATIONS AND CHANGES: Should the District at any time during the performance of the contract, request any alterations, deviations, additions, or omissions from the Specifications or other Contract Documents, it shall be at liberty to do so, and the same shall in no way affect or make void the Contract, but the cost will be added to or deducted from the amount of said Contract price, as the case may be, by a fair and reasonable valuation.

No change shall be made in any specification of any item under the Contract unless a written statement setting forth the object of the change, its character, amount, and the expense thereof is first submitted to the District and written consent thereto obtained.

8. **SAVE HARMLESS CLAUSE:** The Contractor must save, keep, bear harmless and fully indemnify said District and any of its officers or agents from all damages, or claims for damages, costs or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights, copyright, or trademark of any person or persons in consequence of the use by said District or by any of its officers or agents, or articles to be supplied under this contract.

9. **THE DISTRICT'S INSPECTOR:** All items shall be subject to the inspection of the District. Inspection of the items shall not relieve the Contractor from any obligation to fulfill this Contract. Defective items shall be made good by the Contractor, and unsuitable items may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the District and accepted. If any item shall be found defective at any time before final acceptance of the complete delivery, the Contractor shall forthwith remedy such defect in a manner satisfactory to the District.

10. **REMOVAL OF REJECTED ITEMS:** All items rejected by the District at any time prior to final inspection and acceptance shall at once be removed from the place of delivery by the Contractor who shall assume and pay the cost thereof without expense to the District, and shall be replaced by satisfactory items.

11. **DELAY DUE TO UNFORESEEN OBSTACLES:** The parties to this Contract shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is also established that the non-performance is not due in part to the fault or neglect of the party not performing.

12. **ASSIGNMENT OF CONTRACT:** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof, or any right, title, or interest therein, funds to be received hereunder, or any power to execute the same without the consent in writing of the District.

13. **ATTORNEYS' FEES:** If suit is brought by either party to this Contract to enforce any of its terms (including all component parts of the contract documents), and the District prevails in such suit, the Contractor shall pay all litigation expenses incurred by the district, including attorneys' fees, court costs, expert witness fees and investigation expenses.

14. **CONTRACTOR IS NOT AN OFFICER, EMPLOYEE, OR AGENT OF THE DISTRICT:** While engaged in carrying out and complying with the terms and conditions of this Contract, the Contractor is an independent contractor, and is not an officer, employee or agent of the District or its member districts.

15. **INSURANCE PERMITS AND LICENSES REQUIRED OF THE CONTRACTOR:** The Contractor shall maintain insurance adequate to protect him/her from claims under workers' compensatory acts, and from claims for damages for personal injury including death, and damage to property which may arise from operations under the Contract in amounts specified in

the Specifications. The Contractor may be required by the District to file with the District certificates of such insurance. The failure to furnish such evidence, if required, may be considered default by the Contractor.

The contractor and all of its employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with the furnishing of materials, articles, or services covered under this Contract. All operations and materials shall be in accordance with the law.

16. CONDITIONAL BID: The District reserves the right to reject any bid which imposes conditions, or terms, on purchases, which were not specified in the original bid document.

IN WITNESS WHEREOF, the District, by order of its Governing Board, has caused this instrument to be duly subscribed by the Secretary of said Board, and the Contractor has caused this instrument to be duly subscribed and executed, all on the date first hereinbefore set forth.

CONTRACTOR:

By _____

Title _____

Date: _____

DISTRICT:

Grossmont Union High School District

By _____
Scott Patterson

Title Deputy Supt., Business Services

Date: _____

Governing Board Date June 14, 2012

ATTORNEY GENERAL OPINIONS

(PIGGYBACK – MODULAR BUILDINGS CASE)

(JOB ORDER CONTRACTING)

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 05-405
	:	
of	:	January 24, 2006
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
DANIEL G. STONE	:	
Deputy Attorney General	:	
	:	

THE STATE ALLOCATION BOARD has requested an opinion on the following question:

May a school district, without advertising for bids, contract with another public agency to acquire factory-built modular building components for installation on a permanent foundation?

CONCLUSION

A school district may not, without advertising for bids, contract with another public agency to acquire factory-built modular building components for installation on a permanent foundation.

ANALYSIS

Under the Local Agency Public Construction Act (Pub. Contract Code, §§ 20100-20920),¹ counties, cities, school districts, and other local public agencies may enter into contracts with private parties for the construction of local projects. A central requirement of this statutory scheme is that, once the local agency has provided contract specifications for a given project, the contract must be awarded to the lowest responsible bidder. The question presented for resolution is whether a school district may avoid advertising for bids by contracting with another public agency to acquire factory-built modular building components for installation on a permanent foundation. We conclude that it may not do so.

Preliminarily, we note that a school district is generally required to award its contracts for a “public project” to the lowest responsible bidder. Subdivision (b) of section 20111 provides:

“The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars (\$15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover”

Section 22002, subdivision (c), defines a “public project” as follows:

“ ‘Public project’ means any of the following:

“(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

“(2) Painting or repainting of any publicly owned, leased, or operated facility.

“(3) In the case of a publicly owned utility system, ‘public project’ shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.”

¹Hereafter, all references to the Public Contract Code are by section number only.

And the term “facility” is defined in section 22002, subdivision (e), as follows:

“For purposes of this chapter, ‘facility’ means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c), real property, streets and highways, or other public work improvement.”

Section 20113 contains special provisions respecting emergency repairs, sections 20114 and 20115 allow for the rendering of certain services by day labor or force account, and section 20116 prohibits school districts from “splitting” work orders to avoid the cost threshold for mandatory competitive bidding. (See 84 Ops.Cal.Atty.Gen. 5, 6-9 (2000).)

Accordingly, as a general rule, a school district intending to contract for the construction, reconstruction, renovation, improvement, or repair of any school building, where the work will require an expenditure of \$15,000 or more, must follow a competitive bidding process.

The focus of our opinion, however, is upon the terms of section 20118, providing a limited exception to the competitive bidding requirements for certain “personal property.” Section 20118 states:

“Notwithstanding Sections 20111 and 20112, the governing board of any school district without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property.”²

²Sections 20111 and 20112 set forth the competitive bidding process to be followed by school districts. (See, e.g., 84 Ops.Cal.Atty.Gen. *supra*, at pp. 6-7; 18 Ops.Cal.Atty.Gen. 1, 2-3 (1951); 8 Ops.Cal.Atty.Gen. 226, 226-228 (1946).)

Section 20118 thus permits a school district, without advertising for bids, to enter into a contract with another public agency under the specified circumstances, thereby “piggybacking” its order for personal property on an existing order placed by the other agency. In addition, the other agency may charge the school district for “services incidental” to its acting, in essence, as the district’s purchasing agent.³

We are informed that a school district is considering whether it may use the authorization contained in section 20118 to purchase modular structural components for the installation of classrooms and other school buildings and facilities, such as a cafeteria, gymnasium, and library, on permanent foundations. (See Ed. Code, § 17340.) Once these modular components have been attached at the building site, and after significant on-site finish work has been completed, they would result in permanent school buildings of varying dimensions, purposes, and architectural styles.⁴

In examining the language of section 20118, we follow well established rules of statutory construction. Here, the governing rule is known as *ejusdem generis* (“of the same kind, class, or nature”), which is illustrative of the more general legal maxim known as *noscitur a sociis* (“it is known from its associates”). (See *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1011-1012; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 14; *Texas Commerce Bank v. Garamendi* (1992) 11 Cal.App.4th 460, 471, fn. 3; *Martin v. Holiday Inns, Inc.* (1988) 199 Cal.App.3d 1434, 1437; *People v. Stout* (1971) 18 Cal.App.3d 172, 177.) In *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159-1160, the court explained this rule of construction as follows:

“The principle of *ejusdem generis* holds that ‘where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. [It] is based on the obvious reason that if the [writer] had intended the general words to be used in their unrestricted sense, [he or she] would not have mentioned the particular things

³By its terms, section 20118 applies only to a school district’s contracts with, and payments to, another “public corporation or agency” to lease or purchase personal property “for the district” where the other entity “is authorized by law to make the leases or purchases.” The statute provides *no* authority for a school district contract directly with a lessor or vendor.

⁴Because of their permanent foundations and immovability, the structures in question would be distinguishable from typical “portable” or “relocatable” single-classroom buildings. (See *Steelgard, Inc. v. Jannsen* (1985) 171 Cal.App.3d 79, 89-90; see also Ed. Code, §§ 17085-17095.) The procedures to be followed in acquiring the latter units and placing them on school property are beyond the scope of this opinion.

or classes of things which would in that event become mere surplusage.”⁵
[Citations.]” (Fn. omitted)

The court further noted:

“*Ejusdem generis* applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is ‘restricted to those things that are similar to those which are enumerated specifically.’ [Citations.]” (*Id.* at p. 1160, fn. 7.)

In section 20118, the Legislature has indicated the types of “personal property” covered by the statute: “data-processing equipment, . . . materials, supplies, equipment, automotive vehicles, tractors.” The phrase “other personal property” immediately following these particular items must be limited to the same classes of personal property under the rule of *ejusdem generis*. Plainly, building structures to be permanently affixed to land do not have the characteristics of the listed “personal property.”⁵

In contrast to the language of section 20118, when the Legislature has authorized the construction of school buildings and other structures and facilities upon permanent foundations, it has employed different language in delegating such authority. (See, e.g., § 20111, subd. (b) [“construction work”]; § 20114, subd. (a) [governing board may “erect new buildings”]; § 20115 [“any plant, building, structure, ground facility, utility system, or real property”]; § 20118.4 [permitting change orders “for reconstruction or rehabilitation work other than for the construction of new buildings or other new structures . . .”]; § 20118.4 [“construction of new buildings or other new structures . . .”] § 22001 [“construction work”]; § 22002, subd. (b) [“public works construction”]; § 22002, subd. (c)(1) [“Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility”]; § 22002, subd. (e) [“any plant, building, structure, ground facility”]; and see, e.g., Ed. Code, §§ 17350-17360 [“factory-built school buildings”].)

If the Legislature had intended to extend the contracting option of section 20118 to construction contracts for school buildings on permanent foundations, we believe that the language of the statute would have referred to such construction projects in terms other than “lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property.” Section 20118 makes no

⁵Indeed, once the structures are affixed to permanent foundations, they constitute real property, not personal property. (See, e.g., Civ. Code, §§ 657, 658, 660; *Escondido Union School Dist. v. Casa Suenos De Oro, Inc.* (2005) 129 Cal.App.4th 944, 965-966.)

mention of buildings, structures, classrooms, facilities, or construction projects. “When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning. [Citation.]” (*People v. Trevino* (2001) 28 Cal.4th 237, 242.)

We therefore conclude that a school district may not, without advertising for bids, contract with another public agency to acquire factory-built modular building components for installation on a permanent foundation.

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 00-901
	:	
of	:	January 9, 2001
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
ANTHONY S. DA VIGO	:	
Deputy Attorney General	:	
	:	

THE HONORABLE PATRICIA WIGGINS, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. May a school district enter into a job order contract based upon unit prices for the performance of public works projects?

2. Are job order contracts awarded by the California State University involving \$30,000 or more, including individual job orders undertaken pursuant to such a contract involving either more or less than \$30,000, subject to statutory requirements specifying the employment of a ratio of apprentices to journeymen?

CONCLUSIONS

1. A school district may not enter into a job order contract based upon unit prices for the performance of public works projects.

2. Job order contracts awarded by the California State University involving \$30,000 or more, including individual job orders undertaken pursuant to such a contract involving either more or less than \$30,000, are subject to the calculation of the statutory requirements specifying the employment of a ratio of apprentices to journeymen. The implementation of the employment ratio, appropriately calculated, must be satisfied before the end of the contract, provided that the contractor must endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

ANALYSIS

As generally described in 76 Ops.Cal.Atty.Gen. 126 (1993), a job order contract (“JOC”) is a competitively bid, firm fixed price, indefinite quantity contract for the performance of minor construction, as well as the renovation, alteration, painting, and repair of existing public facilities. A JOC is a fixed price agreement in the sense that it is based upon specified charges contained in a unit price book (prepared by the public agency or by independent commercial sources) setting forth detailed repair and construction tasks, including task descriptions, specifications, units of measurement, and unit prices for each task. A contractor’s bid is expressed in terms of a percentage of the specified book charges such as 115 percent or 125 percent. The book is then used to determine the costs of each proposed project during the term of the contract, which is normally one or more years. (*Id.*, at pp. 126-127.)

With this factual background in mind, we turn to the two questions presented.¹ The first concerns the execution of a JOC by a local school district, and the second concerns the execution of a JOC by the California State University.

1. Local School Districts

¹ Additional questions were submitted for determination but are the subject of pending litigation. We do not address such inquiries that may be judicially resolved. (66 Ops.Cal.Atty.Gen. Foreword (1983).)

The initial inquiry is whether a local school district may enter into a JOC for a public works project. We conclude that it may not.

The Local Agency Public Construction Act (Pub. Contract Code, §§ 20100-20920)² authorizes counties, cities, school districts, and other public agencies to enter into contracts with private parties for the construction of local projects. With respect to school districts, subdivision (b) of section 20111 provides:

“The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars (\$15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder’s security. . . .”

Section 20113 makes special provisions respecting emergency repairs. Section 20114 provides for the rendering of services by day labor or force account. Section 20116 provides as follows:

“It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

“The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

“Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.”

In the foregoing statutory scheme pertaining to school districts, we find no

² Undesignated section references herein are to the Public Contract Code.

reference to the special terms and conditions of a JOC. In contrast, section 20128.5 authorizes counties to execute a JOC:

“Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.

“For purposes of this section, ‘unit price’ means the amount paid for a single unit of an item of work, and ‘typical work’ means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

“For purposes of this section, ‘repair, remodeling, or other repetitive work to be done according to unit prices’ shall not include design or contract drawings.”

Section 20128.5’s authority is specifically granted and subject to limitations. We reject the contention that such powers may be exercised by school districts in the absence of any express grant of authority and in the absence of any limitations. (See *Safer v. Superior Court* (1975) 15 Cal.3d 230, 236-238; *Board of Trustees v. Judge* (1975) 50 Cal.App.3d 920, 927; 76 Ops.Cal.Atty.Gen., *supra*, at pp. 129-130; 76 Ops.Cal.Atty.Gen. 86, 89 (1993); see also *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196; *DeWeese v. Unick* (1980) 102 Cal.App.3d 100, 106.)

The broad authority granted to school districts in Education Code section 35160 and 35160.1 thus has no application here. Education Code section 35160 states:

“On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”

Education Code section 35160.1 provides:

“(a) The Legislature finds and declares that school districts . . . have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts . . . should have the flexibility to create their own unique solutions.

“(b) In enacting Section 35160, it is the intent of the Legislature to give school districts . . . broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district . . . are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective.

“(c) The Legislature further declares that the adoption of this section is a clarification of existing law under Section 35160.”

These statutory provisions implement a constitutional amendment (Cal. Const., art. IX, § 14) that was adopted in 1972 to provide as follows: “The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.”

Education Code sections 35160 and 35160.1 require a determination of whether a state law or regulation precludes a school district from entering into a JOC. (See *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1017-1019; *Howard Jarvis Taxpayers Assn. v. Whittier Union High School Dist.* (1993) 15 Cal.App.4th 730, 734-735; *California School Employees Assn. v. Del Norte County Unified Sch. Dist.* (1992) 2 Cal.App.4th 1396, 1404.) “[W]hile the powers of a school district are broad, they may not be exercised in a manner that is in conflict, inconsistent, or preempted by state law.” (83 Ops.Cal.Atty.Gen. 40, 41 (2000).) In this regard, we note that a school district’s control over a program or activity may be precluded by the preemptive existence of another comprehensive statutory plan. (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 591 [“the local districts are denied control over many aspects of teachers’ terms of employment by detailed provisions in the Education Code governing such matters . . .”]; 81 Ops.Cal.Atty.Gen. 218, 221 (1998).)

Applying these interpretive principles to the present inquiry, we find that executing a JOC by a school district would be in conflict with and preempted by the express laws governing the execution of construction contracts by school districts. In accordance with

the specific provisions of section 20111, subdivision (b), contracts for school projects involving expenditures of \$15,000 or more must be let to the lowest responsible bidder. With respect to projects costing less than the designated amount, section 20116 provides for informal bidding. No authority is granted for school districts to execute a JOC similar in terms to what the Legislature has granted to counties. Indeed, the unique features of a JOC, including the lack of information regarding specific projects at the time of submitting the competitive bids, is entirely inconsistent with the language of section 20111.

It is concluded that a school district may not enter into a JOC based upon unit prices for the performance of public works projects.

2. California State University

The second inquiry is whether a JOC awarded by the California State University involving \$30,000 or more, including individual job orders of either more or less than that amount, are subject to a statutorily designated employment ratio of apprentices to journeymen. We conclude that the employment ratio requirements would be applicable.

As in the case of counties, the California State University is authorized, subject to specified limitations, to execute a JOC. Section 10710 provides:

“(a) Notwithstanding any other provisions of this chapter, the trustees may award annual contracts that do not exceed three million dollars (\$3,000,000) for repair or other repetitive work, or renovation or modification, to be done according to unit prices. The contracts shall be awarded to the lowest responsible bidder and shall be based primarily on plans and specifications for typical work. No project shall be performed under a contract

of this type except by order of the trustees. No annual contracts may be awarded under these provisions for capital outlay projects, where the total cost of the project exceeds two hundred fifty thousand dollars (\$250,000) or the limit on minor capital outlay projects as determined in the annual Budget Act, whichever is greater.

“(b) For purposes of this section, ‘unit price’ means the amount paid for a single unit of an item of work, and ‘typical work’ means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual

project.”

A separate statutory scheme contained in the Labor Code governs the employment of apprentices and journeymen on public works projects. Labor Code section 1777.5 provides as follows:

“.....

“(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section. . . . As used in this section, ‘contractor’ includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

“(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. . . .

“.....

“(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

“(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that

the journeymen in the same craft or trade are employed at the job site. . . .

“.....

“(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

“.....”

In analyzing the various provisions of Labor Code section 1777.5, we may apply well established rules of statutory interpretation. The overriding objective is to ascertain and effectuate the legislative intent. (*Larsen v. State Personnel Bd.* (1996) 28 Cal.App.4th 265, 276.) The statutory language itself is the most reliable indicator of the Legislature’s purposes. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.) Every word, phrase, and sentence in a statute should, if possible, be accorded significance. (*Penasquitos, Inc. v. Superior Court* (1991) 53 Cal.3d 1180, 1186.) Also, each word is to be given its usual and ordinary meaning. (*Da Fonte v. UpRight, Inc.* (1992) 2 Cal.4th 593, 601.) Finally, a statute must be construed in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts. (*People v. Hull* (1991) 1 Cal.4th 266, 272.)

In our view, the third and fourth sentences of subdivision (h) of Labor Code section 1777.5, contain the entire prescription concerning the *implementation* of the hiring ratio. Specifically, “[t]he contractor shall employ apprentices for the number of hours computed . . . before the end of the contract. . . . However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.”

We reject the suggestion that the first sentences of subdivisions (d) and (h) of the statute require strict implementation of the ratio *whenever* a journeyman is employed in an apprenticeable craft or trade. On the contrary, we do not construe the latter sentences as requiring absolute simultaneity of employment in precise ratio of apprentice to journeyman. Rather, in accordance with the precept that a statute must be interpreted in the context of the entire system of which it is a part, in order to achieve harmony among the parts, we deem the sentences in question as providing for the *calculation*, not the implementation of the ratio. Specifically, the first sentence of subdivision (d) provides simply that the ratio is applicable to a contract for a public works project on which workers in any apprenticeable craft or trade

are employed. Similarly, the first and second sentences of subdivision (h) prescribe what journeyman hours are to be included for purposes of calculating the ratio. Accordingly, the hours worked during any day or portion of a day by journeymen, except those worked by any journeyman in excess of eight hours, shall be used to calculate the ratio.

The implementation of the ratio to the entire contract, including its component individual job orders, however, is a distinct issue governed by the third and fourth sentences of subdivision (h). Hence, as set forth above, we conclude that a JOC awarded by the California State University involving \$30,000 or more, including individual job orders undertaken pursuant to such contract involving either more or less than \$30,000, is subject to the calculation of the statutory requirements specifying the employment of a ratio of apprentices to journeymen. The implementation of the employment ratio, appropriately calculated, must be satisfied before the end of the contract or subcontract as the case may be, provided that the contractor must endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

INSURANCE AND SURETY INFORMATION

Company Profile

INSURANCE COMPANY OF THE WEST

PO BOX 85563
SAN DIEGO, CA 92186-5563
800-877-1111

Agent for Service of Process

JAMES III W. AUSTIN, 11455 EL CAMINO REAL SAN DIEGO, CA 92130-2045

Unable to Locate the Agent for Service of Process?

Reference Information

NAIC #:	27847
NAIC Group #:	0922
California Company ID #:	2071-9
Date authorized in California:	May 17, 1972
License Status:	UNLIMITED-NORMAL
Company Type:	Property & Casualty
State of Domicile:	CALIFORNIA

Lines of Insurance Authorized to Transact

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the glossary.

AIRCRAFT
AUTOMOBILE
BOILER AND MACHINERY
BURGLARY
COMMON CARRIER LIABILITY
CREDIT
DISABILITY
FIRE
LIABILITY
MARINE
MISCELLANEOUS
PLATE GLASS
SPRINKLER

SURETY
TEAM AND VEHICLE
WORKERS' COMPENSATION

Company Complaint Information

[Company Enforcement Action Documents](#)
[Company Performance & Comparison Data](#)
[Composite Complaint Studies](#)

Want More?

[Help Me Find a Company Representative in My Area](#)

[Financial Rating Organizations](#)

Last Revised - December 11, 2007 03:32 PM
Copyright © California Department of Insurance

Company Profile

Begin your search by using a partial or full Company Name. From there you will be able to access information about a company's location, complaint history, and financial strength.

In addition to this service, you can review [your agent's licensing history](#) and gather basic [pricing information](#).

Enter query criteria for Company Profiles

Company Name:

Last Revised - November 30, 2007 02:48 PM
Copyright © California Department of Insurance



Rating Center
Rating Methodology
Industry Research
Ratings Definitions
Search Best's Ratings
Press Releases
Related Products
Industry & Regional
Country Risk
Structured Finance
How to Get Rated
Contact an Analyst

View Ratings: [Financial Strength](#) [Issuer Credit](#) [Securities](#) [Advanced Search](#)

Other Web Centers: [Select One](#)

About Best's Ratings

A.M. Best Co. was founded in 1899 with the purpose of performing a **constructive and objective role in the insurance industry toward the prevention and detection of insurer insolvency.** This mission led to the development of Best's Ratings, which are now recognized worldwide as the benchmark for assessing insurers' financial strength. Best's rating opinions reflect an in-depth understanding of business fundamentals garnered from more than 100 years of focusing solely on the insurance industry. This is one reason why insurance industry professionals have consistently ranked Best's Ratings number one in confidence, usefulness and understanding.

Quick Links:

[What is a Best's Rating?](#)

[Why is a Best's Rating Important?](#)

[Best's Ratings and Insurer Insolvency](#)



What is a Best's Rating? A Best's Rating is an independent third-party evaluation that subjects all insurers to the same rigorous criteria, providing a valuable benchmark for comparing insurers, regardless of their country of domicile. Such a benchmark is increasingly important to an international market that looks for a strong indication of stability in the face of widespread deregulation, mergers, acquisitions and other dynamic factors.

A.M. Best assigns three types of ratings. All are independent opinions, based on a comprehensive quantitative and qualitative evaluation, of a company's balance sheet strength, operating performance and business profile. They are **not a warranty** of a company's financial strength and ability to meet either its obligations to **policyholders** or its **financial obligations** ([view complete notice](#)).

- **Best's Financial Strength Ratings** provide an opinion of an insurer's financial strength and ability to meet ongoing obligations to policyholders.
- **Best's Issuer Credit Ratings** provide an opinion of an entity's ability to meet its senior obligations.
- **Best's Debt Ratings** provide an opinion for the credit marketplace as to the issuer's ability to meet its financial obligations to security holders when due.

Our analytical process incorporates a host of quantitative and qualitative measures, including comparisons to peers and industry standards as well as assessments of an insurer's operating plans, philosophy and management. A complete list of [Best's Rating Methodologies](#) is available and continually fine-tuned to reflect ever-changing industry, regulatory and legal developments, as well as changes in underlying business fundamentals.

Why is a Best's Rating Important? For insurance companies, a Best's Rating is a strategic tool that can enhance consumer confidence in the organization's stability, as well as its attractiveness to investors. A rating also enhances an insurer's credibility with reinsurers; a valuable resource, particularly for insurers entering new markets.

Insurance professionals depend on Best's Ratings to determine the financial strength and operation of specific insurers, to evaluate prospective reinsurance accounts, to compare company performance and financial condition, and more. A Best's Rating can influence an agent's selection of plans to market.

In recent years, ratings also have become an increasingly important factor in consumers' decisions to purchase insurance. Today's insurance consumers are well aware of how regional, political and economic instabilities can affect a marginal company. Best's Ratings provide these consumers with the information necessary for an educated buying decision. In October of 1999, A.M. Best announced that it was offering company ratings and insurer profiles on its corporate Web site free of charge.

A.M. Best Company is committed to maintaining Best's Ratings as the definitive source for information on the financial condition and operating performance of insurance companies worldwide.

Best's Ratings and Insurer Insolvencies The U.S. property/casualty industry in the past decade has shown resiliency and improved risk management, and financial impairments are relatively rare, but a diminished operating environment remains a common trigger for such events. [View the complete details as published in our most recent landmark study.](#)

[Customer Service](#) | [Product Support](#) | [Member Center](#) | [Contact Info](#) | [Careers](#)
[About A.M. Best](#) | [Site Map](#) | [Privacy Policy](#) | [Security](#) | [Terms of Use](#) | [Legal & Licensing](#)

Copyright © 2008 A.M. Best Company, Inc. All rights reserved.
A.M. Best Worldwide Headquarters, Ambest Road, Oldwick, New Jersey, 08858, U.S.A.



Rating Center
Rating Methodology
Industry Research
Ratings Definitions
Search Best's Ratings
Press Releases
Related Products
Industry & Regional
Country Risk
Structured Finance
How to Get Rated
Contact an Analyst

View Ratings: [Financial Strength](#) [Issuer Credit](#) [Securities](#) [Advanced Search](#)

Other Web Centers:

Best's Ratings and Analysis

A.M. Best Company is the leading provider of ratings, news and financial data for the insurance industry worldwide and **Best's Ratings** are recognized as the benchmark for assessing the financial strength of insurance related organizations and the credit quality of their obligations.

Read "About Best's Ratings" to understand what Best's Ratings are and why they are important. For specific information about our rating types, read our detailed guides covering [Financial Strength](#), [Bank Deposit](#), [Issuer Credit](#), or [Debt](#).

The following sections outline the most recent coverage of Best's Ratings and related [Best's Review](#) articles, [BestWeek](#) Special Reports and Statistical Studies. For complete news coverage visit our [NewsRoom](#) or start your day with [BestDay](#) - a roundup of the insurance news from A.M. Best's Daily newsletter.

Find a company's
Best's Rating

[More Search Options](#)

Rating Activity & Announcements

A.M. Best Assigns Ratings to JRG Reinsurance Company, Ltd.:

Date: 1/28/2008 Source: Press Release

A.M. Best Assigns Ratings to GSFS Risk Retention Group, Inc.:

Date: 1/28/2008 Source: Press Release

A.M. Best Affirms Ratings of Baldwin & Lyons, Incorporated and Its Subsidiaries:

Date: 1/28/2008 Source: Press Release

A.M. Best Comments on The First American Corporation, Inc.'s Plan to Spin-Off Its Insurance Entities:

Date: 1/25/2008 Source: Press Release

A.M. Best Issues Risk Management Methodology:

Date: 1/25/2008 Source: Press Release

A.M. Best Revises Issuer Credit Rating Outlook to Positive for Prudential Financial, Inc. and Its Subsidiaries:

Date: 1/25/2008 Source: Press Release

A.M. Best Assigns a Positive Outlook to Ullico Casualty:

Date: 1/25/2008 Source: Press Release

A.M. Best Downgrades Ratings of XL Capital Ltd. and Its Subsidiaries:

Date: 1/25/2008 Source: Press Release

A.M. Best Affirms Ratings of Legal & General America, Inc.'s Insurance Subsidiaries:

Date: 1/25/2008 Source: Press Release

A.M. Best Downgrades Perpetual Preferred Securities of Stoneheath Re:

Date: 1/25/2008 Source: Press Release

Industry Research

2008 Special Report: U.S. Property/Casualty - Review & Preview, U.S. P/C Industry Records Strong Results - But for How Long?:

Date: 1/28/2008 Source: Special Reports (PDF) Pages: 28

2008 Special Report: U.S. Health - Review & Preview, Health Insurers' Financial Results Will Be Tested As Markets Evolve:

Date: 1/21/2008 Source: Special Reports (PDF) Pages: 16

2008 Statistical Study: U.S. Property/Casualty - 6-Month Net Premiums Earned:

Date: 1/14/2008 Source: Statistical Studies (PDF) Pages: 4

2008 Statistical Study: U.S. Property/Casualty - 6-Month Policyholder Surplus:

Date: 1/14/2008 Source: Statistical Studies (PDF) Pages: 4

2008 Statistical Study: U.S. Property/Casualty - 6-Month Net Premiums Written:

Date: 1/14/2008 Source: Statistical Studies (PDF) Pages: 4

News

A.M. Best Affirms Ratings of Baldwin & Lyons, Incorporated and Its Subsidiaries:

Date: 1/28/2008 Source: BestWire

A.M. Best Assigns Ratings to JRG Reinsurance Company, Ltd.:

Date: 1/28/2008 Source: BestWire

A.M. Best Assigns Ratings to GSFS Risk Retention Group, Inc.:

Date: 1/28/2008 Source: BestWire

For Some Insurers, Avoiding the Credit Crisis May Require a Call to Omaha:

Date: 1/28/2008 Source: BestWire

A.M. Best Downgrades Perpetual Preferred Securities of Stoneheath Re:

Date: 1/25/2008 Source: BestWire

[Customer Service](#) | [Product Support](#) | [Member Center](#) | [Contact Info](#) | [Careers](#)
[About A.M. Best](#) | [Site Map](#) | [Privacy Policy](#) | [Security](#) | [Terms of Use](#) | [Legal & Licensing](#)

Copyright © 2008 A.M. Best Company, Inc. All rights reserved.
A.M. Best Worldwide Headquarters, Ambest Road, Oldwick, New Jersey, 08858, U.S.A.

TIERED INSURANCE

- A. **Insurance.** As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

For Contracts up to \$500,000 the following limits apply:

	Contractor	Subcontractor
Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:	\$ 1,000,000.00	\$ 1,000,000.00
Project Specific Aggregate (for this project only)	\$ 2,000,000.00	\$ 2,000,000.00
OR		
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:		
(a) Per occurrence (combined single limit)	\$ 1,000,000.00	\$ 1,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 2,000,000.00	\$ 2,000,000.00
(c) Products/Completed Operations	\$ 1,000,000.00	\$ 1,000,000.00
(d) Personal & Advertising Injury limit	\$ 1,000,000.00	\$ 1,000,000.00

For Contracts from \$500,000 - \$1 Million the following limits apply:

	Contractor	Subcontractor
Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:	\$ 2,000,000.00	\$ 2,000,000.00
Project Specific Aggregate (for this project only)	\$ 3,000,000.00	\$ 3,000,000.00
OR		
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:		
(a) Per occurrence (combined single limit)	\$ 2,000,000.00	\$ 2,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 3,000,000.00	\$ 3,000,000.00
(c) Products/Completed Operations	\$ 2,000,000.00	\$ 2,000,000.00
(d) Personal & Advertising Injury limit	\$ 2,000,000.00	\$ 2,000,000.00

For Contracts above \$1 Million the following limits apply:

Contractor Subcontractor

Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than:		
	\$ 3,000,000.00	\$ 3,000,000.00
Project Specific Aggregate (for this project only)	\$ 5,000,000.00	\$ 5,000,000.00
OR		
Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:		
(a) Per occurrence (combined single limit)	\$ 3,000,000.00	\$ 3,000,000.00
(b) Project Specific Aggregate (for this project only)	\$ 5,000,000.00	\$ 5,000,000.00
(c) Products/Completed Operations	\$ 3,000,000.00	\$ 3,000,000.00
(d) Personal & Advertising Injury limit	\$ 3,000,000.00	\$ 3,000,000.00

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

- a. Automotive and truck where operated in amounts as above
- b. Material hoist where used in amounts as above

Additional Insured Endorsement: Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Governing Board, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, Erickson-Hall Construction (Construction Manager), the Construction Manager's consultants, Architect, and the Architect's consultants, individually and collectively, as additional insureds. (see General Conditions).

PROPRIETARY SPECIFICATIONS/ DISTRICT STANDARDS

From: Janay Greenlee
To: District Standardized Product Evaluation Committee / "District Construction Committee"
Date: 9/19/2005 10:56:46 AM
Subject: District Standards

Attached is a (pdf) copy of the resolution that relates to district standards that was adopted by the Board. Adopting District Standards, for the reasons stated in the resolution, provides an avenue for the District to list a name brand product in its bid specifications and to not have to accept "equal" or alternate products.

The process set up for us to do this, includes an annual review by a "district construction committee" of the products adopted as district standards. The process will also provide an opportunity for mfgs/vendors with competing products to present their products be considered as the standard. The process may also include an opportunity for the current mfgs/vendors to provide updated information about their product offerings. The "district construction committee" is to consist of staff members from Purchasing, Maintenance, Facilities and Information Systems with input from other departments as appropriate.

A meeting will be set during the week of October 24th for purpose of reviewing products and entertaining vendors wishing to make product presentations.

At this time, would you please review the current list of district standards (2003 is most recent and is also attached), and

1) Advise if you are now aware of additional products that should be added to the list and if there are others that should be removed. Please get input from appropriate staff members. Please submit to me the list of items you'd like as standards by the end of this week, Friday, Sept. 23). When compiling your list of items, please provide:

-Manufacturer's name
-Model Number
-and any other pertinent descriptive information.

2) Advise of your availability during the week Oct. 24, 2005 (and/or the availability of the appropriate staff member(s) that may need to attend vendor presentations and be involved in the decision of whether a listed product is acceptable).

Purchasing has been collecting the names of vendors with competing products that would like an opportunity to present their products over the past year. I will begin to notify these vendors of the meeting date next week and set up appointments for their presentations. I will also be identifying current vendors to invite them to present any product information that may be pertinent. In the near future, I will be providing you a list of the vendors we have on file for the listed products. I will also be asking for any additional vendors that you may know of that you'd like included or that would like to be included.

After we have completed this process, we will once again compile a list of products for the board to adopt as standards at the December board meeting.

Thank you for your attention to this information and for your anticipated responses! Please let me know if you need any additional information.

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA
Janay Greenlee
Manager - Purchasing/Distribution/Publications
ESCONDIDO UNION SCHOOL DISTRICT
1330 E. Grand Avenue
Escondido, California 92027

(760) 432 2147 tel
(760) 735 2876 fax
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

RESOLUTION ADOPTING COMPATABILITY,)
UNIFORMITY AND STANDARDIZATION)
MEASURES FOR VARIOUS PRODUCTS AND)
SYSTEMS FOR THE ESCONDIDO UNION)
SCHOOL DISTRICT)
_____)

Resolution No. 2002-03-18

On motion of Member _____ and seconded by Member _____
_____, the following resolution is adopted:

WHEREAS, the Board of Education of the Escondido Union School District ("District") intends on expending considerable funds building new schools and repairing and modernizing existing campuses; and

WHEREAS, the District, pursuant to Public Contract Code Section 3400, intends to establish uniform, complete, and compatible systems and products ("District Standards") districtwide to avoid the waste of District funds associated with addressing incompatible systems and products; and

WHEREAS, the District and its consultants have undertaken considerable research into determining systems and products that would best serve the District's administrative and educational purposes; and

WHEREAS, the District's existing facilities already utilize specific systems and products and the District's intent is to match those existing systems currently in the District to avoid the cost of designing and engineering systems that may not be compatible, could never be compatible, or could only be made compatible after expending considerable District resources and funds; and

WHEREAS, pursuant to Public Contract Code Section 3400(b), the District desires to designate certain products/brands for current and future projects to match items in existing projects, so as to establish districtwide standards, thus avoiding incompatibility issues; and

WHEREAS, the District, pursuant to Public Contract Code Section 3400, intends to establish District Standards for the listed products and systems for the following reasons:

1. Standardization promotes more consistent and cost-effective maintenance, operating, and repair costs;
2. Standardization promotes more efficient stocking and maintenance of spare parts inventory;
3. District personnel are currently trained to operate, program, install, repair and/or maintain the specified systems and products; and

WHEREAS, the District has established a construction committee comprised of District personnel ("Construction Committee") that shall meet on an annual basis or as necessary within that period to re-evaluate the District Standards, as well as the District's findings regarding the same. Based upon the Construction Committee's evaluation of other products, manufacturers, and systems submitted by other vendors for proposed substitutions, the District may accordingly revise its District Standards and issue updated findings.

NOW, THEREFORE, THE BOARD DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

1. That the above recitals are all true and correct.
2. That the District intends on expending considerable funds building new schools and repairing and modernizing existing campuses and is concerned that systems and products throughout the District be compatible and uniform when it is beneficial for purchase, compatibility, or maintenance reasons.
3. That the District's Construction Committee shall re-evaluate the District Standards on an annual basis, or within that period if necessary, and review the products and systems addressed in this resolution based upon issues of compatibility, durability, maintenance, and other criteria as the Construction Committee deems appropriate.
4. That any vendor or manufacturer may submit requests with appropriate backup documentation and information to be considered as a District Standard. The Construction Committee shall evaluate all such requests as established by the Construction Committee when it re-evaluates the District Standards on an annual basis or as necessary within that period.
5. That the list of systems and products attached hereto as Exhibit "A" comprise the current District Standards and no other specifications are affected by this resolution in connection with the District's construction projects.

PASSED AND ADOPTED by said Board of Education on December 12, 2002, by the following votes:

AYES:

NOES:

ABSENT:

I, _____, Clerk of the Board of Education, do hereby certify that the foregoing is a full, true, and correct copy of a resolution passed and adopted by said Board at a

regularly scheduled and conducted meeting held on said date, which resolution is on file in the office of said Board.

ESCONDIDO UNION SCHOOL DISTRICT

Clerk, Board of Education

EXHIBIT A

ESCONDIDO UNION SCHOOL DISTRICT DISTRICT STANDARDS

Systems

1) HVAC – Carrier Units

- (a) Carrier Temp and VVT Comfort System
 - (i) System includes a relay pack mounted in each unit, model #33CSUCE-06 (sub-base).
- (b) Communication Bus
 - (i) 3 Wire, 20-gauge, stranded, color-coded cable, three conductor (red, black, green) UL with shield. 33PE-SCA209
 - (ii) 5 Wire, 20-gauge, stranded, color-coded cable, five conductor (red, white, black, yellow, green) UL with shield. 33PE-SCA205

2) Clock – Primex Wireless

3) T.V./Video Retrieval/Security – Integra

4) Telephone – Vodavi Triad 3

5) Fire Alarm – Siemens MXL-IQ

6) Intercom/Call Buttons/Speakers – Rauland ICS

Products

1) Paint – Dunn Edwards

2) Vinyl Composition Tile

- (a) Armstrong Imperial Texture Standard Excelon
- (b) 12"x12" gauge 1/8"

3) Carpet

- (a) Collins & Alkman Infinity Mark I RS

4) Toilet Partitions

- (a) Santana
- (b) Continuous stainless steel hinges and 6" strikes
- (c) 15-year warranty

5) Lexan

- (a) 1/4" GE Lexan – MR 10

6) Lighting

- (a) Classroom lighting – 2' x 4' two- or three-tube fluorescent (T-8 Lithonia)
- (b) Security lighting – High pressure sodium fixtures – Lumark polycarbonate lens, various wattage

7) Electrical Panels

- (a) Square D or Siemens

8) Door Hardware

- (a) Classroom locks Schlage D70PD RHO 626 interchangeable core
- (b) Storeroom locks Schlage D30PD RHO 626 interchangeable core
- (c) Privacy locks Schlage D40S RHO 626
- (d) All purpose locks Schlage 53PD RHO 626 interchangeable core
- (e) Rim cylinders Schlage 6 pin 626 R, F, RF keyways
- (f) Mortise cylinders Schlage 6 pin 626 R, F, RF keyways
- (g) Mortise classroom locks Schlage L series 616 with holdback function
- (h) Exit devices Von Duprin 99 series 626 with cylinder dogging
- (i) Closers LCN 4010-4011 alum
- (j) Notes: All cylinders to be 1 bitted and to be interchangeable core.
All exit devices and mortise locks to have Triaco anti-vandal trim pulls 1091fc.
All double doors will have keyable removable mullions.

9) Plumbing

- (a) Flush valves – Sloan Royals
 - (i) Closet – model 111 (low consumption)
 - (ii) Urinal – model 180-1 (low consumption)
- (b) Faucets – Chicago model #928 VR (vandal resistant)
- (c) Drinking Fountains – Haws
 - (i) Two station – stainless steel, ADA approved
 - (ii) Classroom bubbler – Haws #5054 LF ADA
- (d) Kitchen areas
 - (i) Fisher model #2210 spring type pre-rinse
 - (ii) Fisher model #2200 CU faucet wall mount or #2100 deck mount
 - (iii) Hand washing faucet – Chicago model #802A-369
 - (iv) Garbage disposal – ISE SS77 ¾ hp for lounge kitchen and Pro 77 1 hp for Food Services kitchen
- (e) Toilets – American Standard
- (f) Urinals – Bedford 7-121
 - (i) With integral porcelain strainer
 - (ii) Requires 1" filler installed behind fixture to meet ADA compliance (phenolic partition material may be used)
- (g) Lavatory faucets – Chicago
 - (i) Student areas #333-669
 - (ii) Adult areas #802-A-369

10) Lockers – Lyon Metal Products

Should manufacturers' products change, the manufacturers' direct replacement products will be reviewed to ensure it still meets District needs prior to its acceptance.

GROSSMONT UNION HIGH SCHOOL DISTRICT

Business Services Division

Regular Governing Board Meeting:

May 10, 2012

SUPPORTS DISTRICT'S GOAL #II.A

Topic:

Adoption of Resolution (2012-) – Authorizing the Purchase and Installation of Sports Field Lighting from Musco Lighting as a Sole Source Purchase and Waiving the Competitive Bid Requirement for the Football Field Lighting Project at Santana High School

Issue:

Public Contract Code section 3400 permits public entities to make an exception to the public bidding requirement when the necessary equipment, materials, or supplies are only available from one source.

The District has made a finding that Musco Lighting is unique enough in its function to qualify as a sole source based on the following:

- Energy Efficiency: Lower kW consumption per fixture. Musco's 1500W fixture draws on average 1.564kW. Compared to other fixtures which draw 1.62kW. Musco's advanced technology in fixture optics and housing and their Smart Lamp technology have resulted in more light on the field, and reduced energy consumption per fixture.
- Musco is the only known supplier of the Smart lamp technology. Through timed power adjustments, Smart Lamp allows a constant light guarantee. Light levels are guaranteed to be with +/-10% (per IESNA RP-601) through the 5000 hours of the lamp.
- Musco is the only sports lighting manufacturer that employs and trains field technicians to perform fine tune adjustments after installation to ensure maximum performance on-field and off-site. This is part of Musco's performance guarantee that ensures all photometries and components of the system meet the customer's specifications.
- Musco is the only manufacturer that welds all crossarms to the steel pole top section. This provides the highest quality of construction as well as unsurpassed durability. All other manufacturers use bolt-on connections.
- Musco issues a 25-year warranty on their products.

Plan:

Contract with Musco Lighting to provide field lighting and installation at Santana High School without competitive bidding.

Fiscal Impact:

The contract as awarded is for a fixed price of \$111,300 and will be funded out of a Fund 21 – General Obligation Bond Fund.

Recommended Action:

Adoption of Resolution (2012-) – Authorizing the Purchase and Installation of Sports Field Lighting from Musco Lighting as a Sole Source Purchase and Waiving the Competitive Bid Requirement for the Football Field Lighting Project at Santana High School

Originating Department:
Purchasing

Submitted/Recommended By:

Approved for Submission to the Governing Board:

Scott H. Patterson
Deputy Superintendent,
Business Services

Robert Collins
Superintendent

GROSSMONT UNION HIGH SCHOOL DISTRICT

Resolution No. 2012-

RESOLUTION AUTHORIZING)
PROPRIETARY SPECIFICATIONS FOR)
MUSCO LIGHTING)

WHEREAS, the Grossmont Union High School District ("District") desires to contract for the purchase and installation of field lighting for the Santana High School;

WHEREAS, the District has determined that Musco Lighting is unique in its function and designated it as a sole source of field lighting as specified by the District;

WHEREAS, Public Contract Code section 3400 permits public entities to make an exception to the public bidding requirement when the necessary equipment, materials, or supplies are only available from one source; and

WHEREAS, the District has determined that it would be unavailing and no advantage would result if it were to engage in the public bidding process for used office systems furniture meeting the District's needs, when the District has already researched and concluded that no other products or vendor are available at this time that meet the District's specifications. (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631.)

NOW, THEREFORE, BE IT RESOLVED,

1. All of the recitals set forth above are true.
2. The District hereby waives competitive bidding requirements to allow for the purchase of field lighting meeting the District's needs from a sole source and because public bidding would be unavailing and offer no advantage.
3. The Governing Board hereby authorizes Deputy Superintendent, Business Services, or his designee, to take such action and execute such agreements and documentation necessary to affect the intent of this Resolution.

PASSED AND ADOPTED by the Governing Board of the Grossmont Union High School District at El Cajon, California, on this 13th day of November, 2008, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

PURCHASING POLICIES & PROCEDURES

Grossmont Union High
Administrative Regulation

AR 3311

Business and Noninstructional Operations

Bids

The district has adopted the California Uniform Public Construction Cost Account Act procedures under Public Contract Code 22000 et. seq.

Informal Bids:

Public projects, as defined by the Act and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

Contractors List:

A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission

Advertised Bids

The district shall seek competitive bids through advertisement for contracts involving an expenditure of greater than \$175,000 for a public project, informally bid contracts involving an expenditure of less than \$175,000, and seek quotes, when feasible, for projects involving an expenditure of \$45,000 or less.

"Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a district owned, leased or operated facility. (Public Contract Code 22002)

Competitive bids shall be sought through advertisement for contracts exceeding \$50,000, for the following: (Public Contract Code 20111; Government Code 53060). The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

1. The purchase of equipment, material or supplies to be furnished, sold or leased to the district
2. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters
3. Repairs, including maintenance that is not a public project

"Maintenance" means routine, recurring and usual work for preserving, protecting and keeping a district facility operating in a safe, efficient and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered or repaired. "Maintenance" includes, but is not limited to, carpentry, electrical, plumbing, glazing and other craft work designed to preserve the facility as well as repairs, cleaning and other operations on machinery and other permanently attached equipment. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security forces, nor does it include painting, repainting or decorating other than touchup. (Public Contract Code 20115).

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 for any transportation service expenditure of more than \$10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally owned transit system or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder. (Education Code 39802)

No work, project, service or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the district, circulated in the county, or if no such paper exists then in some newspaper of general circulation, at least once a week for two weeks. The notice shall state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. (Public Contract Code 20112)

The notice shall contain the time, date and location of any mandatory prebid conference, site visit or meeting. The notice shall also detail when and where project documents, including final plan and specifications, are available. Any such mandatory visit or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

Bid instructions and specifications shall include the following requirements and information:

1. Recycled Content and Recycled Products (Public Contract Code 22150 et seq.)

a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the paper products offered, and both the postconsumer and secondary waste content.

b. Fitness and quality being equal, the District shall purchase recycled products whenever available at no more than the total cost of non-recycled products.

2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)

a. Cash

b. A cashier's check made payable to the district

c. A certified check made payable to the district

d. A bidder's bond executed by an admitted surety insurer and made payable to the district

The security of unsuccessful bidders shall be returned in a reasonable period of time, in no event any later than 60 days after the bid is awarded. (Public Contract Code 20111)

3. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)

4. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)

5. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, depending on the availability of funds, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #a, below, will be used: (Public Contract Code 20103.8)

a. The lowest bid shall be the lowest bid price on the base contract 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 that were specifically identified in the bid solicitation as being used for the purpose of determining the 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 taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.

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.

6. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

7. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board policy, and administrative regulation.

(cf. 1340 - Access to District Records)

Bids Not Required

Upon a determination that it is in the best interest of the district, the Board may authorize the purchase, lease or contract for data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property through a public corporation or agency ("piggyback") without advertising for bids. (Public Contract Code 20118)

(cf. 3310 - Purchasing Procedures)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

(cf. 3551 - Food Service Operations/Cafeteria Fund)

In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the public agency shall comply with Chapter 2.5 (commencing with Section 22050).

(PCC 22035)

In cases of emergency when repair or replacements are necessary, the governing board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing board, by contractor, or by a combination of the two.

By a four-fifths vote of the governing board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

By a four-fifths vote of the governing board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the governing board within 7 days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed). Code is in conflict with boards that meet on a monthly basis.

(PCC 22050)

(cf. 9323.2 - Actions by the Board)

Bids shall also not be required for day labor under circumstances specified in law. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

Public projects of \$45,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (Public Contract Code 22032)

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined above

Sole Sourcing Brand Names

Specifications for contracts for construction, alteration or repair of school facilities may not limit bidding to any one product or supplier. Specifications designating a particular brand name shall list at least two brands of comparable quality or utility and follow the description with the words "or equal." (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name when one or more of the following conditions apply: (Public Contract Code 3400)

1. In order that a field test or experiment may be made to determine the product's suitability for future use.
2. In order to match other products in use on a particular public improvement either completed or in the course of completion.

3. In order to obtain a necessary item that is only available from one source.
4. (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals. (B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

If the district specifies a brand name for a designated material, product, thing, or service by the specification shall be followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the District shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

Prequalification Procedure

For any contract for which bids are legally required, the Board may require that each prospective bidder complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall supply a form which requires a complete statement of the bidder's financial ability and experience in performing public works. Prospective bidders shall submit the questionnaire and financial statement at least five days before the date fixed for public opening of sealed bids. The information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Public Contract Code 20111.5) The Superintendent or designee shall establish a uniform system for rating bidders on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid. Bidders must be deemed prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

The Superintendent or designee shall furnish each qualified bidder with a standardized proposal form. Bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)

The district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

For any contract awarded after January 1, 2014, using funds from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond if the project has projected expenditures of one million dollars or more, the District must prequalify all bidders. (Public Contract Code 20111.6) The District shall comply with all requirements of the PCC 20111.6 until its expiration on January 1, 2019.

Appeal Procedures

Contractors will be allowed to appeal a negative pre-qualification determination in accordance with California Public Contract Code §20101.d. There is no appeal from a refusal for an

incomplete or late application. Without a timely appeal, the Contractor waives any and all rights to challenge the decision of the District, whether by administrative process, judicial process or any other legal process or proceeding.

In conjunction with this Pre-Qualification Policy, the District hereby establishes a Bidder Pre-Qualification Appeals Panel ("Appeals Panel"), consisting of the following three members, or their designee(s):

The District's Executive Director Facilities Management
The District's Director of Purchasing
A member of an outside agency.

The sole issue before the Appeals Panel shall be the scoring of a Contractor. The decision of the Appeals Panel shall be the District's final administrative decision.

The date for submission and opening of bids for a specific project will not be delayed or postponed to allow for completion of an appeal process.

Process:

- 1) Prior to disqualifying a contractor, the District shall serve written notice on the contractor:
 - a. Setting forth the reasons for the disqualification.
 - b. Indicating that the contractor will be afforded an opportunity to appeal the disqualification as outlined below. Effective notice shall be accomplished by certified mail, return receipt requested, to the last known address of the contractor, or the contractor's agent for service of process, or any of its principal officers, partners, owners or affiliated.
- 2) The contractor shall submit his appeal in writing with the Executive Director Facilities Management no later than 4:00 p.m. of the FIFTH business day following the day on which the notice of rejection was mailed to the contractor.
- 3) The District shall act upon properly filed requests within ten calendar days from the date of receipt of such request. If, after review, the District again rejects the contractor's application, the contractor may request an administrative hearing with the panel.
- 4) At the hearing, the contractor may present oral testimony concerning the contractor's capability and responsibility. The District shall notify the contractor of his decision within five business days following the hearing. The decision of the panel is final.
- 5) A contractor, who is denied prequalification, shall be disqualified in the same type of work or category of value for a period of one year thereafter.

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board policy or the bid's specifications or was not in compliance with law.

A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract.

Any bidder submitting a Bid Proposal may file a protest of the District's intent to award the Contract provided that each and all of the following conditions are met:

1. The protest must be submitted in writing to the District (e-mail is not acceptable), before 4 p.m. of the FIFTH business day following bid opening.
2. The initial protest document must contain a complete statement of any and all bases for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence
3. The protest must refer to the specific portions of all documents which form the bases for the protest.
4. The protest must include the name, address and telephone number of the person representing the protesting party.
5. Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Deputy Superintendent, Business Services, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District's Deputy Superintendent, Business Services or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Governing Board will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid award as reflected in the written statement of the Deputy Superintendent, Business Services or his/her designee. Action by the District's Governing Board relative to a bid award shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Governing Board. The rendition of a written statement by the Deputy Superintendent, Business Services (or his/her designee) and action by the District's Governing Board to adopt, modify or reject the disposition of the bid award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals.
6. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

Regulation GROSSMONT UNION HIGH SCHOOL DISTRICT

Approved: January 1, 2001 La Mesa, California

Revised: January 5, 2009

Revised: April 15, 2013

ANY HIGH SCHOOL DISTRICT
Business Services Division

Governing Board Meeting:

February 1, 2008

Topic:

Delegation of Authority in Regard to Bidding and Management of Proposition XYZ and Other Capital Improvement Projects.

Issue:

Education Code Section 35161 authorizes the Board to delegate to any officer or employee of the District any power or duty delegated to the District or the Board by law, although the Board retains responsibility over the performance of the powers or duties so delegated.

The delegation of authority will permit the District to move projects forward and avoid delays while maintaining the integrity of the contracting process. All approvals by any of the designated officers of the District will be subject to review by the Board at a subsequent meeting.

Plan:

The adoption of resolution (2008-XX) will provide the necessary authorization for the District Superintendent, the Deputy Superintendent of Business Services, and/or the Executive Director of Facilities Management or to their designee the authority advertise for bids, to reject all bids and re-call or re-advertise, and approve change orders subject to subsequent award or rejection of bids by the Board.

Fiscal Impact:

There is no fiscal impact generated from the adoption of this resolution.

Recommended Action:

Adoption of Resolution (2007-77) Delegation of Authority in Regard to Bidding and Management of Proposition XYZ and Other Capital Improvement Projects

Originating Department: Purchasing

Submitted/Recommended By:
Board:

Approved for Submission to the Governing

John Jones
Assistant Superintendent,
Business Services

Bob Smith, Superintendent

ANY HIGH SCHOOL DISTRICT

Resolution No. 2008-XX

**DELEGATING AUTHORITY IN REGARD)
TO BIDDING AND MANAGEMENT OF)
PROPOSITION XYZ AND OTHER CAPITAL)
IMPROVEMENT PROJECTS)**

On motion of Member _____, seconded by Member _____, the following resolution is adopted:

WHEREAS, Public Contract Code Section 22002(c) defines a public works project generally as work including the construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair of any publicly owned, leased, or operated facility; and

WHEREAS, the Governing Board ("Board") of the Any High School District ("District"), when undertaking a public project in excess of \$15,000, is required pursuant to Public Contract Code Section 20111 to award the contract(s) for such work to the lowest responsible bidder(s) or reject all bids; and

WHEREAS, Public Contract Code Section 20112 requires the Board to advertise for bids for public projects by publishing a notice calling for bids at least once a week for two consecutive weeks in a newspaper of general circulation published within the District; and

WHEREAS, Education Code Section 35161 authorizes the Board to delegate to any officer or employee of the District any power or duty delegated to the District or the Board by law, although the Board retains responsibility over the performance of the powers or duties so delegated; and

WHEREAS, on April 1, 2007, the voters residing within the District's boundaries approved Proposition XYZ, thereby providing for issuance of general-obligation bonds and use of bond proceeds to repair and upgrade existing District schools and to construct additional new District school facilities; and

WHEREAS, the Board previously reviewed and approved the list of projects that were to be funded using Proposition XYZ bond proceeds and included such list in the ballot materials for Proposition XYZ presented to the voters, which included projects at : (list sites) (each a "Proposition XYZ Project"); and

WHEREAS, during the course of new construction and modernization projects, situations may arise resulting in requirement for changes to the project or the contracts therefor, and changes to the Proposition XYZ or other Capital Improvement Projects or the contracts therefor have been and, as anticipated, will be necessary during the course of construction; and

WHEREAS, the Board desires to delegate to District staff certain authority in regard to competitive bidding of and contracting and thereby create an efficient process for achieving and implementing the Proposition XYZ and other Capital Improvement projects.

NOW, THEREFORE, the Board does hereby determine, resolve, and order as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The Board hereby delegates the authority and discretion to the Superintendent, the Deputy Superintendent of Business Services, the Executive Director of Facilities Management of the District, or to their designee, to: (i) review and, as appropriate, approve plans and specifications for any of the Proposition XYZ or other Capital Improvement Projects for purposes of seeking competitive bids based on such plans and specifications; (ii) call for bids for any of the Proposition XYZ or other Capital Improvement Projects, including placing advertisements as required pursuant to the Public Contract Code; (iii) reject all bids received in connection with a Proposition XYZ or other Capital Improvement Projects if rejection is determined by District staff to be in the best interests of the District; (iv) re-call and re-advertise for bids on any Proposition XYZ or other Capital Improvement Projects for which previous bids were rejected in accordance with the authority hereby delegated; and (v) take such other action as may be reasonably necessary to accomplish those tasks delegated pursuant to this Section which are subject to subsequent award of contract(s) or rejection of all bids by the Board.

Section 3. The Board hereby delegates the authority and discretion to the Superintendent and the Deputy Superintendent of Business Services for the District, or to their designee, to review and, as appropriate, approve change orders for construction of any Proposition XYZ or other Capital Improvement Projects; subject to no such change order approved pursuant to this Section exceeding \$100,000.00 and all such change orders for a Proposition XYZ or other Capital Improvement Projects not exceeding ten percent (10%) of the original contract amount; and provided that all such change orders approved pursuant to this Section are subject to subsequent ratification by the Board.

Section 4. The Board does not hereby delegate the authority for initial award of any contracts for construction of any of the Proposition XYZ or other Capital Improvement Projects, which authority is expressly reserved by the Board unless otherwise delegated by separate motion, resolution, or official act of the Board.

Section 5. The Superintendent, Deputy Superintendent of Business Services, or their designee, shall report to the Board at each regularly-scheduled Board meeting with a summary of the authority exercised pursuant to this Resolution since the last prior meeting of the Board.

Section 6. This Resolution shall take effect immediately and shall remain in effect until rescinded by the Board.

PASSED AND ADOPTED by the Governing Board of the Any High School District at El Cajon, California, on this 1st day of February, 2008, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

I, _____, Clerk of the Governing Board of the Any High School District of San Diego, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by said Board at the regular meeting thereof at the time and place of vote stated, which resolution is on file and of record in the office of said Board.

Date

TO: BOARD OF EDUCATION

MEETING DATE: January 22, 2008

FROM: John P. Collins
Staff Support: Malliga Tholandi

AGENDA ITEM: E-307

**SUBJECT: APPROVAL OF REVISED BOARD POLICY SECTION 6.40 -
PURCHASING OF SUPPLIES, EQUIPMENT, AND SERVICES**

- ☒ Action
- ☒ Consent Calendar
- ☐ First Reading
- ☐ Information
- ☐ Presentation
- ☐ Public Hearing
- ☐ Roll Call Vote
Required

RECOMMENDATION:

That the Board approve the proposed revision of Board Policy Section 6.40 - Purchasing of Supplies, Equipment, and Services.

DISCUSSION/PROGRAM:

At the December 10, 2007, Board meeting, this policy was presented to the Board for a first reading. The proposed policy amends the wording to generic terminology, as well as revising authorized personnel, as shown in the attached draft. The corresponding Administrative Procedures are attached for information.

Tonight, the Board is being asked for its approval of the revised Board Policy.

LEGAL REFERENCE: Education Code Sections 39802
Public Contract Code Sections 20111, 20112, 20113, 20118, 20129, and
20189

FISCAL IMPACT: N/A

MOVED BY: _____ **SECONDED BY:** _____

VOTE: GUTSCHOW _____ MANGUM _____ PATAPOW _____ RANFTLE _____ VANDERVEEN _____

Student Vote: AHS _____ MCHS _____ PHS _____ RBHS _____ WHS _____

**POWAY UNIFIED SCHOOL DISTRICT
BOARD POLICY**

Originator: Director of Purchasing
Facilities Development

Issue No: 9 8

Date: 3/11/02 _____/08

Page: 1 of 1

Reference: EC-39643-39659, 39802,
39873; PCC 20111, 20112,
20113, 20118, 20129,
20189

ARTICLE: 6.0 BUSINESS SUPPORT SERVICES

6.40 PURCHASING DEPARTMENT

SECTION 6.40 PURCHASING OF SUPPLIES, EQUIPMENT, AND SERVICES

The procurement function is one of the major business responsibilities of the Board of Education, and it shall retain sole authority and responsibility for all purchase contracts of the District except as delegated by official action of the Board. The Superintendent and/or designee shall sign for all obligations of the District arising from the purchasing function. All approvals of Purchase Orders shall be recorded in the minutes of the Board of Education.

2 ~~Telephone quotations shall be obtained from at least three (3) vendors when the total anticipated purchase cost of an item or group of similar items exceeds \$2,000.~~

3 ~~Written quotations shall be received from at least three (3) vendors when the total anticipated purchase of an item or group of similar items exceeds \$10,000 and does not exceed \$58,900. Telephone quotations from three (3) vendors may be substituted for written quotations when it is determined that the time required for obtaining written quotations will adversely affect the price or delivery.~~

4 ~~Written quotations shall be received from at least three (3) contractors when the total anticipated cost of public project work exceeds \$5,000 and does not exceed \$15,000.~~

5 ~~Any contract involving an expenditure of more than \$15,000 for public project work or more than \$58,900 for equipment, materials, or supplies to be furnished, sold, or leased to the District shall be formally advertised for bid, and shall be awarded to the lowest responsible bidder or all bids shall be rejected.~~

6 ~~The Board authorizes the Assistant Superintendent/Business Support Services or designee to purchase perishable supplies and material, in an amount not to exceed \$20,000 by open Purchase Order, as required for the Food Service Program, and in amounts not to exceed \$10,000 as needed for other programs.~~

7 ~~The Board authorizes the Assistant Superintendent, Business Support Services, or designee to contract on behalf of the Board for service and maintenance of District equipment, rental/lease of portable buildings and other facilities, and rental/lease of furniture/equipment when such contracts are below the amount requiring formal bidding, have been previously approved by the Board, or are renewals of contracts previously approved.~~

Paragraph 2: See AP 6.40.5

Paragraph 3: See AP 6.40.5

Paragraph 4: See AP 6.40.5

Paragraph 5: See AP 6.40.4

Paragraph 6: See AP 6.40.4 and AP 6.40.18

Paragraph 7: See AP 6.40.7

**POWAY UNIFIED SCHOOL DISTRICT
ADMINISTRATIVE PROCEDURE**

Originator: Director of Purchasing
Facilities Development

Issue No: 3 4

Date: 3/11/02 ____/08

Page: 1 of 1

Reference:

ARTICLE: 6.0 BUSINESS SUPPORT SERVICES

6.40 PURCHASING DEPARTMENT

**6.40 PURCHASING OF SUPPLIES,
EQUIPMENT, AND SERVICES**

SECTION 6.40.4 Use of Open Purchase Orders —~~Non-Food Items~~

The purpose of open Purchase Orders is to simplify purchasing ~~the purchase~~ —when repetitive purchases for products or services will be made from the same vendor over a period of time. An open Purchase Order is a purchase order which has been issued to a vendor against which multiple purchases may be made for a specified period of time. Similar to a regular Purchase Order, department funds are obligated (i.e., encumbered) upon the establishment and issuance of an open Purchase Order. ~~a wide variety of low cost supply items are needed. Other uses include payment for rentals and services when the cost is unknown.~~

~~Use of open Purchase Orders is not appropriate for routine purchases when items can be individually listed and priced, or when the purchase is not local.~~

1. Open purchase orders ~~for supply items~~ may be processed through the Purchasing Department ~~using the standard Requisition Form PUR-25.~~
2. Before the purchase order is processed, the person originating the request should be certain the vendor will accept open purchase orders from the District.
3. ~~An~~ After a purchase order is issued, an itemized invoice must be sent to the Finance Department to ensure payment to the vendor. The invoice must be signed by the person receiving the items to indicate that all items are received and must show the date of purchase, item description, quantity, and unit price, and all prices must be extended.
4. The dollar amount of any individual purchase shall not exceed \$500-~~00~~ unless prior approval is obtained from the ~~Director of Facilities Development or Assistant Director of Purchasing.~~
5. Open purchase orders shall not be used for capital outlay items.
6. All open purchase orders shall be closed out on or before June 20 of each year. The period the purchase order will be "open" must be specified on the requisition. ~~Please specify on the requisition if the purchase order is to remain open through a specific time period.~~
7. If any changes are made, such as delivery arrangements, the Purchasing Department must be notified so proper action can be taken.
8. ~~The maximum amount for an open purchase order for non-perishable items shall be \$10,0000.00~~

**POWAY UNIFIED SCHOOL DISTRICT
ADMINISTRATIVE PROCEDURE**

Originator: Director of Purchasing
Facilities Development

Issue No: 3 4

Date: 3/11/02 ____/08

Page: 1 of 2

Reference:

ARTICLE: 6.0 BUSINESS SUPPORT SERVICES

6.40 PURCHASING DEPARTMENT

**6.40 PURCHASING OF SUPPLIES,
EQUIPMENT, AND SERVICES**

SECTION 6.40.5 Use of Formal Bidding and Quotes

The Director of Purchasing shall implement formal bidding or quotation requirements when items being purchased or work to be done exceed the dollar limitations as set forth by the Board of Education and/or California law ~~the Education Code~~. All advertising requirements shall be strictly adhered to, and all bids shall be presented to the Board of Education for acceptance or rejection. The Director ~~or Assistant Director~~ of Purchasing shall determine whether bid and performance bonds are required and shall include such in each bid when necessary.

When lease or lease purchases are to be included in the acquisition of an item, the Director ~~or Assistant Director~~ of Purchasing shall include the necessary lease purchase documents in the bid for perusal by the potential bidders. If it is necessary to have legal assistance in the preparation of these documents, the Director ~~or Assistant Director~~ of Purchasing shall work with the Assistant Deputy Superintendent or Chief Financial Officer, ~~Business Support Services~~, to assure that proper legal advice is secured.

~~Written formal~~ Formal written quotations are required for purchases of products, services, or public works projects exceeding \$5,000 and not more than \$14,999 ~~certain amounts as specified in Board Policy~~. Formal written quotations require that a response ~~written verification~~ be obtained from at least three (3) vendors prior to placing the order. ~~A quote number shall be assigned by the Purchasing Department, and complete~~ Complete records shall be kept for each formal written quotation. Two types of formal written quotations are available. The Purchasing Department may contact vendors by telephone and ask for written responses from at least three vendors. Another type of formal written quotation would require that the Purchasing Department send forms to the vendors which would provide for a written response at a set time and date. Both types of quotation procedures are acceptable.

Telephone quotes may be used when the total anticipated purchase cost of an item or group of similar items is between \$2,000 and \$5,000. ~~for purchases as set forth in Board of Education Policy~~. The telephone quotation procedure requires that at least three (3) vendors who specialize in the sale of the product in question be contacted. Purchasing Form PUR-2 shall be used, and the person who responds to the telephone quote shall be identified on the written form. If a vendor that has been contacted fails to respond ~~after one week and after one follow up telephone call has been made~~, a quote "No Bid" may be reported on the form. All prices should ~~be f.o.b.~~ freight to the destination for proper price comparisons.

The dollar limits as set forth in Board of Education Policy and California law ~~the Education Code~~ include tax. Therefore, purchases that include tax and exceed the limits as set forth therein fall into more restrictive purchasing procedure.

SECTION 6.40.5 Use of Formal Bidding and Quotes

[illegible]

**POWAY UNIFIED SCHOOL DISTRICT
ADMINISTRATIVE PROCEDURE**

Originator: Director of Purchasing
Facilities Development

Issue No: 4 5

Date: 3/11/02 ____/08

Page: 1 of 1

Reference:

ARTICLE: 6.0 BUSINESS SUPPORT SERVICES

6.40 PURCHASING DEPARTMENT

**6.40 PURCHASING OF SUPPLIES,
EQUIPMENT, AND SERVICES**

SECTION 6.40.7 Purchase Order Approvals

The Board authorizes the Superintendent, or designee, to contract (purchase, rent, or lease) on behalf of the Board for supplies, equipment, services, and public works projects when such contracts are below the amount requiring formal bidding.

Signatures on District Purchase Orders are valid only if signed by the Superintendent, ~~Assistant Superintendent/Business Support Services~~ Deputy Superintendent, Chief Financial Officer, or the Director of Purchasing, ~~or the Assistant Director of Purchasing.~~

If an **emergency** situation should arise, a requisition may be "walked through" the Purchasing Department for quicker service. This process can only work if the purchase does not require additional work within the District Office and if the requisition is filled in properly with the appropriate signatures.

District personnel shall not authorize any purchases prior to obtaining the proper authorizations.

**POWAY UNIFIED SCHOOL DISTRICT
ADMINISTRATIVE PROCEDURE**

Originator: Director of Purchasing
Facilities Development

Issue No: 3 4

Date: 3/11/02 ____/08

Page: 1 of 22

Reference:

ARTICLE: 6.0 BUSINESS SUPPORT SERVICES

6.40 PURCHASING DEPARTMENT

**6.40 PURCHASING OF SUPPLIES,
EQUIPMENT, AND SERVICES**

SECTION 6.40.18 Purchase of Food Supplies — ~~Consumer/Family Departments and ESS~~

Purchases of food and miscellaneous small supply items for instructional program ~~uses in the consumer/family departments and ESS programs~~ shall be purchased locally, purchased from the Food Service Department, or purchased on special arrangements approved by the ~~Director of Facilities Development or Assistant~~ Director of Purchasing. A regular purchase order will be issued for one-time purchases. An open purchase order will be issued if purchases will be repetitive over a period of time.

1. Purchases from Local Vendors:

~~Requisition Form PUR-25~~ An electronic must be submitted requesting to request the open purchase of miscellaneous food supplies. ~~and the~~ The name of the teacher or staff member that will pick up the supplies ~~'s name~~ should be noted on the purchase order. ~~who will be picking up the supplies. The dollar limit for this type of purchase is \$2,000.00 per order. The cost should be based upon the prior year's expenditures, originator's best estimates estimate and current pricing information which reflect changes in the program.~~

Upon approval by the ~~Director of Facilities Development or Assistant~~ Director of Purchasing, a ~~blanket~~ regular or open Purchase Order, as appropriate, will be issued and returned to the person as noted on the requisition.

Form B-50 ~~is available through Forms Control and~~ shall be used in the following manner:

- a. Purchases are made at the store and after items have been rung up and the total verified with the cash register tape, the invoice must be signed by the purchaser to verify that all items have been received and both the cash register tape and invoices will be forwarded to the Finance Department to be audited. ~~Invoices must be in triplicate.~~ The B-50 District form has to be completed and must accompany the cash register tape and invoices when forwarded to the Finance Department by the purchaser.
- b. Payment to the vendor will be made by Commercial Warrant, after audit by the Finance Department. The original invoice and cash register tape will be sent to the County Superintendent of Schools' office with District warrant for approval, and if approved, it is counter-signed and returned to the District to mail to the vendor.

2. Commodities not allowed to be purchased:

The following items and related products are **not** to be purchased with District funds:

- a. coffee
- b. party favors
- c. gifts
- d. other products not related to the instruction of students

SECTION 6.40.18 Purchase of Food Supplies — ~~Consumer/Family Departments~~
and ESS

ITEMIZED LISTING OF MARKET PURCHASES

POWAY UNIFIED SCHOOL DISTRICT
13826 Twin Peaks Road, Poway, California 92064

INSTRUCTIONS

1. Use for invoicing purchases of food and related small supply items utilized in instructional programs.
2. Only the teacher/person authorized in the open purchase order may make purchases.
3. Attach cash register tape and three (3) copies of the market's invoice to upper left corner.
4. Purchase of coffee, gifts, party favors and other non-instructional items are not authorized.
5. Submit to Accounts Payable within five working days following purchase.

NAME OF MARKET	DATE OF PURCHASE	PURCHASE ORDER NUMBER
----------------	------------------	-----------------------

ITEMS PURCHASED

QUANTITY ORDERED	UNIT	DESCRIPTION	ACTUAL COST	
			UNIT	TOTAL
ADDITIONAL DATA			SUB-TOTAL	
			TAX	
			TOTAL COST	

I certify that the above items were purchased for use in an authorized instructional program for students of this District.

SIGNATURE OF TEACHER

DATE

**CALIFORNIA
UNIFORM PUBLIC
CONSTRUCTION
COST
ACCOUNTING ACT**

California Uniform Public Construction Cost Accounting Act



SAMPLE DOCUMENTS

**Compiled by
Guiselle Carreon, Commissioner
California Uniform Construction Cost Accounting Commission**

This handout has been prepared by the San Diego-Imperial Section CASBO Purchasing Professional Council. It has not been reviewed for approval by the State CASBO and is not an official statement of CASBO. Any advice or comments made by the panel members are not intended to replace the advice of your legal counsel. Revised June 18, 2014.

CONTENTS

Sample Board Agenda Item	3
Sample Resolution	4
Sample Board Policy	6
Sample Administrative Regulation 3311.....	8
Sample Contractor Registration Form	16
Sample Force Account Worksheet.....	17
Frequently Asked Questions	18

GROSSMONT UNION HIGH SCHOOL DISTRICT
Business Services Division

Regular Governing Board Meeting:

April 29, 2004

Topic:

Adoption of Resolution (2004-11)

Issue:

Public projects contracts that exceed \$15,000 in cost have traditionally been awarded by the District through the formal bidding process as outlined in Public Contract Code Section 20111. However, another option exists for award of public projects by public agencies for expenditures up to \$100,000. Public Contract Code Section 22001 provides for the development of cost accounting standards and an alternative method for the bidding of public projects by public entities. This alternative method is known as the "Uniform Public Construction Cost Accounting Act". This is a completely voluntary method and an option for awarding these contracts. The only contracts that can be awarded under this Act are public projects and not maintenance work, as defined in Public Contract Code Section 22002. Election to participate in this program does not require that the formal bid process cannot be utilized for contracts up to \$100,000. The District will evaluate each project to determine if it is cost effective and in the best interest of the District to follow the traditional bid process or the alternative process.

Plan:

The adoption of resolution (2004-11) will provide the necessary authorization for the District to notify the State Controller's Office of the District's intent to participate and to enact an informal bidding policy to govern the selection of contractors to perform public projects. It will further provide authorization to waive the formal bid process, where applicable, for public projects up to \$100,000.

Fiscal Impact:

There is no impact to the general fund in adopting this resolution. Where feasible, a cost savings of staff time will occur when the formal bid process does not have to be utilized for awarding of public projects.

Recommended Action:

Adoption of Resolution (2004-11) Authorizing Election Under Public Contract Code Section 22030 To Become Subject To Uniform Public Construction Cost Accounting Procedures; and Authorization for Superintendent or Designee to Execute Same

Originating Department:
Purchasing

GROSSMONT UNION HIGH SCHOOL DISTRICT

Resolution No. 2004-11

**RESOLUTION AUTHORIZING ELECTION UNDER)
PUBLIC CONTRACT CODE SECTION 22030)
TO BECOME SUBJECT TO UNIFORM PUBLIC)
CONSTRUCTION COST ACCOUNTING PROCEDURES)**

ON MOTION OF Member_____,seconded by Member_____, the following resolution is adopted:

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chap. 1054, Stats. 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code Section 22000 et seq., the Uniform Public Construction Cost Accounting Act, establishes such a uniform cost accounting standard; and

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

WHEREAS, the Grossmont Union High School District desires to elect and become subject to Uniform Public Construction Cost Accounting Procedures for the purpose of awarding public project contracts as appropriate under these procedures; and

WHEREAS, the Grossmont Union High School District finds that utilizing the procedures outlined by the Uniform Public Construction Cost Accounting Act may save administrative time and expense and will be in the best interest of the District; and

NOW THEREFORE BE IT RESOLVED, ORDERED, AND DECLARED that this Board finds that utilizing the procedures outlined by the Uniform Public Construction Cost Accounting Act may save administrative time and expense and will be in the best interest of the District; and

BE IT FURTHER RESOLVED, ORDERED, AND DECLARED that the Governing Board of the Grossmont Union High School District hereby elects under Public Contract Code Section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the Assistant Superintendent, Business Services, and the Director, Purchasing, notify the State Controller forthwith of this election.

PASSED AND ADOPTED by the Governing Board of the Grossmont Union High School District at El Cajon, California, on this 29th day of April, 2004, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

**STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)**

I, Evelyn Wills, Clerk of the Governing Board of the Grossmont Union High School District of El Cajon, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by said Board at the regular meeting thereof at the time and place of vote stated, which resolution is on file and of record in the office of said Board.

Date

Clerk

**NOTICE TO CONTRACTORS
TO BE INCLUDED ON THE DISTRICT'S LIST OF QUALIFIED CONTRACTORS
PER SECTION 22034 OF THE PUBLIC CONTRACT CODE**

The Grossmont Union High School District has elected to become subject to the California Uniform Public Construction Cost Accounting Procedures. The District is inviting all licensed contractors to submit information for inclusion on the District's list of qualified bidders for the 2012 calendar year.

This notice requires contractors to provide the following information. Registration forms are available at <http://portal.guhsd.net/GUHSD/depts/busserv/purchasing>

- 1) Company name
- 2) Contact name and mailing address
- 3) Contact phone number, fax number, and email address
- 4) Type of work contractor is interested in performing
- 5) Type of work contractor is licensed to perform
- 6) Contractor's license class and number

The Grossmont Union High School District may create a new contractors list effective January 1st of each year and may include any contractor's name it desires on the contractors list, but must include, at a minimum, all contractors who have properly provided the School District with the required information, either during the calendar year in which the list is valid or during November or December of the prior year. The list will automatically include all contractors who submitted one or more bids to the School District during the preceding calendar year. A contractor may have their firm added to the School District's contractors list at any time by providing the required information. For information, call Guiselle Carreon at 619-644-8051.

Information should be sent to:

Guiselle Carreon, Director of Purchasing
Grossmont Union High School District
PO Box 1043, La Mesa, CA 91944-1043
Fax: 619-644-3540
E-mail: carreon.guiselle@gmail.com

Dated this 9th day of November, 2012

Clerk of the Governing Board
Grossmont Union High School District,
of San Diego County, California

Publication dates: November 9 & 16, 2012

BOARD POLICY

BP 3300

Note: Education Code 17605 authorizes the Board to adopt a rule delegating authority to purchase services and materials and prescribing time, money, and subject matter limits to this authority. The amount delegated may not be in excess of the amount specified in Public Contract Code 20111 and 22000 et seq. Pursuant to SB 429 (Ch. 897, Statutes of 1995), these limits are currently \$45,000 for facilities projects and \$50,000 for other expenditures. The amount shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction. Expenditures over these amounts must be competitively bid; see 3311 - Bids. The district may revise the following paragraph to specify financial limits equal to or lower than amounts specified in law, and to specify time limits as desired.

The Superintendent or designee may purchase supplies, materials, equipment, and services up to the amounts specified in Public Contract Code 20111 and/or 22000 et seq., beyond which a competitive bidding process is required.

(cf. [3310](#) - Purchasing Procedures)

(cf. [3311](#) - Bids)

(cf. [3312](#) - Contracts)

The Superintendent or designee may authorize an expenditure which exceeds the budget classification allowance against which the expenditure is the proper charge only if an amount sufficient to cover the purchase is available in the budget for transfer by the Governing Board.

(cf. [3100](#) - Budget)

(cf. [3110](#) - Transfer of Funds)

All transactions entered into by the Superintendent or designee on behalf of the Board shall be reviewed by the Board every 60 days. (Education Code [17605](#))

No district funds shall be expended for the purchase of alcoholic beverages. (Education Code [32435](#))

The Board shall not recognize obligations incurred contrary to Board policy and administrative regulations.

Note: Education Code [17605](#) states that the district officer invested by the Board with the power to contract is personally liable for all district funds paid out as a result of malfeasance of office.

Legal Reference:

EDUCATION CODE

[17604](#) Delegation of powers to agents; liability of agents

[17605](#) Delegation of authority to purchase supplies and equipment
[32435](#) Prohibited use of public funds
[35010](#) Control of district; prescription and enforcement of rules
[35035](#) Powers and duties of superintendent
[35272](#) Educational and athletic materials
[38083](#) Purchase of perishable foodstuffs and seasonal commodities
[41010](#) Accounting system
[41014](#) Requirement of budgetary accounting
PUBLIC CONTRACT CODE
[20111](#) Contracts over \$50,000; contracts for construction; award to lowest responsible bidder

Policy GROSSMONT UNION HIGH SCHOOL DISTRICT

Adopted: September 4, 1997 La Mesa, California
Revised: October 11, 2012

Grossmont Union High

Administrative Regulation

AR 3311

Business and Noninstructional Operations

Bids

The district has adopted the California Uniform Public Construction Cost Account Act procedures under Public Contract Code 22000 et. seq.

Informal Bids:

Public projects, as defined by the Act and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

Contractors List:

A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission

Advertised Bids

The district shall seek competitive bids through advertisement for contracts involving an expenditure of greater than \$175,000 for a public project, informally bid contracts involving an expenditure of less than \$175,000, and seek quotes, when feasible, for projects involving an expenditure of \$45,000 or less.

"Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a district owned, leased or operated facility. (Public Contract Code 22002)

Competitive bids shall be sought through advertisement for contracts exceeding \$50,000, for the following: (Public Contract Code 20111; Government Code 53060). The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

1. The purchase of equipment, material or supplies to be furnished, sold or leased to the district
2. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters
3. Repairs, including maintenance that is not a public project

"Maintenance" means routine, recurring and usual work for preserving, protecting and keeping a district facility operating in a safe, efficient and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered or repaired. "Maintenance" includes, but is not limited to, carpentry, electrical, plumbing, glazing and other craft work designed to preserve the facility as well as repairs, cleaning and other operations on machinery and other permanently attached equipment. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security forces, nor does it include painting, repainting or decorating other than touchup. (Public Contract Code 20115).

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 for any transportation service expenditure of more than \$10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally owned transit system or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder. (Education Code 39802)

No work, project, service or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the district, circulated in the county, or if no such paper exists then in some newspaper of general circulation, at least once a week for two weeks. The notice shall state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. (Public Contract Code 20112)

The notice shall contain the time, date and location of any mandatory prebid conference, site visit or meeting. The notice shall also detail when and where project documents, including final plan and specifications, are available. Any such mandatory visit or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

Bid instructions and specifications shall include the following requirements and information:

1. Recycled Content and Recycled Products (Public Contract Code 22150 et seq.)

a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the paper products offered, and both the postconsumer and secondary waste content.

b. Fitness and quality being equal, the District shall purchase recycled products whenever available at no more than the total cost of non-recycled products.

2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)

a. Cash

b. A cashier's check made payable to the district

c. A certified check made payable to the district

d. A bidder's bond executed by an admitted surety insurer and made payable to the district

The security of unsuccessful bidders shall be returned in a reasonable period of time, in no event any later than 60 days after the bid is awarded. (Public Contract Code 20111)

3. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)

4. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)

5. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, depending on the availability of funds, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #a, below, will be used: (Public Contract Code 20103.8)

a. The lowest bid shall be the lowest bid price on the base contract 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 that were specifically identified in the bid solicitation as being used for the purpose of determining the 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 taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.

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.

6. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

7. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board policy, and administrative regulation.

PROPOSITION 39 – ENERGY AGREEMENTS

Proposition 39: “Sole Source” Prohibition

Proposition 39 was approved by the voters in 2012 and requires that a portion of increased corporate tax revenue to the State be allocated to the Clean Energy Job Creation Fund to fund projects that create California clean energy jobs. The Legislature subsequently enacted Senate Bill (SB) 73 in order to implement the requirements of Proposition 39. In doing so, the Legislature created confusion regarding how contracts with design professionals, energy consultants, contractors and others should be awarded for projects involving Proposition 39 funding.

SB 73 provides in part that while an educational agency “may use the best value criteria” as defined in Public Contract Code section 20133, it “shall not use a sole source process” to award Proposition 39 funds. (Pub. Resource Code, § 26235(c).) The Legislature, however, did not define “sole source process” and the Guidelines adopted by the California Energy Commission in December 2013 shed no additional light on this prohibition. The Guidelines merely defer to each educational agency’s own “procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum legal standards specified in (Public Resources Code section 26235).” Therefore, educational agencies are left with uncertainty as to what type of competitive process is sufficient to avoid a violation of the “sole source” prohibition and to what extent the prohibition applies to contracts with parties not directly involved in the actual construction and implementation of Proposition 39 funded projects, such as energy consultants and similar professionals.

Until further guidance is provided by the Legislature or the courts, an educational agency may potentially decrease its risk of an inadvertent violation by increasing the competitive process it utilizes for awarding a Proposition 39 funded contract, to the extent such contracting processes are otherwise legally permissible. Moreover, while financial considerations may preclude this option, an educational agency may avoid the risk of violating this prohibition either by funding such contracts with non-Proposition 39 funds, or by utilizing Proposition 39 funds on contracts awarded to contractors through a competitive process, while funding design professional and other professional contracts with non-Proposition 39 funds. An educational agency planning to award Proposition 39 funded contracts may wish to review its contract awarding process with legal counsel in order to assess the risks created by the prohibition, and the application of that prohibition to a particular set of facts.