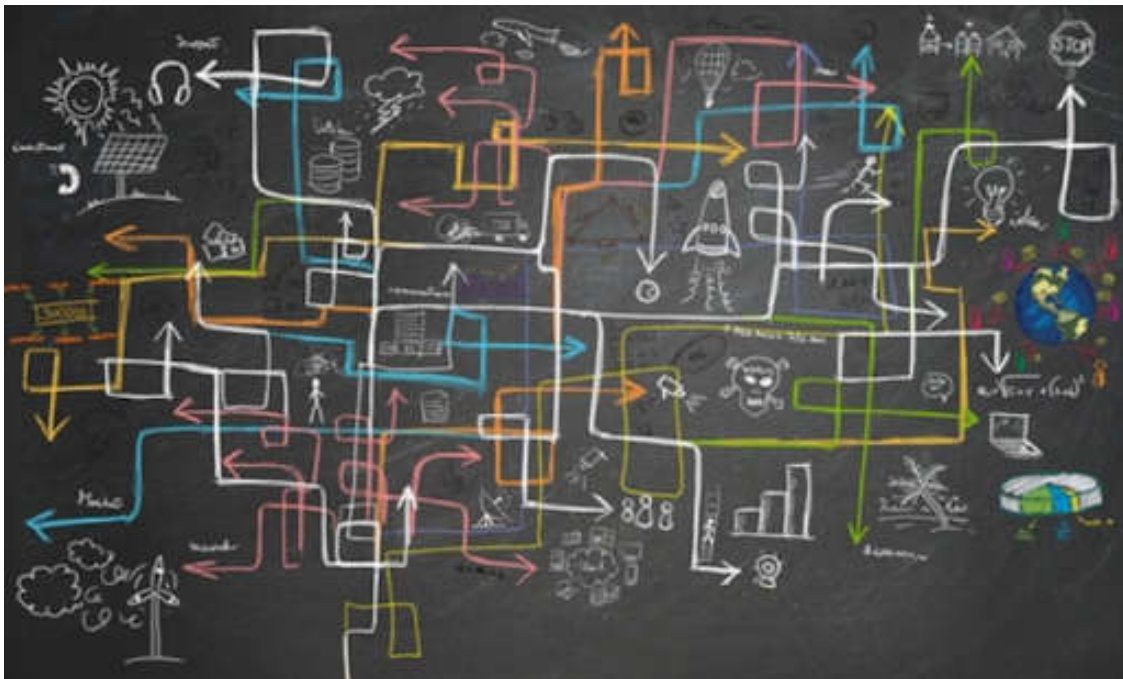


INTERMEDIATE/ADVANCED PURCHASING



**CASBO San Diego-Imperial Section
Purchasing Professional Council
Annual Section Conference**

**2020-2021
Guiselle Carreon**

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.

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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.

Some of the material was provided by other Purchasing Councils from various regions. Some samples have been submitted for our use by school districts. The materials are reviewed annually for relevancy and accurateness; however, the contents are for reference only and as noted, we encourage you review any materials with your own legal counsel. 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:

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2010 – 2011 Southern Section Purchasing Professional Council: Legal Issues in Purchasing

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Thank you to all,

Guiselle Carreon
Consultant, Purchasing & Accounts Payable

NOTE: Some of the samples may contain outdated information and are for reference purposes only.

SECTION I
INSURANCE &
BONDS



SAMPLE INSURANCE CERTIFICATE – ACORD 25 REFERENCE SHEET

1. DATE: Date of Issuance of Certificate
2. PRODUCER: Name of Insurer and Contact Information
3. NAIC: National Association of Insurance Commissioners number. **Verify and check rating!**
4. NAMED INSURED: Name must match the contract.
5. COMMERCIAL GENERAL LIABILITY: Make sure the OCCUR box is checked and any deductibles or retention detailed.
6. GENERAL AGGREGATE: Make sure PROJ is checked. Per Policy means the insurer's liability if for all projects under the policy (separate claims would split the available liability coverage).
7. ADDITIONAL INSURED: The owner needs to be included as an additional insured to receive a defense from the contractor's insurer. Should be checked or marked Y.
8. WAIVER OF SUBROGATION: This endorsement prohibits an insurance carrier from recovering the amount of a paid claim from a negligent third party. It is desirable to obtain this endorsement to avoid being held liable for claims that occur on a jobsite. Should be checked or marked Y.
9. TERM - GL: Keep track of policy expiration date and request a new Certificate of Liability if the term does not cover the project dates.
10. LIMITS: Assess the risk and assign a coverage limit that will adequately protect the district.
11. AUTO LIABILITY: Require if contractor will be using a vehicle or hiring vehicles for the work to be done.
12. TERM - AUTO: As with General Liability, check Term and Limits of policy.
13. UMBRELLA/EXCESS: Commercial umbrella coverage provides extra liability coverage to cover claims that exceed the limits of the general liability or other liability policy limits. When GL is insufficient to meet contract requirements, Umbrella or Excess Liability should be checked with limits that provide those required by contract.
14. OCCURRENCE: The OCCUR box should be checked.
15. LIMITS – UMBRELLA: Limits should be equal to or greater than those required by the contract.
16. PROFESSIONAL LIABILITY or SPECIALTY COVERAGE: Coverage for consultants and independent contractors also known as Errors & Omissions insurance. Covers negligence, misrepresentation, or inadequate advice. Specialty coverage is provided by certain

contractors or vendors that are high risk such as a fireworks professional, hazardous materials handler, healthcare, energy, etc.

17. LIMITS – PL OR SL: Limits should be equal to or greater than those required by the contract.
18. ENDORSEMENTS: List attached endorsements by reference.
19. CERTIFICATE HOLDER: Lists all the parties that are certificate holders by contract.
Examples: District, Architect, Construction Manager, etc.
20. NOTICE OF CANCELLATION: Make sure you check policy and reject certificate if notice is not adequate.



CERTIFICATE OF LIABILITY INSURANCE

1

DATE (MM/DD/YYYY)

11/02/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME:	
2 Hiscox Inc. d/b/a/ Hiscox Insurance Agency in CA		PHONE (A/C. No. Ext): (888) 202-3007	FAX (A/C. No):
520 Madison Avenue		E-MAIL ADDRESS: contact@hiscox.com	
32nd Floor		INSURER(S) AFFORDING COVERAGE	
New York, NY 10022		INSURER A: Hiscox Insurance Company Inc	NAIC # 3 10200
INSURED		INSURER B:	
4		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$ 10
	<input type="checkbox"/> CLAIMS-MADE 5 OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
		7	8			9	MED EXP (Any one person)	\$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$
	<input type="checkbox"/> POLICY 6 PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$
	OTHER:						PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$ 12
	11 ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$
								\$
	13 UMBRELLA LIAB 14 OCCUR						EACH OCCURRENCE	\$
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A						E.L. EACH ACCIDENT	\$ 15
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$
A	Professional Liability 16			UDC-12345-EO-20	12/17/2019	12/17/2020	Each Claim:	
							Aggregate:	\$ 17

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

18

CERTIFICATE HOLDER

CANCELLATION

19	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. 20
	AUTHORIZED REPRESENTATIVE



INSURANCE CHECKLIST

Insurance Certificates (General, Auto, Professional, Specialty):

	NAIC number is valid.
	Insured's name matches contract.
	Certificate matches contract language and limits.
	Policy covers per occurrence not claims made.
	Auto Liability is for Any Auto or Hired Vehicles
	Workers Compensation Certificate is included.
	Policy is current and term covers the period of the contract.
	Umbrella or Excess policies also cover the period of the contract.
	Admitted Insurer?
	Insurer's rating is per contract.
	Description is consistent with contract requirements.
	Certificate Holder(s) is/are adequately listed.
	Cancellation notice is consistent with contract requirements.
	Waiver of Subrogation is attached.
	Additional Insured Endorsement is attached and lists all covered parties (officers, agents, etc.)

BONDS

	Number of copies provided is per contract.
	Admitted Surety
	Rating is at least a A- VII
	On form provided by District. (Make sure form is current).
	Certificate of authorized signatory is included.
	Limits are authorized.

Claims Process:

1. Read contract language regarding Default and Termination and follow closely.
2. Issue a Cure Letter
3. If the Contractor is seriously in default, copy the Surety.
4. If the Cure Letter is ineffective, contact your legal counsel.

The claims process on a Performance Bond is complex and can be very expensive; therefore, it is best to settle problems early before they get to the point of filing a claim.

**PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the _____ School District (sometimes referred to hereinafter as “Obligee”) has awarded to _____ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: _____ (hereinafter referred to as the “Public Work or Project”); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the “Contract”), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

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

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her 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 guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract

through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligees as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligees's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligees of the lowest responsible bidder, arrange for a contract between such bidder and the Obligees and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligees under the Contract and any modifications thereto, less the amount previously paid by the Obligees to the Principal, less any withholdings by the Obligees allowed under the Contract. Obligees shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligees may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligees, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligees and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligees is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligees's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligees and judgment is recovered, the Surety shall pay all costs incurred by the Obligees in such suit, including reasonable attorneys' fees to be fixed by the Court.

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

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$_____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State (SEAL)

Commission expires: _____

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

**PAYMENT BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the _____ School District (sometimes referred to hereinafter as “Obligee”) has awarded to _____ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: _____ (hereinafter referred to as the “Public Work or Project”); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code section 9550;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the _____ School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of _____ Dollars (\$_____), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will 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 said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code section 9100; or 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 for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys’ fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or 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 therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any

person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

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

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for said State

Commission expires: _____

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

SAMPLE 48-HOUR NOTICE TO CURE

Address

RE: **48-Hour Notice to Cure Default**

Dear:

The District has made numerous attempts to work with _____ to complete work at _____ School. Since your company has been unable to (list issues here, e.g. meet the schedule or provide sufficient manpower to date), we find it necessary to provide you with a 48-hour notice to cure per Article _____ of the General Conditions (attached).

Attached are pictures (if relevant) showing the incomplete and shoddy work. _____ has been communicating with your representative to no avail.

It is imperative that no later than 8:00 a.m. (insert deadline), you provide full material and labor resources to bring this project up to schedule. Please note, if you fail to perform as noted herein, the District will proceed against your performance bond to request fulfillment of the agreement and any penalties incurred by the delay.

If you have any questions, please feel free to call me.

SECTION II

PUBLIC WORKS

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BID AND CONTRACT DOCUMENTS CHECK-OFF SHEET

BID DOCUMENTS

<input type="checkbox"/>	Notice to Bidders
<input type="checkbox"/>	Bid Form
<input type="checkbox"/>	Proof of Contractor's License (Public Works)
<input type="checkbox"/>	Proof of Contractor's DIR Registration (Public Works & Maintenance)
<input type="checkbox"/>	Non-Collusion Declaration (Required on Public Works / Optional Other Bids)
<input type="checkbox"/>	Bid Bond (Required on Public Works / Optional Other Bids)
<input type="checkbox"/>	Subcontractors List (Original and/or Fully Executed) (Public Works)
<input type="checkbox"/>	Bidder Information Forms
<input type="checkbox"/>	Bid Schedule Acknowledgment of Phasing (Public Works)
<input type="checkbox"/>	Site Visit Certification (Public Works)
<input type="checkbox"/>	Bid Documents: Notice / Gen. Conditions / Spec. Conditions / Info to Bidders / etc.
<input type="checkbox"/>	DVBE Documents (if applicable)
<input type="checkbox"/>	Federal Certifications if Necessary

CONTRACT DOCUMENTS

<input type="checkbox"/>	Notice to Proceed
<input type="checkbox"/>	Executed Agreement
<input type="checkbox"/>	Certificate of Workers' Compensation Liability
<input type="checkbox"/>	Certificate of General Liability
<input type="checkbox"/>	Certificate of Automobile Liability
<input type="checkbox"/>	Payment Bond (>\$25,000 – Public Works)
<input type="checkbox"/>	Performance Bond (Optional)
<input type="checkbox"/>	Escrow Agreement (Public Works)
<input type="checkbox"/>	Drug-Free Workplace Certification
<input type="checkbox"/>	Asbestos-Free Certification (Public Works)
<input type="checkbox"/>	Alcohol – Tobacco Free Certification
<input type="checkbox"/>	Background Check Certification
<input type="checkbox"/>	Contractor Fingerprinting Certification
<input type="checkbox"/>	Subcontractor Fingerprinting Certification
<input type="checkbox"/>	W-9
<input type="checkbox"/>	Notice of Completion

ADDITIONAL DOCUMENTS

<input type="checkbox"/>	PWC100
<input type="checkbox"/>	Agenda Item for Award w/Bid Results Summary
<input type="checkbox"/>	Proof of Publication
<input type="checkbox"/>	Bidder's Sign-in Sheet

SAMPLE BID SCHEDULE – PUBLIC WORKS [INSERT BID NAME]

Bid Worksheet Due to Purchasing	
Plans and Specifications to Printer	
10-Day Notice to Bidders/Plan Rooms	
Pre-bid Conference & Site Walk	
Deadline for Submitting Prequalification Applications	
Substitution Requests Due	
Questions due from Bidders	
Deadline for Approval & Posting of Prequalified Bidders	
FINAL Addendum to Bidders	
Open Bids	
Verification of Bid Documents / Contractor / Subcontractor License and Registration	
Board Topics Due	
Notice of Intent to Award Sent	
Protest Period Ends	
Final Board Items	
Contract Submittals due to District	
Governing Board – Bid Award	
Verification of Contract Documents / Bonds / Insurance / Certifications / Fingerprinting	
Preconstruction/LCP Meeting	
Technical Submittals due to Architect	
Notice to Proceed	
Start Date	
File PWC 100	
Project Completion Date	
Facility Planner/Project Manager	
Construction Manager	

■ District
■ Architect/CM
■ Program Manager
■ Contractors

ANY SCHOOL DISTRICT

This substitution request form may be used for Pre-Bid Substitution Requests or Post-Bid Substitution Requests.

TO: _____

PROJECT: _____

SPECIFICATION ITEM:

Section	Page	Paragraph	Description
<p>Substitution approval is an acceptance of only the manufacturer and product for general conformance with the design concept reflected in the Contract Documents. The A/E has made no attempt to verify specific performance data, or to check the details of the proposed substitution as to special features, capacities, physical dimensions or code and/or regulatory compliance, all of which remain the responsibility of the person/entity submitting the proposed substitution.</p>			

The undersigned requests consideration of the following:

PROPOSED SUBSTITUTION:

Attached data includes product description, specifications, drawings, photographs, 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 that the following paragraphs, unless modified by attachments, are correct:

1. The proposed substitution does not affect dimensions shown on the Drawings.
2. The undersigned will pay for changes to the building design, including engineering design, detailing, and construction
3. costs caused by the requested substitution.
4. The proposed substitution will have no adverse effect on other trades, the construction schedule, or specified warranty
5. requirements.
6. Maintenance and service parts will be locally available for the proposed substitution.

The undersigned further certifies that the function, appearance, and quality of the proposed substitution are **equivalent or superior** to the specified item.

The undersigned agrees that, if this page is reproduced, the terms and conditions for substitutions found in the Bidding Documents apply to this request.

SUBMITTED ON _____, _____ **BY:**

Name

Signature

Company Name

Address

City State Zip Code

For Use by Design Consultant:

- Accepted
- Accepted as Noted
- Not Accepted
- Submitted Late

By: _____

Date: _____

Blind Bid Process

For this to work properly, it would be best if the district provided the envelopes for submission of the bid. The person handing out the bid packets needs to be someone other than the person opening the bids.

- Bidders submit their bids in two envelopes. The outside envelope would contain the bid form, the inside envelope would contain the rest of the bid documents (bid bond, non-collusion, etc.). The envelopes should be marked in small letters with corresponding letters or number (e.g. A, B, C, or 1, 2, 3) in order to make sure that no one disputes which two envelopes go with the corresponding bid form.
- At time of bid opening, the District reviews only the bid forms without opening the interior documents.
- The low bids are then ranked either by base bid, or base bid plus alternate 1, base bid plus alternate 1 & 2 or just 2, base bid by alternate 1, 2 & 3 or 2 & 3 or 3 and so on. List the bidders by rank, e.g. Bidder B, A, then C.
- Once the District determines which one is the lowest acceptable bid, then the low bidder is announced (Bidder A, B, C....) and the corresponding docs are then opened and reviewed for responsiveness. If that bidder should be non-responsive, then the bidder ranked next would go through that same process.

This is less complicated than it sounds, but this should show you how things could change on close bids:

	Bidder A	Bidder B	Bidder C
Base Bid	100,000	99,000	101,000
Alternate 1	18,900	20,000	17,000
Option w/Alt. 1	118,900	119,000	118,000
Alternate 2	7,150	8,250	8,000
Option w/Alt. 2	107,150	107,250	109,000
Option w/Alt. 1 & 2	126,050	127,250	126,000

This guidebook is intended to be given to contractors doing business with the district.

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.

_____, Director of Purchasing, [INSERT PHONE NUMBER]

Revised: July 2019

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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 \$60,000 or Less:

Public projects of thirty thousand dollars (\$60000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

Projects of \$60,001 to \$200,000:

An informal bidding process is required for public projects exceeding \$60,000 but falling below \$200,000.

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 \$200,000:

A formal bidding process is required for all contracts estimated to exceed \$200,000:

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.

Registered Contractors:

The current CUPCCAA requirements call for participating agencies to maintain a list of registered contractors. This requirement is not the same as the Prequalification requirements that became effective January 1, 2014 OR the DIR Registration requirement explained later in this handbook.

To be added to the registered contractors list, please complete the form at:

[\[INSERT LINK\]](#)

CONTRACT REQUIREMENTS

The [INSERT NAME OF DISTRICT] School District would like to inform all contractors that under Public Contract Code Section 22002, subdivision, all contracts for public works of \$60,000 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 [INSERT NAME OF DISTRICT] School District without an executed agreement signed by an authorized signatory of the District.

The Governing Board of the [INSERT NAME OF DISTRICT] School District has given signatory authority for capital improvement contracts to the following:

[Insert Names and Titles Here]

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.

Prequalification: Effective January 1, 2014, AB 1565 requires that the District only accept bids from prequalified general contractors for projects in excess of \$1 million that are paid in whole or in part with Leroy F. Greene School Facility funds. MEPs bidding as subcontractors on these projects are also included in the prequalification requirements. For more information or to register, please go to [\[insert link\]](#).

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.

Legal codes governing bidding may be viewed at: <http://leginfo.legislature.ca.gov/>

It is in your best interests to contact the Purchasing Department at [INSERT PHONE NUMBER] to verify that you are in compliance with contracting procedures prior to commencing any work at any of the [INSERT NAME OF DISTRICT] School District sites.

FINGERPRINTING & BADGING PROCEDURES

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

Fingerprinting

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). The District is currently not providing fingerprinting services. Contractors may use any LiveScan office to process their employees' fingerprints.

Construction Contractor Badge Procedures

Badges will be provided by our LiveScan office as follows:

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

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

The lists shall include:

- Employee first and last name
- California Driver's License number OR the last four digits of the employee's Social Security Number.

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 [INSERT NAME OF DISTRICT] 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:

[\[INSERT URL\]](#)

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 _____, [INSERT TITLE], at [INSERT PHONE NUMBER] 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 [INSERT NAME OF DISTRICT] 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. Obtaining a performance bond is optional but highly recommended as a best business practice.

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

Establishment of an escrow account is optional. 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:

Director of Purchasing
[INSERT NAME OF DISTRICT] School District
[INSERT ADDRESS AND DEPARTMENT]

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 a **separate payment request** for retention. Payments will be forwarded directly to the bank for deposit to the escrow account.

ESCROW RELEASE: Upon completion of a project, please forward a letter requesting release of the Escrow Account funds to the above address or via email to _____. Include the following information in the letter:

1. Bank representative's name
2. Bank name
3. Address
4. Fax or email
5. Escrow Account Number

The District will send a request for release to the Bank following receipt of the Request to Release Escrow Funds letter and 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:

District Superintendent
c/o _____
Director of Purchasing
[INSERT NAME OF DISTRICT] School District
[INSERT ADDRESS AND DEPARTMENT]

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.

Legal Reference:

Public Contract Code section 20118.4 provides as follows:

- a) If any change or alteration of a contract governed by the provisions of Article 3 (commencing with Section 39643) of Chapter 4 of Part 23 of the Education Code is ordered by the governing board of the district, the change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:
 - (1) The amount specified in Section 20111 whichever is applicable to the original contract;
 - or
 - (2) Ten percent (10%) of the **original** contract price.

The governing board of any school district, or of two or more school districts governed by governing boards of identical personnel, having an average daily attendance of 400,000 or more as shown by the annual report of the county superintendent of schools for the preceding year, may also authorize any change or alteration of a contract for reconstruction or rehabilitation work other than for the construction of new buildings or other new structures, where the cost of the change or alteration is in excess of the limitations in subdivisions (a) and (b) but does not exceed 25 percent of the original contract price, without the formality of securing bids, when such change or alteration is a necessary or integral part of the work under the contract and the taking of bids would delay the completion of the contract. Changes exceeding 15 percent of the original contract price shall be approved by an affirmative vote of not less than 75 percent of the members of the governing board.

PREVAILING WAGE

Prevailing wage statutes ensure that workers are paid "the generally prevailing rate" of wages for their work where performed and to maintain public construction quality when agencies are required by law to contract with the lowest responsible competitive bidder. In most of California, the published prevailing wage rates are the union wage rates for commercial and engineering construction work for public works projects. In 2001, the DIR redefined "public work" to include work "paid for in whole or in part out of public funds."

Prevailing wage determinations are administered by the Department of Industrial Relations and information can be found at:

<http://www.dir.ca.gov/dlsr/pwd/>

SB 854 (2014) REQUIREMENTS

CONTRACTOR'S DIR REGISTRATION REQUIREMENT:

- Contractors and all-tier subcontractors must be registered in order to bid or be listed in a bid for public works.
- No contractor or subcontractor may perform work on any public works project unless registered with the DIR.
- Contractors must upload Certified Payroll.
- The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)
- Effective July 1, 2017, public works projects of \$25,000 or less and maintenance projects of \$15,000 or less are exempt from the DIR registration and electronic certified payroll reporting requirements.

SB 96 (2017) – CHANGES TO SB 854

Effective July 1, 2017, public works projects of \$25,000 or less and maintenance projects of \$15,000 or less are exempt from the DIR registration and electronic certified payroll reporting requirements.

DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION PROGRAM

The [INSERT NAME OF DISTRICT] 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>

CONTACT INFORMATION
FACILITIES & PURCHASING DEPARTMENTS

[INSERT NAMES, EMAIL, AND PHONE NUMBERS]

DISABLED VETERANS BUSINESS ENTERPRISE FORMS

Attachment “B”

Forms are to be submitted with bid. Failure to submit DVBE documents with the bid MAY result in the bid being determined non-responsive.

Purchasing Department
_____ **School District**
Address & Phone _____

DVBE INSTRUCTIONS

Steps / Instructions

1. Dial _____ (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 at (800) 559-5529 or (916) 375-4400 during normal business hours to obtain a list of certified DVBEs. This information may also be accessed by searching the online database at <https://www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>. Begin the search by completing the search form. (Hint: Enter an * to search all, click on Disabled Veteran Business Enterprise DVBE to narrow your search.)
 - b. Search the U.S. Small Business Administration's (SBA) Central Contractor Registration on-line database at <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf> to identify potential DVBEs (Hint: Use the Search term DVBE). Before claiming use of a CCR firm, verify the named DVBE is registered with DGS.
 - c. 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' and federal SAM search 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.)
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/bids by: [date/time]
 - 5) Ads placed in general circulation newspapers including the S.D. Union or the Reader are not acceptable.
 - 6) **Document the GFE efforts on the forms in this package entitled "Good Faith Effort". Indicate, in Step 3 on the Good Faith Effort form, the publication date, whether the publication is a trade publication, a focus publication or both and whether ad copy or written ad content is attached.**

GFE Steps / Instructions (continued)

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.

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.

- 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.

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 <small>(Prime is to enter its own name if the Prime is a certified DVBE)</small>	FIRM THAT DVBE WILL CONTRACT WITH <small>(Prime is to enter "self" if the Prime is a certified DVBE)</small>	COMMERCIALY USEFUL FUNCTION TO BE PERFORMED OR PROVIDED BY THE IDENTIFIED DVBE	DVBE % Claimed	Tier <small>(See legend below)</small>
<p>DVBE % Claimed: Enter the percentage level of actual DVBE participation achieved, even if the amount or 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.</p> <p>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.</p> <p>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".</p>				
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 (District) **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 CONT ACT	TIME OF CONT ACT	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 - _____		_____
		Dept. of General Services' Small Business and DVBE Services		(916) 375-4400 or (800) 559-5529
		Dept. of General Services' Small Business and DVBE Services	Internet*	https://www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx
		U.S. SBA Central Contractor Registration (CCR)	Internet*	https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf
			<ul style="list-style-type: none"> • 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.

NAME OF DVBE(S) THAT RESPONDED (This column is self-explanatory) COLUMN 1	INDICATE YOUR PROPOSED USE OF EACH DVBE (Complete the appropriate column below and show percentage use, if applicable)		REASON(S) FOR NOT CHOOSING TO USE THIS DVBE (Enter a business reason for not selecting each firm identified in Column 2B) COLUMN 3
	COLUMN 2A Will Use _____ Percent	COLUMN 2B X = Will Not Use	
	%		
	%		
	%		
	%		
	%		
	%		

Completion Instructions

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.

Place an "X" in Column 2B for each interested DVBE that the bidding firm does not intend to use.

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 _____ 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

SKILLED AND TRAINED WORKFORCE

Required for Lease-leaseback and Design Build Contracts.

Contract must include language committing the Contractor to use a Skilled and Trained Workforce in all apprenticeable crafts.

Workforce must be made up of journeymen that have graduated for a state-approved apprenticeship program or equivalent on-the-job training.

As of 2020, 60% of the workforce including subcontractors must fall into this category (all tiers).

Exceptions:

Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

District must file a monthly report of Skilled and Trained Workforce.

Ref: PCC 2601(d)(2)(C)-(D)

Prequalification

As of January 1, 2014, prequalification of bidders became mandatory for specified projects. For other projects, prequalification remains permissive. The mandatory and permissive prequalification sections are discussed separately below.

Mandatory Prequalification

Commencing on January 1, 2014, prequalification became mandatory for school districts with an average daily attendance of at least 2,500 when they are awarding a construction project of \$1,000,000 or more that will be funded in whole or in part with state bond funds. Contractors who must prequalify for such projects include general contractors, as well as mechanical, electrical, and plumbing (“MEP”) subcontractors. School districts subject to this mandatory prequalification requirement 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. Some districts also adopt ‘rolling’ prequalification, where contractors and subcontractors may prequalify throughout the year and remain prequalified for one year from the date of their prequalification. Pub. Contract Code § 20111.6.

As of January 1, 2016, mandatory prequalification also applies where a school district uses local funds during the project, but after construction seeks reimbursement from future state bonds.

Mandatory 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. 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). Also, the questionnaire should include a statement that prequalification of a prospective bidder does not preclude a district’s subsequent consideration of a prequalified bidder’s responsibility on factors other than financial qualifications. The questionnaires and financial statements are not public records open to public inspection. Pub. Contract Code, § 20111.6(b), (c), (d).

A district must also provide prospective bidders with a standardized proposal form, which must be submitted as the bid. 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. School districts are also expressly authorized to require submissions at an earlier date, and to set a longer time before the bid for prequalification to be completed. A school district must also make available to all bidders a list of district prequalified general contractors and MEP

subcontractors at least five business days prior to the bid opening date. Pub. Contract Code, § 20111.6(e), (f), (j).

For projects awarded on or after January 1, 2015, general contractors and MEP subcontractors on lease-leaseback and lease-to-own construction contracts must meet the prequalification requirements of section 20111.6. Although school districts are authorized to prequalify contractors on competitively bid projects on a per-project, quarterly, or annual basis, school districts are required to prequalify lease-leaseback contractors on a quarterly or annual basis only. Also, effective January 1, 2016, prequalification for lease-leaseback and lease-to-own construction is required *regardless* of the funding source and *regardless* of the cost of the project. Even if a school district is not going to use or request funds from state bonds, and even if the project will be valued at less than \$1 million, the district must still use prequalification under Public Contract Code section 20111.6 for lease-leaseback and lease-to-own construction. However, districts with ADA under 2,500 remain exempt from prequalification requirements.

The mandatory prequalification requirements expire on January 1, 2019, unless that date is modified by the Legislature.

Permissive Prequalification

School districts are also authorized to use prequalification on projects where prequalification is not mandatory. Public Contract Code section 20111.5 states:

- (a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire and financial statements shall not be public records and shall not be open to public inspection.
- (b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.
- (c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

- (d) A proposal form required pursuant to subdivision (c) shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.
- (e) Notwithstanding subdivision (d), any school district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and may authorize that prequalification to be considered valid for up to one calendar year following the date of initial prequalification.

Public Contract Code section 20651.5 contains a similar authorization for community college districts.

**CONTRACTOR PREQUALIFICATION
REQUIREMENTS**

**GENERAL CONTRACTORS,
MECHANICAL/PLUMBING
SUBCONTRACTORS
&**

**ELECTRICAL SUBCONTRACTORS
FOR THE**

_____ **SCHOOL DISTRICT**

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NOTICE TO CONTRACTORS

1. Effective January 1st, 2014, school districts in California that use any state funds to finance the construction of their local schools will be required to prequalify the general contractors, mechanical contractors, electrical contractors, and plumbing contractors (MEP) that seek to bid or negotiate a district's construction projects. (Public Contract Code section 20111.6) Mechanical, electrical and plumbing contractors subject to this requirement are those with any of the following license classifications: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46. AB 1565 was passed in 2012, and takes effect for all projects awarded after January 1st, 2014. School districts with an average daily student attendance of 2,500 or less, and projects that have a projected expenditure of \$1,000,000 or less, are exempted from AB 1565.
2. It is mandatory that all General Contractors, Mechanical/Plumbing Subcontractors, and Electrical Subcontractors fully complete each part of this Prequalification Questionnaire, provide all materials requested herein, and be approved by the District in order to bid on all District construction projects that are projected to exceed an expenditure of \$1,000,000.
3. If two or more businesses intend to perform a construction project as a joint venture, each entity within the Joint Venture must be separately prequalified.

FILING OF PREQUALIFICATION SUBMITTALS

A Contractor or Subcontractor seeking prequalification must provide (X) copies of the fully completed Prequalification Questionnaire in a sealed package, mailed to:

Name
Address
etc.

Prequalification packages may be obtained from the District's website at:
www._____.

Prequalification Questionnaires must be submitted to the District 30 days prior to bidding on any District project or within 5 days of the advertisement for bid of a project.

NOTIFICATION OF DETERMINATION

The District will issue the Notification of Determination within 5 business days of the Contractors/Subcontractors submission of the Prequalification Questionnaire. Contractors/Subcontractors that submit a Prequalification Questionnaire will be notified in a Notice of Determination regarding their firm's status, whether or not they are prequalified to bid, or provide sub-bids on District projects projected to exceed an expenditure of \$1,000,000 or more. Notification concerning the project size limit the contractor/Subcontractor has qualified for will also be included in the determination.

The DISTRICT will deliver a written Notice of Determination to each Contractor that has submitted a Prequalification Questionnaire. If the DISTRICT determines a Contractor is not qualified or responsible to bid, the Contractor shall also notify the Contractor of the basis of the determination and any supporting evidence obtained from the Third parties or through investigation.

TERM OF PREQUALIFICATION

The term of the Prequalification is 12 months from the date of the District's notice to the applicant. The applicant may renew the prequalification by filing an updated Prequalification Questionnaire via the process in effect at the time.

To bid on a District project subject to the Prequalification Requirement, the applicant must be prequalified on the day bids are accepted. If the District delays the initial bid day for a project to a date after the expiration of the applicant prequalification term, the applicant is nonetheless prequalified for that specific project.

End of Notice

APPEALS PROCEDURE

The following procedures apply when an applicant that is denied prequalification wishes to challenge that denial.

An applicant that is denied prequalification has the right to appeal that denial unless the applicant failed to complete the Prequalification Questionnaire and provide the documents identified in the Prequalification Questionnaire.

Contractor's costs for the appeal shall be undertaken at the Contractor's expense.

The Contractor initiates an appeal by delivering to the DISTRICT a written notice requesting a hearing and setting forth in general terms the basis of the appeal. The Contractor must deliver the written notice to the same location that it delivered the Prequalification Submittal. The Contractor must deliver such written notice within 5 business days following the date of the DISTRICT's Notice that the District denied prequalification. The Contractor waives its right to appeal the DISTRICT's decision if it fails to deliver the notice within 5 business days.

The _____ for the _____ District, or their designee, will conduct a hearing on the appeal no later than 5 business days following the Contractor's delivery of the written notice of appeal. The hearing conducted by the Director will be informal and is not an evidentiary hearing. At the hearing, the Contractor will be given the opportunity to present information and reasons in opposition to the DISTRICT's determination. The Director will consider all evidence, information and arguments submitted by the Contractor relevant to the DISTRICT's determination, the DISTRICT's response to such evidence, information and arguments, and any other information the Director deems relevant.

Within 5 business days following the hearing, the _____ or their designee, will provide a written decision whether the Contractor is qualified or not qualified. The written decision is the final determination of the issue, and the Contractor shall have no further administrative appeals.

The procedure and time limits set forth above are mandatory and the Contractor's sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

End of Appeals Procedure

PUBLIC RECORD

State law requires that the names of contractors applying for pre-qualification status shall be public records subject to disclosure. Other than this, the prequalification package (questionnaire answers and financial statements) submitted by Contractors are not public records and are not open to public inspection. All information provided will be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purposes of verification, investigation of allegations of falsification or wrongdoing, or in any appeal hearing or in connection with any claim or legal proceeding.

End of Introduction

PREQUALIFICATION QUESTIONNAIRE

Part I. Contact Information

The contractor must provide all of the following contact information to be considered for prequalification. The Contractor must also sign the Certification on the last page, certifying that the statements and information contained in the Prequalification Questionnaire are complete and accurate and that the Prequalification Submittal contains no false or deliberately misleading information.

Legal Name of Contractor: _____

- Check One:
- Corporation
 - Partnership
 - Sole Proprietorship
 - Joint Venture
 - LLC

Contact Person: _____

Address of Contractor: _____

Phone Number: _____ Email: _____

If firm is a sole proprietor or partnership, provide Owners(s) of Company: _____

If Contractor is a Corporation, provide the State of Incorporation: _____

- Seeking Prequalification for:**
- General Contractor
 - Mechanical Subcontractor
 - Plumbing Subcontractor
 - Electrical Subcontractor

**General Contractors/Subcontractors with A; B; C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46 licenses must prequalify*

End of Introduction

Part II. General Information

The Contractor must provide all the following information to be considered for prequalification.

1. Has there been any change in ownership of the firm at any time during the last 3 years?

NOTE: A publicly-traded corporation is not required to answer this question.

Yes No

If "Yes"; explain on a separate signed page.

2. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

NOTE: Include information about other firms if a firm owns 50% or more of another firm, or if an owner, partner, member, or officer of your firm holds a position in another firm.

Yes No

If "Yes"; explain on a separate signed page.

3. Have any of your firm's owners, partners, members, or officers served in the same capacity in another construction firm in the past 5 years?"

Yes No

If "Yes"; explain on a separate signed page, including the reason for the change.

4. List all California construction license numbers, classifications and expiration dates of the California contractors licenses held by your firm:

License:_____	Classification_____	Exp._____
License:_____	Classification_____	Exp._____
License:_____	Classification_____	Exp._____
License:_____	Classification_____	Exp._____
License:_____	Classification_____	Exp._____
License:_____	Classification_____	Exp._____

5. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individuals(s) listed on the

CSLB records who meet(s) the experience and examination requirements for each license. Include their position in the company.

6. Has your firm changed its name(s) or license numbers(s) in the past 5 years?

Yes No

If "Yes"; explain on a separate signed page, including the reason for the change.

End of Part II

Part III. Essential Requirements for Qualification

NOTE: Contractor will be immediately disqualified if the answer to any of questions 1 through 4 is “No.”

1. Select the appropriate category(ies) for which the Contractor is seeking prequalification.
Leave non-applicable category(ies) blank.

For General/Prime Contractors: Does Contractor possess a valid and current California Contractor’s “A” or “B” license?

Yes No

For Mechanical Sub contractors: Does Contractor possess a valid, current, and appropriately classified California Contractor’s “C” license?

Yes No

For Plumbing Sub contractors: Does Contractor possess a valid, current, and appropriately classified California Contractor’s “C” license?

Yes No

For Electrical Sub contractors: Does Contractor possess a valid, current, and appropriately classified California Contractor’s “C” license?

Yes No

2. Does Contractor have a Commercial General Liability Insurance policy with a policy limit of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate. **Include a certificate of insurance verifying current insurance coverage?**

Yes No

3. Does Contractor have current Workers’ Compensation Insurance policy as required by the Labor code or is legally self-insured pursuant to Labor Code section 3700 et.seq.?

Yes No

4. Has Contractor attached a notarized statement from an admitted surety insurer approved by the California Department of Insurance and authorized to issue bonds in the State of California which states your aggregate and per project bonding capacity within 30 days preceding the submission of this Prequalification Questionnaire?

Yes No

NOTE: Contractor will be immediately disqualified if the answer to any of questions 5 through 9 is “Yes.”

5. Has your contractor's license been revoked at any time in the last 5 years?

Yes No

6. Has a surety firm completed, or paid for completion of a contract on your behalf because your firm defaulted or was terminated by the project owner within the last 5 years?

Yes No

7. At the time of submitting this Prequalification Questionnaire, is your firm ineligible to bid on or be awarded any local, state or federal public works contract, or to perform as a General contractor or Subcontractor on any such public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7 or any other local, state or federal law or regulation?

Yes No

8. Is your firm currently the debtor in a bankruptcy case?

Yes No

9. At any time during the last 5 years, has your firm or any of its owners, partners, members, or officers been convicted of a crime involving the awarding of a contract of a government construction project, or bidding or performance of a government contract?

Yes No

End of Part III

Part IV. Organizational Performance, Compliance with Civil and Criminal Laws

A. History of the Business, Financial and Organizational Performance

This Part IV-A contains a total of 13 scored questions about the history of the business and its organizational performance. There is a maximum total of 94 points that can be scored on these 13 questions. In order to prequalify, a minimum of 70 points must be scored on these 13 questions. Contractor must respond to all questions.

1. How many years has your organization been in business in California as a:

General/Prime Contractor under your present business name and license number?

_____ years. Note: Each category will be scored independently.

<3 years = 0 points

3-4 years = 2 points

5+ years = 3 points _____

Mechanical Subcontractor under your present business name and license number?

_____ years. Note: Each category will be scored independently.

<3 years = 0 points

3-4 years = 2 points

5+ years = 3 points _____

Plumbing Subcontractor under your present business name and license number?

_____ years. Note: Each category will be scored independently.

<3 years = 0 points

3-4 years = 2 points

5+ years = 3 points _____

Electrical Subcontractor under your present business name and license number?

_____ years. Note: Each category will be scored independently.

<3 years = 0 points

3-4 years = 2 points

5+ years = 3 points _____

2. Has your firm filed for bankruptcy any time during the last 5 years? (This question refers only to a bankruptcy action that was not described in answer to question #9, Part III)

Yes

No

"Yes" = 0 points

"No" = 3 points _____

3. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last 5 years? If all suspensions were retroactively removed, answer "no."

Yes

No

"Yes" = 0 points

"No" = 5 points

4. Indicate which of the following statements is true (select only 1):

In the last 5 years, our firm has not paid liquidated damages, pursuant to a construction contract with either a public or private owner.

(5 points)

In the last 5 years, our firm has paid liquidated damages, pursuant to a construction contract with either a public or private owner on one project.

(3 points)

In the last 5 years, our firm has paid liquidated damages, pursuant to a construction contract with either a public or private owner on more than one project.

(0 points)

5. In the last 5 years, has your firm, or any firm with which any of your company's owners, partners, members, or officers held a position, been debarred, disqualified, removed or terminated "for cause" from a construction project, or defaulted on a construction contract, or been found not to be responsible?

Yes

No

"Yes" = 0 points

"No" = 8 points

6. In the last 5 years, has your firm been denied an award of public works contract based on a finding by a public agency that your company was not a responsible bidder?

Yes

No

"Yes" = 0 points

"No" = 5 points

NOTE: Question 7 & 8 refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. Also, you may omit reference to all disputes about amounts of less than \$50,000.

7. In the past 5 years, has an owner or general contractor filed and won a court action or formally initiated arbitration against your firm concerning your firm's work on a construction project?

Yes No

If you answer is "Yes," then state how many times this has occurred:_____.

*5 points for either "No" or "Yes" indicating 1 such instance.
3 points for "Yes" indicating 2 such instances.
0 points for "Yes" if more than 2 such instances.* _____

8. In the past 5 years, has your firm filed and lost a court action or formally initiated arbitration against a project owner or general contractor concerning work on a project or payment for a contract?

Yes No

If you answer is "Yes," then state how many times this has occurred:_____.

*5 points for "No"
4 points for "Yes" indicating 1 such instance.
3 points for "Yes" indicating 2 such instances.
0 points for "Yes" if more than 2 such instances.* _____

9. At any the time during the past 5 years, has your surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf in connection with a construction project, either public or private?

Yes No

If you answer is "Yes," then state how many times this has occurred:_____.

*8 points for "No"
6 points for "Yes" indicating 1 such claim.
3 points for "Yes" indicating 2 such claims.
0 points for "Yes" if more than 2 such claims.* _____

10. Has your firm or any of its owners, partners, members, or officers, ever been found liable in a civil suit, or found guilty in a felony, for making any false claim or material misrepresentation to any public agency or entity?

Yes No

"Yes" = subtract 5 points "No" = 5 points _____

11. Has your firm or any of its owners, partners, members, or officers, ever been convicted of a felony involving any federal, state, or local law related to construction?

Yes No

"Yes" = subtract 5 points "No" = 5 points _____

12. Has your firm or any of its owners, partners, members, or officers, ever been convicted of a crime involving any federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

“Yes” = subtract 5 points “No” = 5 points

13. Provide one of the following:

- (a) A copy of a reviewed or audited financial statement for your firm’s latest fiscal year. A financial statement that is either not reviewed or audited is not acceptable. A letter verifying the availability of a line of credit is not a substitute for the required financial statement.
- (b) On a Certified Public Accountants letterhead, provide specific numerical data for the following four (4) financial ratios with respect to your firm’s latest complete fiscal year, signed and dated by Contractor’s Chief Financial Officer, President or Chief Executive Officer, and a partner in the CPA firm.

Financial Assessment Ratios

Assessment	Formula	Desired Ratio
Current Ratio	Current Assets / Current Liabilities	> 1.15
Net Worth	Total Assets - Total Liabilities	≥ 0
Working Capital	Current Assets - Current Liabilities	≥ 10 % of Est. Cost
Leverage	Total Liabilities / Equity	≤ 2.5

Current Ratio

8 points if the ratio is greater than 1.15
 4 points if the ratio is 1.25 or less, but greater than 1.0
 0 points if the ratio is less than 1.0

Net Worth

8 points if the ratio is greater than or equal to 0
 0 points if the ratio is less than 0

Working Capital

8 points if the ratio is greater than or equal to 10% of estimated cost of project (\$1.2M)
 4 points if the ratio is greater than or equal to 7.5 of the estimated cost of project (\$900K)
 0 points for any other answer

Leverage

8 points if the ratio is less than or equal to 2.5
 4 points if the ratio is greater than 2.5 but less than 3.25
 0 points for any other answer

End of Part IV-A

B. Compliance with Safety, Workers Compensation & Prevailing Wage Laws

This part IV-B contains a total of 6 scored questions about compliance with safety, workers compensation, prevailing wage and apprenticeship laws. There is a

maximum total of 31 points that can be scored on these 6 questions. In order to prequalify, a minimum of 23 points must be scored on these 6 questions. Contractor must respond to all questions.

1. Has Cal OSHA, or Federal Occupational Safety & Health (Fed. OSHA), cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past 5 years?

NOTE: If you have filed an appeal of a citation and the Occupational Safety & Health Appeals Board has not yet ruled on the appeal, you need not include information about it.

Yes No

If you answer is “Yes,” then state how many times this has occurred and attached a separate signed page describing each citation: _____

*8 points for either “No” or “Yes” indicating only 1 such instance.
5 points or “Yes” indicating 2 such instances.
0 points for “Yes” if more than 2 such instances.* _____

2. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the prime contractor, in the past 5 years?

NOTE: If you have filed an appeal of a citation and the Occupational Safety & Health Appeals Board has not yet ruled on the appeal, or if there is a court appeal pending, you need not include information about it.

Yes No

If you answer is “Yes,” then state how many times this has occurred and attached a separate signed page describing each citation: _____

*5 points for either “No” or “Yes” indicating only 1 such instance.
3 points or “Yes” indicating 2 such instances.
0 points for “Yes” if more than 2 such instances.* _____

3. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project? _____

*3 points for an answer of once each week or more often.
0 points for “Yes” for any other answer.* _____

4. How often do you require documented safety inspections be made by the safety officer or manager during the course of a project? _____

*3 points for an answer of once each month or more often.
0 points for any other answer.* _____

5. List your firm’s Experience Modification Rating (EMR) (California Worker’s Compensation Insurance) for each of the past 3 premium years:

NOTE: An Experience Modification Rating is issued to your firm annually by your Workers’ Compensation Insurance carrier.

Current year: _____
Previous year: _____
Year prior to previous year: _____

If your EMR for any of these 3 years is or was 1.00 or higher, you may attach a letter of explanation.

9 points for three-year average EMR of 0.90 or less
6 points for three-year average EMR of 0.91 or more but no more than 1.25
4 points for three year average EMR of more than 1.25 but no more than 1.5
2 points for any other average EMR

6. Has there been any occasion during the last 5 years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with any state or local prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

Yes No

If you answer is "Yes," then state how many times this has occurred in total:_____

3 points for either "No" or "Yes" indicating either 1 or 2 such instance.
2 points or "Yes" indicating 3 such instances.
0 points for "Yes" if more than 3 such instances.

End of Part IV-B

Part V. Experience. Recent Similar & Relevant Construction Projects.

(Please note this section also deals with the size of projects your firm may bid!)

Part V is an opportunity for your firm to show recent and relevant construction experience. The experience you submit will be used in two ways. The first is that your firm must score a minimum of 26 points out of a possible 40 points to meet the basic prequalification criteria. The second is that the experience you submit, combined with your bonding and financial information, will be used by the District to determine the size (based on dollar value) of the projects you will be allowed to bid.

Part V includes Project Data Sheets for up to eight projects. There is a maximum 40 points. To qualify, your firm must score a minimum 26 points. Projects are scored per the following:

5 POINTS for each construction project your firm has completed during the past six years that required Department of State Architect (DSA) approval. Names and references must be current and verifiable.

4 POINTS for each public works construction project your firm has completed during the past six years. Names and references must be current and verifiable.

3 POINTS for each private works construction project your firm has completed during the past six years. Names and references must be current and verifiable.

General Contractors shall submit only on projects in which the firm held the contract with the owner (i.e. public or private entity).

Mechanical, Plumbing, and Electrical Contractors must submit projects in which the firm served as the lead contractor for the craft (i.e. Mechanical, Plumbing, or Electrical). They also must submit the verifiable prime contractor or construction manager for each project.

The dollar value for all projects shall be based upon the General Contractors contract amount.

Total Points this Part _____

End of Part V

Part VI. PROJECT DATA SHEET- one project per Project Data Sheet

Contractor Name: _____

(Seeking Prequalification)

Project Name: _____
Location: _____
Owner: _____

Provide the names, titles, and current phone numbers of the Owner's Project Manager, and at least one other person who you believe to be best qualified to answer the questions set forth beginning on Page 8 of this Prequalification Questionnaire. It is the Contractor's responsibility to confirm that contact information is current. Non-current information may result in rejection of the project for evaluation.

1) Owner Contact Name/Title: _____
Owner Contact Phone: _____

2) Owner Contact Name/Title: _____
Owner Contact Phone: _____

Architect or Engineer: _____

Architect/Engineer Contact Name: _____
Architect/Engineer Contact Phone: _____

Prime Contractor or Construction Manager: _____
Prime Contractor or Construction Manager Contact Name: _____
Prime Contractor or Construction Manager Contact Phone: _____

Project Description, Scope of Work Performed (Be descriptive and include similar relevant school projects that required DSA approval. It is solely the responsibility of the Contractor to include sufficient information regarding project relevancy to allow the DISTRICT to appropriately evaluate & assign points for submitted projects.)

Total Construction Cost of Project: _____
Total Value of Mechanical/Plumbing Contract: _____
(For Mechanical/Plumbing Subcontractors Only)

Total Value of Electrical Contract: _____
(For Electrical Subcontractors Only)

Total Project Gross Square Footage: _____

Schedule Information:

Original Contract Completion Date: _____

Time Extensions Granted by Owner Change Order (number of days) _____

Contract End Date _____

Actual Date of Completion: _____

End of Part VI

CERTIFICATION

The Contractor shall sign this Certification. Failure to include this Certification in the Prequalification Submittal will preclude requalification and subsequent participation in the bidding and construction of District projects

By signing the Certification, the Contractor acknowledges that receipt of this submittal by the DISTRICT does not constitute either a direct or implied guarantee to the Contractor that prequalification is or will be granted. By signing the Certification and submitting this Prequalification Questionnaire, the Contractor further agrees to be bound by the procedures and conditions of prequalification described in the Request for Prequalification for Contractors and the Prequalification Questionnaire.

The undersigned is legally authorized representative of the Contractor.

The legal name of the contractor is:

State of California Contractor's License Number, including all specialty licenses and certifications:

- License Number:
- Type(s):

Contractor's Telephone Number:

Contractor's Email Address:

* * * *

I, the undersigned, certify and declare that I have read all the foregoing answers provided in this Prequalification Questionnaire and know their contents. The matters stated in these answers are true of my own knowledge and belief, except as to those matters specifically stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Dated: _____

Company

Printed Name

Signature

End of Prequalification Questionnaire

PREQUALIFICATION SCORING PROCESS:

Step I – General: This section is Pass/Fail. Contractors not meeting the minimum qualifications; (e.g. not having an A, B, or MEP licensing, felony convictions, disbarment, etc.) will not be able to complete the remainder of the questionnaire and will receive an email notifying them that they have not been approved as a prequalified contractor.

Step II – This section will be scored on a point basis with the allowable points being 0-5 per line item. Questions allowing for a score of 0-5, zero being the lowest and 5 being the highest will be tallied for a maximum overall score of 145 points. In order to pass Section II, the contractor must receive 75% of the total points (60 out of 80).

Step III – Recent Construction: Each project listed will have a maximum score of 5 for a total maximum score of 40 (two K-12, three Public Works, three private projects). In order to pass Section III, the contractor must receive 75% of the total points (30 out of 40).

PREQUALIFICATION LIMIT:

A contractor will be approved for a limit up to a specified amount based on the experience and bonding capacity. Each participating district may use different criteria for assigning a prequalified limit of construction. The established limit is set at the sole discretion of the district.

Pre-Qualification Scoring Sheet - **General Contractors**

Contractor: _____

Application Received on: _____

Notice Deadline (14 Calendar Days Prior to Bid Opening): _____

Q#	Part IA - General	Required Response to Pass
1	Copy of Valid and Current Contractors License = <input type="checkbox"/> A <input type="checkbox"/> B	Yes
2	Liability Insurance w/ Limit of at Least 3M per Occurrence, 5M Aggregate for Projects over 1M.	Yes
3	Valid and Current Workers' Compensation Insurance or Notice of Exempt Status	Yes
4	Contractor's License Suspension within the Last Five (5) Years	No
5	Convicted of a Crime Involving the Award of a Contract on a Government Construction Project	No
6	Reviewed or Audited Financial Statements Attached	Yes
Q#	Part IB - General w/ Explanations	Required Response
1	Disbarred/Disqualified from Government Agency/Public Works Project.	No
2	Denied Award of Public Works Contract as Non-Responsible Bidder	No
3	Claim Filed in Court or Arbitration Against Firm Concerning Your Firms Work on a Construction Project	No
4	Claim Filed in Court or Arbitration Against Owner Concerning Work on a Construction Project or Contract Payment	No
5	Contract Termination for Cause	No
6	Agreement Not to Bid Future Projects	No
7	Surety Payments for Default	No
8	Liable in Civil Suit for False Claim or Material Misrepresentation	No
9	Convicted of Federal, State or Local Crime Related to Construction	No
10	Convicted of Federal, State or Local Crime Related to Fraud or Theft	No
11	Denied or Lapse of Bond Coverage Within Last Five Years	No
12	Workman's Compensation Lapse within Last Five Years	No

Result: Pass Fail

Q#	Part IIA - Organization	Required Response to Pass
-----------	--------------------------------	----------------------------------

Corporations:

1a	Date Incorporated	Yes
1b	State Incorporated	Yes

Partnerships:

2a	Date of Formation	Yes
2b	Under Laws of What State	Yes

Sole Proprietorships:

3a	Date of Commencement of Business	Yes
3b	Identification of Additional Construction Firm Associations	Yes

Result: Pass Fail

Q#	Part IIB - History of Business	Pts. Available
1	Change In Ownership with the last three years.	0
2	Is the firm a subsidiary, parent, holding company or affiliate with another construction firm.	0
3	Any corporate officers, partners or owners affiliated with another construction firm.	0
4	Three Years Gross Revenues	0
5	Years in Service (6+ = 5) (5 = 4) (4 = 3) (3 = 2) (2 or Less = 1)	5
6	Current Bankruptcy (No = 5) (Yes=0)	5
7	Bankruptcy Within Last Five Years (No = 5) (Yes=0)	5
		15

Q#	Part IIC - Licenses	Pts. Available
1	Corporate or Partnership Licenses	0
2	Name Change Within Last Five Years	0
3	Additional Owner/Partner Construction Firm Affiliations Within Last Five Years	0
		0

Q#	Part IID - Disputes	Pts. Available
1	Liquidated Damages Within Last Five Years (1 or Less = 5) (2 = 3) (Other = 0)	5
2	Insurance Refusal to Renew Within Last Five Years (No = 5) (Yes = 0)	5
3	More Than Three (3) Stop Payment Notices on a Public Works Contract within Last Three Years (No = 5) (Yes = 0)	5
4	Stop Payment Notices Resulting in Claim Against Payment Bond (No = 5) (Yes - 0)	5
		20

Q#	Part IIE - Bonding	Available
1	Required to Pay a Premium < 1% (No = 5) (1-1.25% = 4) (1.25-1.5% = 3) (<1.5% = 0)	5
2	Previous Bonding Company Name/Agent/Address/Telephone Number Provided	0
		5

Q#	Part IIF - Safety Compliance	Pts. Available
1	CAL OSHA Violations within Last Five Years = Serious, Willful or Repeat: <i>If Avg Gross Rev < 2M: (No = 5) (Yes w/ 1 Instance = 4) (Yes w/ 2 Instances = 3) (Yes w/ 3+ Instances = 0)</i> <i>If Avg Gross Rev > 2M: (No = 5) (Yes w/ 1 Instance = 4) (Yes w/ 2 Instances = 2) (Yes w/ 3+ Instances = 0)</i>	5
2	Federal OSHA Violations within Last Five Years <i>If Avg Gross Rev < 2M: (No = 5) (Yes w/ 1 Instance = 4) (Yes w/ 2 Instances = 3) (Yes w/ 3+ Instances = 0)</i> <i>If Avg Gross Rev > 2M: (No = 5) (Yes w/ 1 Instance = 4) (Yes w/ 2 Instances = 2) (Yes w/ 3+ Instances = 0)</i>	5
3	EPA, Air Quality or Regional Water Quality Control Board Penalties within Last Five Years: <i>If Avg Gross Rev < 2M: (No = 5) (Yes w/ 1 Instance = 4) (Yes w/ 2 Instances = 3) (Yes w/ 3+ Instances = 0)</i> <i>If Avg Gross Rev > 2M: (No = 5) (Yes w/ 1 Instance = 4) (Yes w/ 2 Instances = 2) (Yes w/ 3+ Instances = 0)</i>	5
4	Safety Meetings (Weekly = 5) (Monthly = 4) (Quarterly = 2) (Other = 0)	5
5	Experience Modification Rate (EMR .95 or Less = 5) (ERM .95-1 = 3) (Other = 0)	5
6	Explanation of EMR 1.00 or Higher	
		25

Q#	Part IIG - Prevailing Wage/Apprenticeship Compliance	Pts. Available
1	Required to pay back wages (States Prevailing Wages): <i>If Avg Gross Rev < 2M: (No = 5) (Yes w/ 1-2 Instances = 4) (Yes w/ 3 Instances = 3) (Yes w/ 4+ = 0)</i> <i>If Avg Gross Rev > 2M: (No = 5) (Yes w/ 1-2 Instances = 4) (Yes w/ 3 Instances = 2) (Yes w/ 4+ = 0)</i>	5
2	Required to pay back wages (Federal = Davis-Bacon Prevailing Wages): <i>If Avg Gross Rev < 2M: (No = 5) (Yes w/ 1-2 Instances = 4) (Yes w/ 3 Instances = 3) (Yes w/ 4+ = 0)</i> <i>If Avg Gross Rev > 2M: (No = 5) (Yes w/ 1-2 Instances = 4) (Yes w/ 3 Instances = 2) (Yes w/ 4+ = 0)</i>	5
3	Apprentice Violations: <i>If Avg Gross Rev < 2M: (No/Yes w/ 1-2 Instances = 5) (Yes w/ 3 Instances = 3) (Yes w/ 4 Instances = 0)</i> <i>If Avg Gross Rev > 2M: (No/Yes w/ 1-2 Instances = 5) (Yes w/ 3 Instances = 2) (Yes w/ 4 Instances = 0)</i>	5
		15

Total Points Available:	80
Passing Score (75%)	60
Contractor's Score	
Results (Pass/Fail)	

Q#	Part IV - Recent Construction Projects Completed	Pts. Available
1a	Two (2) K-12 Projects - (Awarded and Verified = 5 Each) (No = 0)	10
1b	Three Public Works Projects - (Awarded and Verified = 5 Each) (No = 0)	15
2	Private Projects - Three (3) Largest - (Awarded and Verified = 5 Each) (No = 0)	15
		40

Total Points Available:	40
Passing Score (75%)	30
Contractor's Score	
Results (Pass/Fail)	

Project Experience List	Category (NG, G)	
Public Projects: (Minimum of Two (2) K-12/DSA Approved Projects Required)		
1.		
2.		
3.		
4.		
5.		

Private Projects:		
1.		
2.		
3.		

Public Projects: (Minimum of Two (2) K-12/DSA Approved Projects Required)		
Reference #1		
Reference #2		
Reference #3 (if needed)		

Private Projects:		
Reference #1		
Reference #2		
Reference #3 (if needed)		

Part V - Info Verification by District	Yes/No	
License Verified		
Bonding Verified		
Safety History		
Workers Comp		

	Overall Results (Pass/Fail)
--	------------------------------------

Contractor's Answer		
Contractor's Answer	Adjustments	Final Reponse

**Information
provided? (Y/N)**

--

Score	Adjustments	Final Score
0	0	0

Score	Adjustments	Final Score
0	0	0

Score	Adjustments	Final Score
0	0	0

Score	Adjustments	Final Score
0	0	0

Score	Adjustments	Final Score
0	0	0

Score	Adjustments	Final Score
0	0	0

Score	Adjustments	Final Score
0	0	0

Value

PASS/FAIL

PASS/FAIL

www.CSLB.ca.gov
http://www.ambest.com
www.osha.gov
www.CSLB.ca.gov

Check One:

Firm Name: _____
(as it appears on license)

Corporation
 Partnership
 Sole Proprietership

Contact Person: _____ Email: _____

Address: _____

Phone: _____ Fax: _____

Contractors License Numbers: _____

If Sole Proprietor or Partnership:

Owners Name: _____

BID LIMIT:

The candidate's qualified limit will be the lesser of the following (stated in US currency): **a)** the largest public works contract the candidate has fully performed within the last five years (as defined by the original contract price, plus additive and deductive change orders), plus 10%; or **b)** the candidate's current bonding capacity (as determined by the surety with which the candidate currently has the highest bonding limit). Your accurate answers to A and B immediately below, once verified by the District, will determine your bid limit.

A. Largest Contract \$ _____ + 10% = \$ _____

B. Maximum Bonding Capacity \$ _____

Name of Bonding Company _____

**SECTION III
PROPRIETARY
SPECIFICATIONS
& DISTRICT
STANDARDS**

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SOLE SOURCE JUSTIFICATION

A. **OVERVIEW**

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand prior to submitting a requisition to Purchasing. Even though the department's review process prior to the submittal of a requisition may be sound, departments may unknowingly discourage free and open competition by requesting a single vendor or product. Additionally, the district is bound by local and state laws of which faculty and staff may be unaware. The lack of an effective means of communication between Buyer and requesting departments can lead to lost time in completing the acquisition of a product or service. Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definitions.

In an effort to expedite sole source/brand requisition requests through Purchasing, we would encourage you to review the Criteria for Sole Source/Brand form herein. If you feel your request meets such criteria, follow the instructions in filling out the form and attach it to your requisition. If the sole source/brand justification is accepted by Purchasing, the requisition will be processed for the sole source/brand indicated.

This is an internal review process. Departments are requested to use discretion in their discussion with vendors so as not to compromise any competitive advantage the Buyer may utilize, regardless of the acceptance or rejection of the sole source/brand justification.

Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand, and provides you with the method by which to make your requisitioning efforts more efficient under sole source/brand conditions.

Purchasing will advise you when a particular competitive review process may both serve the District better and/or be required by governing law.

If the Purchasing Department confirms a sole source is permissible, the request for sole source/sole brand, the certification, and the form referenced herein should be made a part of your justification. A signature by an authorized department representative is required. This certification will remain on file for audit purposes.

A. **PROCEDURE**

Sole source/brand purchasing is an exception to the normal procurement function and requires a detailed justification. Sole source is justified in very limited occasions. In processing sole source/sole brand requests for supplies, services and/or equipment, Purchasing adheres to and is governed by the principles set forth in the CA Education Code, Public Contract Code, and by the Board of Trustees. As such, our decision is final.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your requisition. Such a request should not be made unless the request is reasonable and

appropriately justified to meet legal requirements and can withstand a possible audit. The District's requirements and the format for submitting such requests are contained herein. Please make copies of the Criteria for Sole Source/Sole Brand form for your future use.

The following factors DO **NOT** apply to sole source/sole brand requests and should not be included in your sole source/sole brand justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor.
2. Cost, vendor performance, and local service (this may be considered an award factor in competitive bidding).
3. Features which exceed the minimum department requirements.
4. Explanation for the actual need and basic use for the equipment, unless the information relates to a request for unique factors (refer to questions 2 and 3 from the Criteria for Sole Source/Sole Brand form).
5. A request for no substitution submitted without justification. This is a sole source/sole brand request requiring detailed justification including established sole source/sole brand criteria.

CRITERIA FOR SOLE SOURCE

Please address by specific reference each question listed below (1-5) in your justification. Failure to respond to any of the questions could result in a justification on that is inadequate and may result in the rejection of your justification and delay of your request.

1. Why was this product and/or vendor chosen?
2. What are the unique performance factors (functionality) of the product/service specified? Provide detailed specifications and descriptions.
3. Why are these specific factors required?
4. What other products/services have been examined and rejected?
5. Why are other sources providing like goods or services unacceptable? (Full meaningful explanation.)

I HEREBY CERTIFY THAT:

- 1) I am an approved department representative, and am aware of the District's requirements for competitive bidding, as well as the criteria for justification for sole source/brand purchasing.
- 2) I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment. Copies are attached.
- 3) There is validity as to the information contained herein.
- 4) There is justification for sole source/sole brand purchasing noted above as it meets the District's criteria.
- 5) A sole source/brand purchase in this case would withstand a possible audit or a vendor's protest.

DATED: _____

DEPARTMENT REPRESENTATIVE

PURCHASING OFFICE USE ONLY:

APPROVED: _____

BUYER:

NOT APPROVED: _____

DATE: COMMENTS:

When using Federal funds to pay for a sole source good or service, be sure to follow EDGAR requirements.

**ABC UNIFIED SCHOOL
DISTRICT**

Business Services Division

Note: this example is dated.
Technology may have changed which
could result in this no longer being a
sole source. It is important to review
prior sole source items to ensure
competition is not stifled.

Regular Governing Board Meeting:

SUPPORTS DISTRICT'S GOAL #II.A

Topic:

Adoption of Resolution (#) 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.

Resolution No. _____
[Insert Date]
Page 2

Recommended Action:

Adoption of Resolution (# _____) – 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:

[INSERT NAME]
Assistant Superintendent,
Business Services

[INSERT NAME]
Superintendent

ABC UNIFIED SCHOOL DISTRICT

Resolution No. _____

RESOLUTION AUTHORIZING PROPRIETARY SPECIFICATIONS FOR MUSCO LIGHTING

WHEREAS, the ABC Unified School District ("District") desires to contract for the purchase and installation of field lighting for the _____ 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 ABC Unified School District at _____, California, on this _____ day of _____, _____, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

STATE OF CALIFORNIA)
)
 COUNTY OF SAN DIEGO)

I, _____, Clerk of the Governing Board of the ABC Unified School District of _____, 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

**SECTION IV
CALIFORNIA
UNIFORM PUBLIC
CONST. COST
ACCOUNTING ACT**

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California Uniform Public Construction Cost Accounting Act



SAMPLE DOCUMENTS 2020

Compiled by
Guiselle Carreon, Retired Commissioner
California Uniform Construction Cost Accounting Commission;
Consultant, Purchasing & Accounts Payable

DISCLAIMER

This handout 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.

Sample Documents: The sample documents are provided for general information purposes only. Your use of any of these sample documents is at your own risk, and you should not use any of these sample documents without first seeking legal and/or other professional advice.

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Regular Governing Board Meeting:

Insert Date

Topic:

Adoption of Resolution (_____)

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 (*informal bid limit*). 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". 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.

Plan:

The adoption of resolution (_____) 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.

Fiscal Impact:

There is no impact to the general fund in adopting this resolution.

Recommended Action:

Adoption of Resolution (_____) 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

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 (22000 et seq. for CUPCCAA districts). Pursuant to SB 429 (Ch. 897, Statutes of 1995), these limits are currently the informal bid limit for facilities projects and \$50,000 for other expenditures. The amount for other expenditures 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 (if CUPCCAA use 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 _____ SCHOOL DISTRICT

Adopted: _____, _____, _____, California

Revised:

_____ SCHOOL DISTRICT

Administrative Regulation

AR 3311

Business and Noninstructional Operations

Public Works Bids

The district has adopted the California Uniform Public Construction Cost Account Act procedures under Public Contract Code 22000 et. seq.

Informal Bids:

To opt into maintenance.

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. **[OPTIONAL:** The District has elected to utilize the alternative bid limits for maintenance work pursuant to Public Contract Code 22003].

Contractors List:

A list of contractors may 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.

Delegation for Informal Bids:

The governing body of the public agency may delegate the authority to award informal contracts to the public works director, general manager, purchasing agent, or other appropriate person.

Bids Over Informal Limit:

If all bids received are in excess of two hundred thousand dollars (\$200,000), the governing body of the public agency may, by adoption of a resolution by a four-fifths vote, award the contract, at two hundred twelve thousand, five hundred dollars (\$212,500) or less, to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable.

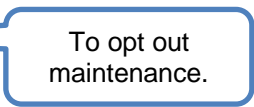
Formal Bids:

The district shall seek competitive bids through advertisement for contracts involving an expenditure of greater than the informal bid limit for a public project (Public Contract Code 22037), informally bid contracts involving an expenditure of less than the informal bid limit, and seek quotes, when feasible, for projects involving an expenditure of the force account threshold or less. *(Amended by Stats. 2015, Ch. 269, Sec. 29. Effective January 1, 2016.)*

"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 as adjusted annually by the State Superintendent of Public Instruction, 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



To opt out maintenance.

"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 for materials, supplies, and non-construction services and not less than 14 calendar days prior to bid opening for public works projects.. 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 and 22037)

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 informal and formal 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)

1. 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)
2. 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)
3. 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.
4. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

5. 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 up to the Force Account Limit 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 it's 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):

Two representatives of the district.
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.

1. The contractor shall submit his appeal in writing with the *(INSERT TITLE)* 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.
2. 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.
3. 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.
4. 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 opening of bids. 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.

Federal Procurement

Procurement is the multistep process for acquiring the best possible goods and services at the lowest possible price. The District will purchase items for use in the School Nutrition Programs (SNP) and in Federally funded programs in compliance with 2 CFR Part 200, State and District regulations, using the procedures outlined as follows and in the attached chart of procedures.

The primary purpose of this procurement plan is to ensure that open and free competition exists to the maximum extent possible. The Board believes that competition helps ensure that goods, equipment, and services will be obtained at the lowest possible cost. The procurement procedures used by the District will not unduly restrict or eliminate competition.

When making procurement decisions, the District will follow the subsequent four fundamentals principals:

1. Follow the Buy American provision.
2. Follow the more restrictive bid threshold, whether it be the federal, state or
3. local threshold.
4. Ensure that full and open competition exists to the maximum extent possible.
5. Award contracts to the most responsible and responsive bidders.

Prior to beginning the procurement procedures outlined in this document, the District will:

1. Complete a needs assessment and an accurate forecast – to the best ability of the District.
2. Determine that the item(s) are necessary and does not duplicate items and/or bid(s) the District already has in place.
3. With equipment, the District will determine the most economical approach – lease vs. buy – prior to preparing a solicitation.
4. Determine the bid threshold in order to determine what method of procurement will be used for the goods or services
5. Develop specifications for products needed including details such as product descriptions and requirements for goods or services. Descriptions must not unduly restrict competition. The description must describe the minimum essential characteristics and standards the product must conform to.
6. Developing evaluation criteria if using a Request for Proposal (RFP) prior to releasing the bid document
7. All procurements will be handled by the Purchasing Department. No other Department is authorized to procure materials, goods, and services unless designated by the Assistant Superintendent, Business Services or designee.

Micro Purchase Procedures

Micro purchase process will be used to purchase goods and services that are needed on an emergency basis, for special or last minute catering events or for items needed only occasionally.

Micro purchasing procedures are used under the following conditions:

- a. The aggregate value of the single transaction is under \$3500.
- b. The District considers the price to be reasonable.
- c. The determination that the price is reasonable is documented and included in the procurement file (This file is located within the Purchasing Department). Prices found on the internet may be used to verify that the price the District is paying is reasonable.
- d. Micro purchases are equally distributed among qualified suppliers. A qualified supplier for items picked up by District personnel at the supplier location will be defined as a supplier who will accept a District purchase order and be within five miles of the District headquarters. For emergency equipment repair, repair work will be distributed amongst those suppliers who are familiar with the brand of equipment the District uses and is authorized to work on that brand by the manufacturer and can respond within 24 hours.

Small Purchase Procedures

Small purchase procedures will be used to purchase goods, equipment, office supplies, and services where the aggregate cost is less than \$88,300 and greater than \$3,500.

When small purchase procedures are used, the following conditions must be met:

1. The goods, equipment, or services to be purchased will be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service. These specifications may be either verbal or written. It is not necessary to send price quotes in writing, but it is the preferred method. Both written and verbal methods must be documented.
2. Specifications/food descriptions must be sent by fax or e-mail or communicated by telephone or in person to an adequate number of suppliers. A list of potential suppliers will be developed, maintained, and added to throughout the course of the school year. During the summer, the District will solicit potential suppliers to determine their interest level in being added to the small purchase procurement list. The District will network with other appropriate personnel to obtain supplier contact information, as well as to obtain feedback regarding service and product quality. The list developed will be used to contact interested suppliers throughout the school year. Suppliers will be added to this list upon request. The list will be maintained by the Purchasing Department.
3. Responses from suppliers may be in either the written or verbal form. Verbal quotes must be documented. The District's purchase documentation form and /or supplier contract form contained herein will be used for this purpose.
4. Price quotation responses will be retained by the District in the Purchasing Department with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. The District will utilize its purchase documentation form and/or supplier contract form for this purpose.

Competitive Formal Procurement

EFC (1 of Competitive Formal procurement procedures – Information for Bid (IFB) or Request for Proposal (RFP) - will be used to purchase goods, equipment, and services where the aggregate cost is more than \$88,300.

When competitive formal procurement procedures are used, the following conditions, stipulations, and terms must be met:

5. The bid must be free of actions that might inhibit competition and allow the supplier adequate time to complete the bid.
6. • The bid must be advertised and include the general nature of the goods or services to be procured; method of procurement that will be used; how the supplier can obtain more information; and the due date for the responses to the bid. The bid must be publically advertised one week a part in a newspaper of general circulation per California PCC section 20112. The bid may also be advertised on the District website.
7. Bids will be solicited from an adequate number of known suppliers in sufficient time prior to the date set for the opening of the bids. Bids will be mailed or emailed to those suppliers who have previously requested to do business with the District.
8. The date that all addenda, changes, or answers to questions will be posted regarding the bid must be included in the original bid document as well as the website where the answers will be posted.
9. The invitations for bid will clearly define the items or services needed in order for the bidders to be able to properly respond. This includes product specifications and general purchasing conditions.
10. Suppliers wishing to bid on the contract may not assist the District in the development of the bid or the specifications for product/goods. This includes offering the services free of charge for the development of the specifications.
11. The bid document must contain the following written requirement: "All rebates, discounts, and other applicable credits must be returned to the District".
12. Any and all bids may be rejected when there is sound documented reasons rejecting is in the best interest of the District.
13. Bid award will be based on low bid after verifying that the supplier with the low bid is responsive and responsible, meets the product specifications, and after performing a cost analysis.
14. When using a Request for Proposal (RFP) in compliance with federal and state guidelines, the evaluation criteria must be included in the bid package and price must be the highest weighted factor. In addition to price, the evaluation criteria may include categories such as:

Flavor & Quality, Past Performance, Minimums, Delivery Days and Times. A description of the Scoring System must be included in the RFP which will explain the scoring criteria for each category.

15. During the evaluation phase, the evaluation criteria, other than price, must first be evaluated prior to evaluating price. There should be a committee of at least 2 persons who did not write the bid, evaluate the technical criteria of the RFP. The RFP is to be awarded to the most responsive, responsible supplier who submitted the lowest price as determined by the evaluation criteria.
16. Responses from suppliers must be in writing; signed by the authorized authority to submit the bid, be returned in a sealed envelope on or before the date and time specified and to the place specified in the bid documents.
17. Bids not received on time will be returned to the bidder unopened.
18. Bid proposals will be retained by the District with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved.
19. The recommendation for bid award must be submitted to District's Board for the award of the bid.
20. When the District chooses, purchases may be made through a cooperative agreement or piggybacking with other school districts when all legal procurement procedures are followed as required.
21. For cooperative purchasing, District must maintain on file for the current year plus three additional years, a copy of the bid; proof of advertising; and bid award documents from the awarding District's Board.
22. For piggybacking, District must obtain permission from the District awarding the bid and the supplier awarded the bid. A copy of the bid, including the piggyback clause, proof of advertising, and proof of award from the awarding District's Board must be kept on file for the current year plus three additional years.

Non-Competitive Proposal (Sole Source):

These types of proposals will be used only when procurement is not feasible under the small purchase procedures, sealed bid (formal advertising), or competitive proposals. The decision to use noncompetitive proposal will be justified in writing, approved by CDE, and be available for audit and review.

Circumstances under which procurement may be conducted by noncompetitive proposal will be limited to one of the following:

23. The merchandise or service is available only from a single source. The Purchasing Department will provide documentation that the merchandise or service is not available from

any other source.

24. An emergency exists, and the urgency for the requirement will not permit the delay involved with sealed bids (formal advertising) or competitive proposal. Emergency conditions must be documented by the requesting Department.

25. After solicitation from a number of sources, competition is found to be lacking.

Regulation _____ SCHOOL DISTRICT

Approved: _____, 20__, _____, California

Revised:

SCHOOL DISTRICT
Business Services Division

Governing Board Meeting: **Insert Date**

Topic:

Delegation of Authority in Regard to Bidding and Award of Public Works Contracts

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 within 60 days.

Plan:

The adoption of resolution (#_____) will provide the necessary authorization for the (*insert titles of officials*) or to their designee the authority to advertise for bids, award public works contracts up to the informal bid limit, to reject all bids and re-call or re-advertise, and approve change orders subject to subsequent award, ratification, and/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 (#_____) Delegation of Authority in Regard to Bidding and Award of Public Works Contracts

Originating Department: Purchasing

Submitted/Recommended By:
Board:

Approved for Submission to the Governing

Deputy Superintendent,
Business Services

Superintendent

_____ SCHOOL DISTRICT

Resolution No. _____

**DELEGATING AUTHORITY IN REGARD TO AWARD OF INFORMAL CONTRACTS PURSUANT TO
THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT**

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 _____ School District ("District"), when undertaking a public project in excess of the informal bid limit, is required pursuant to Public Contract Code Section 22000 et seq. to award the contract(s) for such work to the lowest responsible bidder(s) or reject all bids; and,

WHEREAS, Public Contract Code Section 22037 requires the Board to advertise for bids for public projects by publishing a notice calling for bids in a newspaper of general circulation published within the District at least 14 calendar days prior to opening of bids; 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, during the course of public works projects, situations may arise resulting in requirement for changes to the project or the contracts therefor; and,

WHEREAS, the Board desires to delegate to District staff certain authority in regard to informal bids and other competitive bidding and contracting duties and thereby create an efficient process for achieving and implementing the public works 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 [INSERT TITLE] or to their designee, to: (i) award public works contracts up to the informal bid limit pursuant to the California Uniform Public Construction Cost Accounting Act; (ii) review and, as appropriate, approve plans and specifications for purposes of seeking competitive bids based on such plans and specifications; (iii) call for bids for any Public Works Projects, including placing advertisements as required pursuant to the Public Contract Code; (iv) reject all bids received in connection with Public Works Projects if rejection is determined by District staff to be in the best interests of the District; (v) re-call and re-advertise for bids on any Public Works Projects for which previous bids were rejected in accordance with the authority hereby delegated; and (vi) 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 [INSERT TITLES] for the District, or to their designee, to review and, as appropriate, approve change orders for construction of any Public Works Projects; subject to no such change order(s) approved pursuant to this Section exceeding a cumulative 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.

Regular Governing Board Meeting

Topic:

Delegation of Authority in Regard to Awarding of Emergency Contracts.

Issue:

Pursuant to Public Contract Code Section 22050 (b) (1) the governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, city manager, chief engineer, or other nonelected agency officer, the authority to order any action to 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 provided that the designee complies with the conditions set forth in the code.

Plan:

The adoption of resolution (_____) will authorize the [INSERT TITLES] to award an emergency contract for public works as outlined in the attached resolution.

Fiscal Impact:

There is no fiscal impact generated from the adoption of this resolution.

Recommended Action:

Adoption of Resolution (_____) Delegating Authority to the Superintendent and/or _____ Superintendent of Business Services to Award Emergency Contracts

Originating Department:
Purchasing

Submitted/Recommended By:

Approved for Submission to the Governing Board:

(insert name)

Superintendent,
Business Services

(insert name)
Superintendent

Resolution No. _____

DELEGATION OF AUTHORITY IN REGARD TO AWARDING OF EMERGENCY CONTRACTS)

On motion of Member _____, seconded by Member _____, the following resolution is adopted:

WHEREAS, pursuant to Public Contract Code Section 22050 et. seq. the governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, city manager, chief engineer, or other nonelected agency officer, the authority to order any action to 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 provided that the designee complies with the conditions set forth in the code; and

WHEREAS, Public Contract Code Section 22037 requires the Board to advertise for bids for public projects by publishing a notice calling for bids not less than 14 days prior to opening of bids in a newspaper of general circulation printed and published within the District; and

WHEREAS, from time to time emergencies arise necessitating awarding of a contract without competitive bidding to permit the continuance of existing school classes or to avoid danger to life or property; and

WHEREAS, the Board desires to delegate to District staff certain authority in regard to contracting for emergency public works 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 and/or the [INSERT TITLES] to award emergency contracts for public works without competitive bidding.

Section 3. If a person with authority delegated pursuant to paragraph (1) or (2) orders any action specified in paragraph (1) of subdivision (a), that person shall report to the governing body, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.

Section 4. If a person with authority delegated pursuant to subdivision (b) orders any action specified in paragraph (1) of subdivision (a), the governing body shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless a person with authority delegated pursuant to subdivision (b) has terminated that action prior to the governing body reviewing the emergency action and making a determination pursuant to

**NOTICE TO CONTRACTORS
TO BE INCLUDED ON THE DISTRICT'S LIST OF QUALIFIED CONTRACTORS
PER SECTION 22034 OF THE PUBLIC CONTRACT CODE**

PREQUALIFICATION OF GENERAL AND MEP CONTRACTORS

The _____ 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 _____ calendar year.

This notice requires contractors to provide the following information. Registration forms are available at [\(insert URL\)](#)

- 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

[NOTE: Registering with a district does not satisfy the prequalification requirements under PCC 20111.6 or the Department of Industrial Relations registration requirements under Labor Code 1725.5.](#)

(Optional Language) Prequalification: In addition to registering with the District, all General Contractors (A and B), Mechanical, Electrical and Plumbing Contractors (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and C-46) need to complete the prequalification application in order to be eligible to work on projects in excess of \$1 million dollars. **Effective December 1, 2013**, the link for the application may be found at the above-mentioned web address.

The _____ 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 shall 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. **(Optional Language)** 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 _____.

Information should be sent to:

Name & Address

Fax:

E-mail:

Dated this _____

Clerk of the Governing Board
_____ District,
of San Diego County, California

CONTRACTOR REGISTRATION APPLICATION

California Uniform Public Construction Cost Accounting Act

The _____ 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 _____ calendar year.

NOTES:

1. The registration process is for the purpose of being notified of bid opportunities according to your license classification. Prequalification is a more complex process and will be required of all General Contractors (A and B) and all MEPs (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and C-46) for projects in excess of \$1 million.
2. SB 854 became effective July 1, 2014 and requires contractors to register with the Department of Industrial Relations prior to bidding on public works projects. This registration does not fulfill that requirement.

This notice requires contractors to provide the following information:

Company Name	Phone No.	Fax No.
Address	Contact Name:	
City, State, Zip	Email Address	
Type of Work	License Classification(s)	License No. DIR No.

Information should be sent to:

_____, Director of Purchasing
 _____ District
 _____, CA 92111

Fax: _____

E-mail:

The _____ 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. A contractor may have their firm added to the School District's contractors list at any time by providing the required information. (Optional: The list will automatically include all contractors who submitted one or more bids to the School District during the preceding year.)

REQUEST FOR PROPOSAL

PUBLIC WORKS SERVICES UNDER THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

(Not to Exceed \$60,000)

Please Fax/Email Response To:

(insert name & contact information)

PLEASE RESPOND BY:

Company Name: _____ Contact: _____

Address: _____ Phone #: _____

Email Address: _____ Fax: _____

Please provide a proposal for the following scope of services:

Project Name:

Scope:

Start Date:

Completion Date:

Signature

Date

										EXHIBIT II-1
PROJECT LEDGER CARD							START DATE:		9/20/2013	
							END DATE:		10/31/2013	
MAIN STREET SCHOOL DISTRICT										
Main Street School Remodel							Project Code:			
Project Manager: Sanders										
	RATE	UNIT	HOURS				TOTAL	GRAND TOTAL		
			Week 1	Week 2	Week 3	Week 4				
Direct Costs - Labor										
Maintenance Worker I	\$20.00	HR	20.0	20.0	20.0	20.0	80.0	400.00		
Maintenance Worker II	\$17.50	HR	20.0	15.0	20.0	10.0	65.0	175.00		
Foreman / Job Superintendent	\$40.00	HR	20.0	20.0	20.0	20.0	80.0	800.00		
							0.0	0.00		
							0.0	0.00		
							0.0	0.00		
Total Hours						50.0	185.0			
T & L Expenses								1,375.00		
Overhead							30%	412.50		
Labor w/Overhead								1,787.50		
Direct Costs - Equipment										
	RATE	UNIT	QTY	TOTAL	GRAND TOTAL					
Flatbed Truck - Daily	\$38.80	DY	2.0	2.0	77.60					
Table Saw, 16" Blade - Weekly	\$102.46	WK	1.0	1.0	102.46					
			0.0	0.0	0.00					
			0.0	0.0	0.00					
	\$0.00		0.0	0.0	0.00					
	\$0.00		0.0	0.0	0.00					
Total Hours			3.0	3.0						
Total Equipment Charges					180.06					
Overhead					30%	54.02				
Total Equipment w/Overhead					234.08					
Materials/Supplies/Subcontracts										
	RATE	UNIT	QTY	TOTAL	GRAND TOTAL					
Carpeting	\$2.00	SF	400.0	400.0	800.00					
Painting-Subcontract	\$1,500.00	EA	1.0	1.0	1,500.00					
Drywall	\$50.00	EA	10.0	10.0	500.00					
					0.00					
					0.00					
					0.00					
Total Hours			411.0	411.0						
Total Materials/Supplies/Subcontracts					2,800.00					
Overhead					30%	840.00				
Total Materials/Supplies/Subcontracts w/Overhead					\$0.00	3,640.00				
TOTAL PROJECT COST						\$5,661.58				

[Insert District name, address, phone and fax number]

PUBLIC WORKS CONTRACT FOR SERVICES UNDER THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

(Not to Exceed \$60,000)

THIS CONTRACT made and entered into on _____, _____ by and between _____, hereinafter called the **CONTRACTOR** and the **[Insert District name]**, 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 \$60,000) 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. Contractor shall be registered with the Department of Industrial Relations pursuant to Labor Code 1725.5 (Attachment B) when public project exceeds \$25,000 or a maintenance project exceeds \$15,000.
4. **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. Attach additional sheets if necessary and reference "see attachment" in space provided below. NOTE: this contract, in conjunction with the terms and conditions in Attachments A - C take precedence over any Contractor supplied attachments.

SCOPE OF WORK

Prevailing Wages Apply

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

NONCOLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

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

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

By: _____

Name: _____

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 (please complete certification form, Attachment A).

_____ 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, 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 as listed below:

- | | |
|--|---|
| _____ Work Specs/Scope of Work Statement | _____ Non-Collusive Declaration |
| _____ Certificates of Insurance | _____ Workers' Compensation Certificate |
| _____ Contractor Certification Form , Attachment A | _____ Terms and Conditions dated _____ Attachment C |
| _____ Purchase Order No. _____ | |

NOTE: Federal Regulations (26 CFR 1.6041) requires non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these

regulations, the District requires your federal tax identification number or Social Security Number, whichever is applicable. The District requires a valid copy of a W-9 to be supplied upon request.

TYPE OF BUSINESS ENTITY

- _____ Individual
- _____ Sole Proprietorship
- _____ Partnership
- _____ Corporation
- _____ Other

TAX IDENTIFICATION

Employer Identification Number

Last 4 digits of Social Security Number - Submit W-9 form.

License No: _____ Classification: _____ Expiration Date: _____

DIR Registration No. _____

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

All notices permitted or required under this contract 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. 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.

Date: _____

Company Name: _____

Address: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Phone: _____ Fax: _____

Email Address: _____

Accepted by: _____
Signature of District Representative

Printed Name: _____

Title: _____

Date: _____

Address: _____

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, Contractor’s employees may have contact with pupils. As required under Education Code Section 45125.1, subdivision (a), Contractor shall require their employees, including the employees of any subcontractor, 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.

Contractor 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.

Contractor 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.

Contractor 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 Contractor’s failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Contractor 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 Contractor agrees that they are familiar with Education Code Section 45122.1. The following individuals are employees of contractor who may come in contact with pupils in the performance of services in this contract.

Name	Social Security No. (Last four digits only)
_____	_____
_____	_____
_____	_____

I certify that none of the individuals identified above has been convicted of a felony as defined in Education Code Section 45122.1.

Dated: _____(Company)

_____(Signature) _____(Title)

(Complete only if pertinent)

**ATTACHMENT B
CERTIFICATION OF CONTRACTOR AND
SUBCONTRACTOR DIVISION OF INDUSTRIAL RELATIONS REGISTRATION**

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

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

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

Relations (DIR):

Contractor's DIR Registration Number _____

Expiration date June 30, 20__

Contract further acknowledges:

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

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

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

Signature

Date

ATTACHMENT C
TERMS AND CONDITIONS DATED

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

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

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

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

No contractor or subcontractor may be listed on a proposal or be awarded a contract for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 when a public project exceeds \$25,000 or a maintenance project exceeds \$15,000 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

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

ARTICLE 6. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE: The Contractor shall not commence work under this contract until it has obtained the insurance required under this paragraph and satisfactory proof of such insurance has been submitted to District and said insurance has been approved by the District. Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than \$1,000,000 per occurrence (combined single limit) and \$2,000,000 Project Specific Aggregate (for this Project only). Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of 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 Contractor allow any subcontractor to commence work under this contract until all required insurance certificates have been delivered to and approved by District. Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the District's prior written consent, and, the District shall be named as an additional insured and be furnished thirty

(30) days written notice prior to cancellation. The Contractor shall not allow any subcontractor, employee or agent to commence work on this contract or any subcontract until the insurance required of the Contractor, subcontractor, or agent has been obtained.

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

ARTICLE 7. LABOR CODE COMPLIANCE: This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The Contractor hereby stipulates that it shall comply with the applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5 ("Public Works Labor Code Provisions"), including, but not limited to, the payment of the general prevailing rates for public works projects of more than One Thousand Dollars (\$1,000) (§1771), hiring of Apprentices (§ 1777.5) and Working Hours (§ 1813), and Payroll Records (§ 1776). Prevailing rate of per diem wages are on the website of the Division of Labor Statistics and Research of the Department of Industrial Relations at www.dir.ca.gov/OPRL/. Contractor shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

Contractor or subcontractor shall, as a penalty to the District, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by Contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 of the Public Works Labor Code Provisions.

With regard to hiring of apprentices, the responsibility of compliance with Labor Code section 1777.5 shall rest with the Contractor.

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. Said determinations are available to any interested party on the 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 two hundred dollars (\$200) 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 one-hundred dollars (\$100) for

each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due.

ARTICLE 8. DIR REGISTRATION: In accordance with Labor Code 1725.5, if the Project is a public works project in excess of \$25,000 or a maintenance project in excess of \$15,000, Contractor and Subcontractors must be registered as of the date of this Agreement.

ARTICLE 9. 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 proposing work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand (\$30,000) 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 proposal 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 10. 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 11. INDEMNIFICATION: District shall not be liable for, and Contractor shall defend, indemnify, and hold harmless the District, its officials, employees, agents and volunteers, against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages or injury, in law or equity to property or persons, including wrongful death, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the Project or this contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants, volunteers 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 it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of District or its agents or employees. Contractor 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.

ARTICLE 12. MATERIALS: Contractor warrants good title to all material, supplies and equipment installed or including in the work. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within specified time. Unless otherwise specified, all materials shall be new

and both workmanship and materials shall be of good quality. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.

ARTICLE 13. PATENTS, ROYALTIES AND INDEMNITIES: The Contractor shall hold and save the District and its officers, agents and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the contract documents.

ARTICLE 14. GUARANTEE: Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

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

ARTICLE 15. PROTECTION OF WORK AND PROPERTY: The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for safety of employees on the work and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of the organization on the work, whose duty shall be prevention of accidents. Contractor shall report name and position of person so designated to District. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at its discretion to prevent the threatened loss or injury. It shall be the responsibility of the Contractor to ascertain from the District the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present

ARTICLE 16. DISTRICT'S RIGHT TO TERMINATE CONTRACT: 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. In the event this contract is terminated 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.

ARTICLE 17. 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. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs. Contractor shall provide copies of all reports and monitoring information to the District Representative.

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

ARTICLE 18. CLEAN UP: Contractor 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 19. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provisions is not inserted, or is not correctly inserted then upon application of either party

the contract shall forthwith be physically amended to make such insertion or correct.

ARTICLE 20. 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 by information about the site made available to proposers prior to the deadline for submitting proposals. (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractors' cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this contract, but shall proceed with all work to be performed under the contract. A contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE 21. REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES: The Contractor shall not be assessed for liquidated damages for delay in completion of this project, when such delay was caused by the failure of the awarding authority of this contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with section 4215 of the Government Code, if the Contractor while performing the contract discovers any 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 22. CHANGES AND CHANGE ORDERS: *Change orders may not cause the total aggregate cost of the project to exceed \$60,000 or the project will become subject to competitive bidding. The District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the contract 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 23. PAYMENTS: The Contractor shall submit to the District an invoice requesting payment for completion of the Work. The District shall review payment request and, as soon as practical, shall: (i) certify that the request is correct in all aspects and should be paid by the District; (ii) reject the request as not proper, stating the reason(s) why rejection is appropriate; or (iii) require that the Contractor provide additional information that the District reasonably determines is necessary to verify the requested payment amount. In the event the District rejects the request for payment, the Contractor may resubmit the request with additional or new information establishing why payment should be made despite the reason(s) set forth in the District's initial rejection. The District shall pay the undisputed amount of the Contractor's request for payment, less any amounts that may be withheld or retained pursuant to this Contract or applicable law, within thirty (30) days of receipt of such request and in accordance with Public Contract Code Section 20104.50.

ARTICLE 24. DISPUTE RESOLUTION: "Claims between the District and the Contractor shall first be resolved using the procedures set forth at Public Contract Code §9204. "Claims" are defined as a separate demand by the Contractor for one of the following: a time extension for relief from penalties for delay; payment of money or damages arising from work done; or payment of an amount disputed by the District. Upon receiving a claim sent by registered or certified mail, the District must review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the claim. The forty-five (45) day period to respond may be extended by mutual agreement. The claim is deemed rejected in its entirety if the District does not issue a response. Any payment due on an undisputed portion of the claim must be processed within sixty (60) days after the District's response. If a claimant disputes the District's response or lack thereof, the claimant may demand to meet and confer for settlement of the issues in dispute. Any portion of a claim that remains in dispute after a meet and confer conference will be subject to nonbinding mediation process, as described in Public Contract Code §9204. Undisputed and unpaid claims accrue interest at 7% per annum. A subcontractor or lower tier subcontractor may make a claim to the District through the Contractor, as specified in Public Contract Code §9204. However, these procedures shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the contract documents."

ARTICLE 25. RESOLUTION OF CONSTRUCTION CLAIMS OF \$375,000 OR LESS: For public work claims of \$375,000 or less between Contractor and District, if District has not elected to resolve disputes by arbitration pursuant to article 7.2 (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" means "public works contract" as defined in Public Contract Code section 1101. "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 matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with section 2060.010 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The court may, upon request by any party, order any witness to participate in the mediation or arbitration process.

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

ARTICLE 26. DEFAULT BY CONTRACTOR: When Contractor, or any subcontractor, or vendor shall fail to deliver any article or service or shall deliver any article or service which does not conform to the work specifications, the District may, upon five (5) business days' prior written notice describing the default, at its option, annul and set aside the contract entered into with said Contractor, subcontractor or vendor either in whole or in part, and make and enter into a new contract in

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

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

ARTICLE 28. SUBSTITUTIONS: No substitutions of materials from those specified in the Work Specifications shall be made without the prior written approval of the District.

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

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

ARTICLE 31. ASSIGNMENT OF CONTRACT AND PURCHASE ORDER: The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations under this contract without the prior written consent of the District.

ARTICLE 32. FORCE MAJEURE: The parties to this contract shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by Act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party (ies), provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

ARTICLE 33. PERMITS AND LICENSES: The Contractor and all of his employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, such licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.

ARTICLE 34. CONTRACTOR NOT OFFICER, EMPLOYEE, OR AGENT OF DISTRICT: While engaged in carrying out other terms and conditions of the purchase order, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District.

ARTICLE 35. ASSIGNMENT OF CLAIMS: In submitting a quote on this public works project, or any subcontractor agreeing to supply goods, services, or materials, and entering a contract pursuant thereto, the Contractor and/or subcontractor do offer and agree to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act, Chapter 2 (commencing with Section 116700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor without further acknowledgment by the parties.

ARTICLE 36. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct or work as indicated or specified. If Contractor observes that any of the work required by this contract is at variance with any such laws, ordinances, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work knowing it to be in violation of such laws, ordinances, rules or regulations, and without first notifying the District of such violation, Contractor shall bear all costs arising therefrom.

Contractor agrees to post job site notices prescribed by regulation Chapter 8 Calif. Code Reg. §16451(d).

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

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

ARTICLE 37. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this contract.

ARTICLE 38. GOVERNING LAW: This contract shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 39. NO ORAL MODIFICATION: Any waiver, amendment, modification, consent or acquiescence with respect to this contract or any provision of this contract or with respect to any failure to perform in accordance therewith shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby.

ARTICLE 40. ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA): All contract work that is performed for the District by outside contractors or workers must meet all of the regulations that have been set forth in the AHERA rule. This means that all work which could disturb the integrity of any Asbestos Containing Building Material (A.C.B.M.) needs to be approved by the District. This refers to the sawing, grinding, cutting, or drilling of any A.C.B.M. in occupied areas of District buildings.

ARTICLE 41. PROHIBITION AGAINST LEAD-BASED MATERIALS: In accordance with the Lead-Safe Schools Protection Act (Education Code Section 32240 *et seq.*), the Contractor shall not use for purposes of the Work, or incorporate into the Work, any lead-based paint, lead plumbing or solders, or other materials, equipment or other things that,

in whole or in part, consist of lead and, therefore, may be a potential source of lead contamination.

ARTICLE 42. DRUG FREE/SMOKE FREE/ALCOHOL FREE POLICY: All District sites are designated drug free/smoke free/alcohol free. The use or abuse of controlled substances, tobacco products and alcohol will not be tolerated.

ARTICLE 43. DVBE PARTICIPATION: This contract will be subject to Disabled Veterans Business Enterprise participation goals and records retention program if State funding is used for the Project. If applicable, in accordance with Education Code section 17076.11, this District will implement its participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such project, Contractor shall provide appropriate documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

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

ARTICLE 44. PROJECT-RELATED RECORDS: The Contractor shall maintain all documents, books, papers, accounting records, computer files, and other information related to the Project and performance of the Work ("Project Records"), including, but not limited to, Change Orders, submittals, requests for information, daily reports, correspondence, permits, insurance policies, certificates of insurance, testing and inspection reports, and safety records. The Contractor shall keep such accurate and comprehensive Project Records as are (i) necessary for proper administration and performance of the Work and (ii) required by law or this Contract. All Project Records, as applicable, shall be maintained in accordance with generally accepted accounting principles. If the Contract Amount, as adjusted pursuant to this Contract, exceeds \$10,000, then, in accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Records of the Work during the three-year period following final payment to the Contractor pursuant to the Contract. In addition, the District hereby has the right to examine, review, audit and/or copy the Records of the Work during the four-year period following final payment to the Contractor pursuant to the Contract. Therefore, the Contractor shall make the Project Records available at its offices at all reasonable times during the performance of the Work and for four (4) years from the Governing Board accepts the Work. However, if any audit is commenced within such four (4) year period, the Contractor shall make the Project Records available at all reasonable times until proceedings related to such audit are complete and all statutes of limitation related thereto have expired. In the event the District notifies the Contractor that federal funds have been used in connection with the Project, the Contractor shall retain and make available the Project Records for such longer period as may be required by federal law.

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

When using federal funds for public works, make sure you comply with the Education Departments Guidelines and Regulations (EDGAR) or the federal requirements for the specific grant.

CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT FREQUENTLY ASKED QUESTIONS (FAQs)

These FAQs have been compiled to assist agencies that are participating in the California Uniform Public Construction Cost Accounting Act (the Act), as contained in Public Contract Code (PCC) Section 22000, et seq. All references are to PCC, unless otherwise stated.

1. What is the Uniform Public Construction Cost Accounting Act?

The Act is legislation that was enacted in 1983 to help promote “uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state” (Section 22001). The Act is a voluntary program available to all public entities in the State, but it applies only to those public agencies that have “opted in” to the provisions set forth by the Act using the processes outlined in the Act. The entirety of the Act is found at Sections 22000-22045.

2. What are some of the key provisions of the Act?

The Act allows for public project work in the amount of \$60,000 or less to be performed by a public agency’s force account using the public agency’s own resources, or by negotiated contract, or by purchase order (Section 22032(a)). Public projects in the amount of \$200,000 or less may use the informal or formal bidding procedures set forth in Section 22032(b) or (c) of the Act.

Public projects at a cost of more than \$200,000 must use formal bidding procedures to let the contract pursuant PCC Section 22032(c).

3. What are the benefits of the program?

- Increased force account limit for public agencies;
- Simplified bidding for projects that are \$200,000 or less;
- Reduced number of formal bids based on project size; and
- Expedited contracting for projects under \$200,000.

Many participating agencies appreciate the program because it has given them more leeway in the execution of public works projects under a certain dollar amount; sped up the award process; expedited project delivery; reduced the time, effort, and expense associated with bidding projects under \$200,000; and simplified administration for those projects. Few agencies have experienced challenges with the accounting requirements and overhead provisions. Moreover, adjustments, when required, have been relatively simple; most required procedures were already in place, so there were few, if any, major changes to existing operations. The current Standard Accounting Codes Structure satisfies reporting requirements when used properly.

4. Is the Uniform Public Construction Cost Accounting Act mandatory for public agencies?

No. The Act is a voluntary program requiring a public agency to “opt in” using the process outlined in the Act.

5. How does a public agency become subject to the Act?

The governing body must elect by resolution to become subject to the Act and must file a copy of the approved resolution with the State Controller’s Office (Section 22030). Sample documents are available at: http://www.sco.ca.gov/ard_cuccac.html. Once an agency has opted into the Act, it will remain a part of the program.

6. May a public agency withdraw from the Act?

Yes. An agency may withdraw from the Act by filing with the State Controller's Office an approved resolution of the agency's election to withdraw that was made during a public meeting of the agency's governing body.

7. Must a participating agency "opt in" to the Act annually?

No. Once a participating agency "opts in" to the Act, the agency remains subject to the Act until it "opts out" of the Act.

8. What is the California Uniform Construction Cost Accounting Commission?

The Commission was created to administer the Act, per Section 22010. It consists of 14 members: 13 members appointed by the State Controller and the License "A" member of the Contractors' State License Board. Seven members represent the public sector (counties, cities, school districts, and special districts). Six members represent the private sector (public works contractors and unions). The Commission members receive no salary, but are eligible for reimbursement of their direct expenses related to the Commission.

9. What are the Uniform Public Construction Cost Accounting Procedures? These procedures are to be used for tracking costs for work performed by an

Agency's own forces on a "project" as defined by the Act (Section 22002(c)). The procedures do not apply to operations or maintenance work, or any work that meets the criteria listed in Section 22002(d).

These procedures are intended to capture and record all direct and indirect labor, materials, equipment, subcontractors, and supervision costs, as well as the appropriate overhead costs for the public agency associated with each

"project" it performs with its own forces. The procedures follow industry- standard accounting methods, and in many cases are not much different from those already in place at most agencies. Sample forms are available in the CUCCAC Cost Accounting Policies and Procedures Manual at http://www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf

School districts may use the Standard Accounting Code Structure to comply with tracking requirements.

10. Are the cost accounting procedures applicable for agencies whose work forces perform only maintenance tasks as defined in the Act and that contract all of their public projects to third parties?

No. The cost accounting procedures are applicable only for agencies that perform public project work such as construction and alteration by force account or otherwise. As maintenance does not constitute a "project" under the Act, the cost accounting procedures do not apply.

11. When are participating agencies required to advertise if they choose to maintain a list of qualified contractors?

At least once per calendar year, each Public Agency that has elected to become subject to the Act and intends to use the notice provisions outlined in Section 22034(a) must establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing written notice to all construction trade journals designated for that Agency under Section 22036. The notice must invite all licensed contractors to submit the name of their firms to the Agency for inclusion on the Agency's list of qualified bidders for the following twelve (12) months. Effective January 1, 2016, a participating agency can choose a specific date of their choice in which to renew its list of qualified contractors.

12. May an agency that chooses to maintain a list add a contractor to the list at any time during the year?

Yes.

13. What is meant by the term “qualified contractors” as used in section 22034(a)(1) of the Act?

Qualified contractors are contractors licensed by the State to perform the subject work. The Commission has determined that nothing in the Act prohibits a participating agency from using additional objective pre-qualification standards in the formation and maintenance of their Qualified Contractors Lists if they so desire.

14. Can a public agency disqualify or exclude certain contractors from the Qualified Contractors List required in Section 22034(a)(1)?

Agencies may disqualify contractors from Qualified Contractors Lists when the contractors fail to furnish information to meet the minimum criteria as established by the Commission.

15. For agencies that do not maintain an informal bidders list, are they allowed to choose who would get notifications of projects?

No. Section 22034(a)(2) provides for notifications to construction trade journals and exchanges in lieu of sending notifications to contractors on an informal bidders list. An agency may send notices to selected contractors provided it has also met the advertisement requirements of Section 22034(a).

16. What is the difference between “qualifying contractors” under the Act and “prequalification of contractors” by school districts under Section 20101?

Qualifying contractors is a process that allows contractors to register with a public agency for notification of public works opportunities. The prequalification process under Section 20101 is a more complex process that requires a standardized questionnaire and evaluation of contractors using standard scoring criteria. The prequalification process is applicable under the Local Agency Public Construction Act, and does not apply to the Uniform Public Construction Cost Accounting Act.

17. Must a public agency a) notify contractors about public projects if the contractors are believed to not have the skills, credentials, or experience to perform the work required for the public project; and b) consider bids submitted by contractors that the public agency believes do not have the skills, credentials, or experience to perform the work?

a) Yes. If a contractor is on the Qualified Contractors List, the contractor must be notified by the agency of public projects for which he or she is licensed to perform (Section 22034(a)(1)).

b) All bids received must be considered, unless an agency makes appropriate legal findings that a contractor is not legally responsible or his or her bid is not responsive.

18. Does the Act allow flexibility in cases of emergency and when repair or replacements are necessary to permit the continued conduct of a public agency’s operations or services?

Yes. For the purposes of the Public Contract Code, an “emergency” is defined at Section 1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

The Act sets forth in Section 22035(a) how a governing body should proceed in case of emergency repairs or replacements. This section states:

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. Section 22050 et seq., provides the emergency contract procedures to be followed in these cases.

19. Do the alternative bidding procedures apply only to public projects as defined in Section 22002(c)?

The alternative bidding procedures apply only to work that constitutes a “public project” as defined in Section 22002(c) and has a construction cost within the limits described in Section 22032. The alternative bidding procedures are not required for the purchase of goods or materials that are not part of a “public project.”

However, as outlined in Section 22003, a participating agency may also use the alternative bidding procedures when contracting for maintenance or other work that does not fall within the definition of a “public project” if it so chooses.

20. What will membership in the Act cost my agency?

Nothing. There are no membership fees or dues. However, the Commission does accept grants to assist it in carrying out its duties (Section 22015(c)).

21. What are the most common concerns addressed by the Act? These are:

- Cost accounting policies and procedures;
- Informal bidding procedures; and
- Accounting procedures review.

Cost accounting requirements for the Act follow those common to the construction industry. The informal bidding on public projects up to \$200,000 is seen by agencies as an effective tool to expedite completion of small projects. While an accounting procedures review could potentially hold up a project for a minimum of 45 days pursuant to Section 22043(c)(1), these types of reviews have been rare in the Commission’s history.

22. Must an agency calculate an overhead rate to apply the accounting procedures?

No. Cities with populations of less than 75,000 must assume an overhead rate equal to 20% of the total costs of the public project, including the costs of material, equipment, and labor (Section 22017(b)(1)). Cities with a population of more than 75,000 may either calculate an actual overhead rate or assume an overhead rate of 30% of the total costs of a public project including the costs of materials, equipment, and labor (Section 22017(b)(2)).

23. When a public entity opts into the Act, does the Act supersede other contracting legal requirements such as statutory requirements for performance bonds, prevailing wages, and certificates of insurance, etc.?

No. The Act supersedes only the bidding procedures used once a public agency has opted into the Act and has notified the Controller. All other contracting requirements of the PCC remain applicable.

24. Can a public agency claim to be exempt from following all of the requirements in Public Contract Code by claiming it only has to follow the language and procedures within the Act?

No. The Act is part of the Public Contract Code; therefore, if the Act is silent on a particular matter, then the Public Contract Code applies on that matter.

25. If public agencies are not following the advertising requirements in the Act, will the Commission address those agencies? Can a complaint be brought to the Commission?

Yes. Recent legislative changes have expanded the Commission’s authority to enforce provisions of the Act. The Commission may review complaints filed by interested parties when evidence is provided that:

- The participating agency performed work after rejecting all bids, claiming it could do the work less expensively (Section 22042(a)).
- The work performed exceeded the force account limits (Section 22042(b)).
- The work was improperly classified as maintenance (Section 22042(c)).

- A public agency did not comply with the informal bidding procedures set forth at Section 22034 (Section 22042.5).

26. Section 20112 specifically requires school districts to advertise twice for a two- week period, while Section 22037 requires advertising once, 14 days in advance of the date of opening of bids. How do participating school districts reconcile this conflict?

When the Act is in conflict with any other section in the Public Contract Code, the Act shall supersede. The Act requires advertising once, 14 days in advance of the date of opening of bids. Districts participating in the Act may choose to maximize their outreach by advertising twice.

27. May a public agency contract separately for like work at the same site at the same time using the under \$60,000 Force Account method?

No. Section 22033 states:

It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

Separating “like work” would be permitted only if the total of all the “like work” is less than \$60,000. If the work is more than \$60,000, it must be advertised and bid according to the provisions of the Act (i.e. bid informally if the total amount is less than \$200,000; bid formally if the total amount exceeds \$200,000).

28. May a public agency bid out two separate projects that occur at the same time and site, but are different types of work?

Yes. There is no violation if the work is competitively bid. If an agency wishes to use the negotiated or informal bidding processes, it must apply the appropriate limits to each of the projects. Each project must be separate in scope. Projects may not be separated by trade to avoid bidding. If the total of all jobs is greater than \$60,000 then the informal or formal bid limits apply.

29. Can an agency separately bid out for the materials and supplies on a project to avoid contractor markup and then bid out for the installation labor or perform installation with its own forces?

An agency may separately procure the materials and supplies for a project; however, all costs (materials, supplies, labor) of a project must be included in the project cost estimate to determine whether the project falls within the force account, informal bid, or formal bid thresholds.

In addition, if installation is performed by force account, an overhead rate must be applied to all direct costs of the project and included in the cost estimate. For example, if materials/supplies cost \$50,000 to procure separately and the estimated labor cost to install is \$25,000, the project could not be performed with force account, but would fall within the informal bid threshold because the total cost estimate is \$75,000.

30. Must a value be assigned to the volunteer labor when the California Conservation Corps or another volunteer organization provides labor on a public project?

No. Volunteer labor from volunteer organizations does not need to be included as a cost of a public project for bid limit purposes as long as no costs are associated with the volunteer labor.

31. By opting into the Act, does a public agency automatically bring all of its component divisions or departments into the Act?

Yes. When a public agency elects to become subject to the uniform construction cost accounting procedures, the entire legal entity is considered subject to the Act and no divisions or departments are exempt.

32. When a public agency opts into the Act, does it automatically bring all districts under control of its governing Board into the Act?

No. Special Districts, which are governed by a board of supervisors or city council, are subject only if a separate election is made for each special district.

33. PCC 22034 requires that participating agencies adopt an Informal Bidding Ordinance. What do schools and special districts that cannot adopt Ordinances do to comply?

Agencies that do not have the ability to adopt Ordinances should discuss Section 22034 compliance with their legal counsel.

Additional inquiries and questions may be directed by email to LocalGovPolicy@sco.ca.gov, or by regular mail to:

State Controller's Office

Local Government Programs and Services Division Local
Government Policy Section

P.O. Box 942850 Sacramento, CA
94250

COMPARISON CHART			
CUPCCAA		NON-CUPCCAA	
Bid Limits:		Bid Limits:	
Force Account	\$60,000	Formal	\$15,000
Informal ¹	\$60,001		
Formal			
Bid Requirements:		Bid Requirements:	
Force Account	None / District Policy	Informal	None / District Policy
Informal	Notification of Contractors within a trade or Journals or both. 10-day minimum bid period. Sealed Bid		
Formal:	Advertisement in a newspaper of general circulation one time not less than 14 days prior to bid opening Sealed Bid	Formal	Advertisement once a week for two weeks in a newspaper of general circulation with not less than five days in between. Sealed Bid
Board Approval:		Board Approval:	
Up to \$60,000	Ratification under Delegation of Authority or Approval	Up to \$15,000	Ratification under Delegation of Authority or Approval
\$60,001 - \$200,000	Ratification under Delegation of Authority or Approval	>\$15,000	Board Approval
>\$200,000	Board Approval		
Accounting	Tracking of all costs for work done by force account.	Accounting	Standard accounting for projects.
Payment Bond	All projects exceeding \$25,000	Payment Bond	All projects exceeding \$25,000
DSA Compliance	As required by DSA	DSA Compliance	As required by DSA
SB 854 / SB 96 DIR Registration	\$25,000 Public Works \$15,000 Maintenance	SB 854 / SB 96 DIR Registration	\$25,000 Public Works \$15,000 Maintenance
Change Orders:			
Force Account	Costs cannot exceed \$60,000.	Informal	Costs may not exceed \$15,000
Informal	10% of original contract amount		
Formal	10% of original contract amount	Formal	10% of original contract amount

CONTRACTING PROCEDURES FOR PUBLIC WORKS

Standard Bid Limits:

Public Works: \$15,000
Services & Equipment: \$96,700 (as of January 1, 2021) - Adjusted annually.

Bid Limits Pursuant to CUPCCAA (if you choose to opt in to the Act):

Informal Quotes: \$60,000 (**set threshold when quoting is required**)
Informal Bids: \$60,001 - \$200,000. Requires notification to registered vendors OR plan rooms and sealed bids.
Formal Bid \$200,001 and up. (Contracts may be awarded for up to \$212,500 when all bids received exceed \$200,000 and re-bidding is not feasible.)

Steps to Contracting

1. Identify project (is it public works, maintenance, or services)
2. Identify budget (site funds, donations, district funds)
3. Contact _____ to initial bidding and contracting process

Project: Known work at a site that would logically be grouped together, e.g. electrical wiring at a school site encompassing various buildings. In most cases like work would be an indication of logical project grouping, but not always. For example, electrical wiring for temporary housing and electrical wiring for permanent structures might qualify as two projects. Scope needs to be reviewed on a case-by-case basis to determine whether grouping should be required to comply with Public Contract Code.

Public Contract Code 20116 states that 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 total cost of construction (project) includes owner furnished equipment and installation.

Legal Requirements for Contracts:

All contracts for construction above \$1,000 are subject to prevailing wages.

Effective July 1, 2017, public works projects of \$25,000 or less and maintenance project of \$15,000 or less are exempt from the DIR registration and electronic certified payroll reporting requirements.

Public works projects above \$200,000 require a formal bid. Bid must be advertised for a period of two weeks with no less than five days in between advertisements. Plan Rooms OR Contractors on the bidder's list must receive a 15-day Notice of the bid opportunity.

Public works projects above \$25,000 require a Payment Bond.

All public works projects, especially those over \$60,000 **should** have a performance bond.

Public works contract documents should include:

- Notice to Proceed (**issued after award, execution of contract and receipt of all documents**)
- Notice of Award (may be issued prior to Notice to Proceed – usually formal bids only)
- Bid Bond for Sealed Bids (Required for formal bids, may be requested for informal bids.)
- Non-collusion Declaration (Required on bids for public works projects)

Certificate of Insurance (Assess risk to determine amount of insurance)
Certificate of Workers' Compensation
List of Subcontractors (if applicable)
Fingerprinting Certification
Drug & Tobacco Free Certification
Asbestos Certification
Lobbying Certification (Projects over \$1 million)
DVBE Documentation (contracts above \$10,000 that are funded out of SFB funds.)

Note: Federally funded projects including child nutrition program funds may require additional certifications

Important Information:

Project limits are cumulative: e.g., if installing prefabricated equipment requiring site preparation, both the site prep and the equipment install should be added together. If the total exceeds \$60K the project should be bid using informal or formal bidding procedures OR each component should be bid separately.

The bid limit for supplies or equipment is cumulative on a contract basis and currently stands at **\$96,700**. The limit is adjusted annually for inflation. Furniture or equipment that is like in nature (e.g. science equipment) must either be bid or the District must piggyback on another public agency's bid to purchase the equipment. Purchases of equipment in which there is installation labor involved that is more than incidental in nature must be bid as public works and the construction bid limits would then apply. The statewide standard for incidental installation is 10%.

Change orders:

Under \$60K Contracts: Changes may be made to a contract but in no instance, may a change order cause the contract to exceed the \$60,000.

Informal and Formal Bids: Change orders are limited to 10% of the **original** contract amount. (PCC 20118.4)

DIR Regulations:

Public Works: Contracts greater than \$25,000

Maintenance: Contracts greater than \$15,000

All bid solicitations, quotes, contracts and purchase orders for public works projects as defined in Labor Code 1720, shall reference the requirements of SB 854 (2014) as follows:

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- [To be determined]: The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

NOTICE OF COMPLETION & RETENTION PROCEDURES

Notice of Completion: The Notice of Completion may coincide with the release of retention, but its sole purpose is to trigger the period for filing Stop Payment Notices. There is no legal requirement to file a Notice of Completion; however, many legal counsels recommend the practice. Check with yours.

Civil Code 8182 stipulates that a "Notice of Completion" means a written notice, signed and verified by the owner or his agent, containing all of the following:

- (1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 8186, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract.
- (2) If signed by the owner's successor in interest, the name and address of the successor's transferor.
- (3) The nature of the interest or estate of the owner.
- (4) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.
- (5) A notice of completion that does not comply with the provisions of this section is not effective.

The notice of completion shall be recorded in the office of the county recorder of the county in which the site is located, **within 15 days after such completion**. A notice of completion in otherwise proper form, verified and containing the information required by this section shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.

A stop payment notice is not effective unless given before the expiration of whichever of the following time periods is applicable: (a) If a notice of completion, acceptance, or cessation is recorded, 30 days after that recordation. (b) If a notice of completion, acceptance, or cessation is not recorded, 90 days after cessation or completion. (CC 9356)

Release of Retention: Public Contract Code 7107 stipulates that within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

Definition of Completion:

- (1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
- (2) The acceptance by the public agency, or its agent, of the work of improvement.
- (3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.
- (4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

In the event that retention payments are not made within the time periods required by this section, the public entity withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(The above is an excerpt of PCC 7107)

Completion of a work of improvement occurs at the earliest of the following times: (a) Acceptance of the work of improvement by the public entity. (b) Cessation of labor on the work of improvement for a continuous period of 60 days. This subdivision does not apply to a contract awarded under the State Contract Act, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. (CC 9200).

Note: As noted above, the Notice of Completion is unrelated to the release of retention and holding retention until a NOC is recorded may cause the district to exceed the 60 day prompt payment period.

STOP PAYMENT NOTICE PROCEDURE

BACKGROUND INFORMATION

The first step in the STOP PAYMENT NOTICE process is the filing of a PRELIMINARY NOTICE. This notice must be filed by certain subcontractors or laborers on a project. Any time a PRELIMINARY NOTICE is received, it should be forwarded immediately to the _____ for their control file.

A preliminary notice is a legal document which must be served by most subcontractors and material suppliers and, in certain cases, by direct contractors, in order to serve a stop payment notice, or make a payment bond claim. Failure to serve a preliminary notice may invalidate your right to pursue these statutory payment remedies. The preliminary covers the period from 20 days prior to the notice to completion of the work. (CC 9300)

A record of the date on which a particular subcontractor begins work or delivery of materials should be kept. Documentation of when a subcontractor begins work will help determine the enforceability of a STOP PAYMENT NOTICE.

STOP PAYMENT NOTICE

On a public construction project, a subcontractor, supplier, laborer, or laborer's trust fund that is not paid by the general contractor or subcontractor may file a document called a STOP PAYMENT NOTICE with the public entity.

Pursuant to Civil Code 9358. (a) The public entity shall, on receipt of a stop payment notice, withhold from the direct contractor sufficient funds due or to become due to the direct contractor to pay the claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. (b) The public entity may satisfy its duty under this section by refusing to release funds held in escrow under Section 10263 or 22300 of the Public Contract Code.

It is important that the District handle a STOP PAYMENT NOTICE correctly. If a valid STOP PAYMENT NOTICE is received, and the money is not withheld, the District may have to pay twice -- once to the contractor and once to whoever filed the STOP PAYMENT NOTICE. If the money is withheld when it should not be, the District may violate its contract with the contractor and be liable for damages.

RECEIPT OF STOP PAYMENT NOTICE

When a District employee receives a STOP PAYMENT NOTICE, the department having received the notice should immediately send a copy to the _____ for validation and send the original to the _____. Any pertinent documentation, such as PRELIMINARY NOTICES, discussed above should be sent to the _____ with the notice.

If the STOP PAYMENT NOTICE is valid, the _____ shall inform the Project Manager, the subcontractor and the contractor, in writing, of the receipt of the STOP PAYMENT NOTICE. A copy of the correspondence will be sent to _____ and the _____.

If a subcontractor pays Ten Dollars (\$10.00) to the District prior to completion of the project, the _____ shall give the filer written notice of the filing of a NOTICE OF

COMPLETION on the project within ten (10) days of the filing of a NOTICE OF COMPLETION by the District.

NOTICE OF COMPLETION shall be filed and recorded with the County within fifteen (15) days of project completion or acceptance. Civil Code 9204.

WITHHOLDING OF FUNDS

Upon receipt of a STOP PAYMENT NOTICE, the total amount withheld in conjunction with the STOP PAYMENT NOTICE should be the amount of the claim plus additional funds sufficient to pay legal fees and interest on the claim. As a general rule, One Hundred Twenty-Five percent (125%) of the claim is appropriate. Amounts withheld pursuant to a STOP PAYMENT NOTICE shall be in addition to any retention withheld from the contractor pursuant to the terms of payment contained in the District's contract with the contractor.

SCHOOL

DISTRICT

**BID & CONTRACT DOCUMENTS
INFORMAL BID PURSUANT TO CUPCCAA**

[PROJECT NAME]

These documents were drafted as an INFORMAL BID template for CUPCCAA districts and have not been reviewed by legal counsel. Please send to your legal counsel for review prior to using this template.

**NOTICE TO BIDDERS – INFORMAL PROJECT
PURSUANT TO PUBLIC CONTRACT CODE 22000 ET SEQ.
(CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT)**

NOTICE IS HEREBY GIVEN that the _____ School District of _____ County, California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT will receive up to, but not later than **00:00:00 p.m. on the [DATE]**, sealed bids for the award of a contract for:

Bid No. [BID NAME]

Any bid received by the District after the Bid Deadline shall be returned to the bidder unopened.

PLACE FOR SUBMITTING BIDS: Bids shall be received in the Office of the _____ at [ADDRESS], _____, CA _____, [PHONE NUMBER] and shall be opened and publicly read aloud at the above state time and place. Any bids received after the time specified above or after any extensions due to material changes shall be returned unopened.

OBTAINING OFFICIAL BID DOCUMENTS: Bid documents are available from the _____ School District Website at [WEB ADDRESS] or at [ADDRESS], contact [PHONE NUMBER] with any questions regarding availability of bid documents.

REQUIREMENTS FOR BID: Bids must be submitted on the Bid Form provided by the District and included in the bid documents. Each bid must strictly conform with and be responsive to this Notice Inviting Bids and other Contract Documents.

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

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

Bid No. Contractor's License Requirement:

MANDATORY PRE-BID CONFERENCE AND SITE VISIT: The District will conduct a pre-bid conferences and site visits on **[DATE AND TIME]** for the purpose of acquainting all prospective bidders with the bid documents and the work site. Attendance is mandatory, and any bidder that does not attend the entire pre-bid conference will be disqualified from bidding on the Project. The pre-bid conference(s) will be at _____, located at [ADDRESS].

PERFORMANCE AND PAYMENT BONDS: The successful bidder will be required to provide both a performance bond and a separate payment 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 all bonds must be issued by a California-admitted surety as defined in California Code of Civil Procedure Section 995.120.

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

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

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

The contract will be awarded to the lowest responsive, responsible bidder based on the specifications noted in the bid. The _____ School District reserves the right to reject any or all bids, to accept or reject any one or more items of a bid or to waive any irregularities or informalities in the bids or in the bidding.

No bidder may withdraw his bid for a period of sixty (60) days after the date set for the opening of bids. In the event of identical bids, the Governing Board may determine by lot which bid shall be accepted per Public Contract Code 20117.

Clerk of the Governing Board
_____ School District

BID FORM

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

Bid No. **[BID NAME]**

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

BASE BID:

_____ Dollars and _____ Cents. (\$_____).

Said sums includes all applicable taxes and costs.

1. It is understood that the District reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.
2. The following forms are to be submitted with the bid. Failure to submit these forms may render the bid non-responsive:

- Bid Form
- Non-Collusion Declaration
- List of Subcontractors Form
- Bid Bond or Bid Guarantee Form

4. It is understood and agreed that if written notice of the acceptance of this bid is mailed, emailed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District the Contract attached hereto in accordance with the bid as accepted. The undersigned will also furnish and deliver to the District an executed Contractor, the Performance Bond and Payment Bond for Public Works as specified, and any other required documents all within **five (5) business days after Notice of Intent to Award**. The work under the Contract shall be commenced by the undersigned bidder, if awarded the Contract, on the date to be stated in the District's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents.
5. Bidder certifies that he is licensed in accordance with the law providing for the registration of Contractors, License No. _____, Expiration Date _____, class of license _____, DIR Registration No. _____.

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

Executed on this _____ day of _____, 20__ at _____ County, California.

Proper Name of Bidder _____

By _____

Signature of Bidder

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

Business Address: _____

Place of Residence: _____

Telephone: () _____

Facsimile: () _____

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ [Title] of _____ [Name of Company],
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 bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, 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: _____

LIST OF SUBCONTRACTORS FORM

In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.,) and any amendments thereof, each Bidder shall set forth below: (a) The name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the Contractor, who will perform work or labor or work or improvement to be performed under this Contract, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvements according to detailed Drawings contained in the Plans and Specifications in an amount in excess of one-half of one percent of the Contractor's total bid; and (b) the portion and description of the work which will be done by each subcontractor under this Act. The Contractor shall list only one subcontractor for each such portion as is defined by the Contractor in this bid. All subcontractors shall be properly licensed by the California State Licensing Board.

If a Contractor fails to specify a subcontractor, or if a Contractor specifies more than one subcontractor for the same portion of work to be performed under the Contract in excess of one-half of one percent of the Contractor's total bid, the Contractor shall be deemed to have agreed that the Contractor is fully qualified to perform that portion, and that the Contractor alone shall perform that portion of the work.

No Contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow the relevant portion of the work to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the Contractor's total bid where the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act.

Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the Contractor's total bid where no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record, of the authority awarding this Contract setting forth the facts constituting the emergency or necessity.

All subcontractors (of any tier) performing any portion of the work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.

NOTE: If alternate bids are called for and bidder intends to use different or additional subcontractors on the alternates, a separate list of subcontractors must be provided for each such Alternate.

LIST OF SUBCONTRACTORS FORM

Scope of Work	Name of Subcontractor	Location & Place of Business	License Type and Number	DIR Registration Number*	<i>E-Mail & Telephone*</i>

Proper Name of Bidder: _____

Date: _____

Name: _____

Signature of Bidder Representative: _____

BID BOND FORM

KNOW ALL MEN BY THESE PRESENT that we, the undersigned, (hereafter called "Principal"), and _____ (hereafter called "Surety"), are hereby held and firmly bound unto the _____ School District (hereafter called "District") in the sum of _____ (\$ _____) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors, and assigns.

SIGNED this _____ day of _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to the District a certain Bid, attached hereto and hereby made a part hereof, to enter into a Contract in writing for the construction of:

_____.

NOW, THEREFORE,

- a. If said Bid is rejected, or
- b. If said Bid is accepted and the Principal executes and delivers a Contract or the attached Agreement form within five (5) calendar days after the date of the Notice of Intent to Award (properly completed in accordance with said Bid), and furnishes bonds for his faithful performance of said Contract and for payment of all persons performing labor or furnishing materials in connection therewith,

Then this obligation shall be void; otherwise, the same shall remain in 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, or the call for bids, or the work to be performed thereunder, or the specifications accompanying the same, shall in anyway affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of said Contract, or the call for bids, or the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including without limitation, attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, on the day and year first set forth above.

(Corporate Seal)

By _____
Principal's Signature

Typed or Printed Name

Principal's Title

(Corporate Seal)

By _____
Surety's Signature

Typed or Printed Name

Title

(Attached Attorney in Fact Certificate)

Surety's Name

Surety's Address

Surety's Phone Number

BID GUARANTEE FORM
(Use only when not using a Bid Bond)

Accompanying this proposal is a cashier's check payable to the order of the _____ School District or a certified check payable to the order of the Colton Joint Unified School District in an amount equal to ten percent (10%) of the base bid and alternates (\$_____).

The proceeds of this check shall become the property of said District, if, this proposal shall be accepted by the District through the District's Governing Board, and the undersigned fails to execute a Contract with and furnish the sureties required by the District within the required time; otherwise, said check is to be returned to the undersigned.

Bidder

FORM CONSTRUCTION CONTRACT

This CONTRACT made and entered into this ___ day of _____, 2015, by and between _____ **SCHOOL DISTRICT**, sometimes hereinafter called "District," and [**TO BE INSERTED**], hereinafter referred to as "Contractor." District and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

WITNESSETH: That the Parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. Contract Documents. The complete Contract includes all the Contract Documents, to wit:

Notice to Bidders
Non-Collusion Declaration
List of Subcontractors Form
Bid Bond or Bid Guarantee Form
Form Construction Contract
Exhibit "A"- Scope of Work dated _____
Exhibit "B"- Schedule of Charges
Payment Bond
Performance Bond
Contractor's Certificate Regarding Background Checks
Certificate(s) of Insurance and Endorsements
All official papers and documents issued to bidders relating to the work to be performed hereunder which are not included in Exhibit "A" (i.e., technical drawings, etc.)

2. Scope of Work. Contractor agrees to perform the work and to furnish all tools, equipment, apparatus, facilities, labor and material necessary to perform and complete in a good workmanlike manner, all parts of the work as called for in a manner designated in and in strict conformance with the scope of work set forth in Exhibit "A," attached hereto and incorporated herein ("Scope of Work") and the Contract Documents. It is understood and agreed that said tools, equipment, apparatus, facilities, labor and material shall be furnished and said work performed and completed as required in said Scope of Work under the direction and supervision of, and subject to the approval of the District's authorized representative. Contractor's Work shall also be consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the District to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the District, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work. Any conflicts, discrepancies or ambiguities between this Contract and Exhibit "A" or Exhibit "B" attached hereto shall be interpreted in favor of and governed by this Contract.

3. Compensation. As consideration for performance of the Work required herein, District agrees to pay Contractor on a time and materials basis as set forth herein, a not-to-exceed amount of **[WRITTEN AMOUNT TO BE INSERTED]** (\$ _____) (“Total Contract Price”) provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the District.
 - A. Subject to paragraph 3(B) below, the District shall pay for such services on a time and materials basis in accordance with the Schedule of Charges set forth in Exhibit "B."
 - B. Periodic payments shall be made by the District to Contractor within thirty (30) days of District's receipt of an approved application for payment from Contractor for services rendered. Payments to Contractor for work performed will be made on a monthly billing basis. The application shall include all information required by the District and shall be in a format approved by the District. This application shall be supported by evidence which is required by this Contract and such other documentation as the District may require. The Contractor shall certify that the Work for which payment is requested has been done and that any materials listed are stored where indicated. District shall review and pay the payment request in accordance with the provisions set forth in the Contract Documents.
 - C. Labor and Material Releases. Contractor shall furnish District with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by District.
4. Retention. For Contracts greater than Five Thousand dollars (\$5,000), Public Contract Code section 9203 requires progress payments and retention based on the percentage of actual work completed plus a like percentage of the value of material delivered and unused. Therefore, District will withhold as retention five percent (5%) of all billings and the Total Contract Price until final completion for projects exceeding \$5,000 and acceptance of the project. District, at its sole discretion, shall release retention proceeds withheld from any payment within sixty (60) days after the date of “completion” of the work as defined in the Public Contract Code section 7107. If a dispute arises between the Contractor and District, District may withhold an amount from the final payment not to exceed one hundred and fifty percent (150%) of the disputed amount, as well as any other amounts permissible under this Agreement and/or California law.
5. Other Retentions. In addition to Contract retentions, the District may deduct from each progress payment an amount necessary to protect District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor’s obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the District to deduct any of

these sums from a progress payment shall not constitute a waiver of the District's right to such sums.

6. Substitution of Securities. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by District to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the District, with the State or federally chartered bank as the escrow agent, who shall return such securities to the Contractor upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the District, which provides that no portion of the securities shall be paid to the Contractor until the District has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. District shall certify that the Contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under this section shall be limited to those listed in Section 16430 of the Government Code, bank or savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by the Contractor.
7. Time for Completion/Liquidated Damages. Contractor shall complete the Project within [INSERT # OF DAYS] calendar days from receipt of the Notice to Proceed. If the Work is not completed and usable by the District, it is understood that the District will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine 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 of \$ N/A for each and every calendar day of delay beyond the time prescribed in the Agreement for completing the Work. In the event this is not paid, the Contractor agrees that the District may deduct that amount from any money due or that may become due the Contractor under the Contract.

Insurance. Without limiting Contractor's indemnification, it is agreed that Contractor shall secure and maintain in force during the term of this Contract a Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:

Review risk before setting limits of liability

- | | |
|---|----------------|
| 1) Per occurrence (combined single limit) | \$2,000,000.00 |
| 2) Project Specific Aggregate (for this project only) | \$3,000,000.00 |
| 3) Products/Completed Operations (included in Comm. Gen. Liability) | |

The District shall be named as an additional insured on the policies by endorsements. The policy shall provide that it is primary, such that insurance maintained by the District, if any, shall be excess and not co-primary. A copy of the declarations page of Contractor's insurance policies and required additional insured endorsement shall be attached to this Contract as proof of insurance. Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the District's prior written consent, and, the District shall be named as an additional insured and be furnished thirty (30) days' written notice prior to cancellation. The Contractor shall not allow any subcontractor employee or agent to commence work on this Contract, or any subcontract until the insurance required of the Contractor and subcontractor or agent has been obtained.

9. Hold Harmless for Payroll Issues. Contractor hereby agrees to accept exclusive liability for, and shall hold District, District's officers, directors, employees and agents harmless from, all payroll

taxes for contributions to unemployment insurance or old age pensions, or annuities, measured by wages, salaries or other remuneration paid to employees of said Contractor or subcontractors.

10. Subcontractors. Contractor shall use due diligence in the requirement and confirmation of insurance coverage similar to the foregoing on behalf of his subcontractors.
11. Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than **\$1,000,000** per occurrence. This insurance shall name the District, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section.
12. Pursuant to Section 1861 of the Labor Code, by signing this Contract and initialing hereunder the Contractor certifies that:
 - A. I am aware of the provisions of Section 3700 of the Labor Code which requires 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.
 - B. Contractor's Initials: _____
13. Bonds. The Contractor shall be required at the time of the execution of the Contract to furnish Payment and Faithful Performance Bonds in amounts not less than one hundred percent (100%) of the Total Contract Price. These bonds shall be secured from a surety company satisfactory to District, shall be submitted on the District's prescribed bond forms, and the Contractor thereon shall pay the premiums. The bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California. Failure to submit acceptable bonds will be cause of rejection of the Contract. Said bonds shall be furnished within five (5) days after award of the Contract and before commencement of construction.
14. Assignment of Contract. Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract, or of his/her right, title of interest in or to the same or any part thereof without previous consent in writing from District's authorized representative.
15. Termination of Contract.
 - A. Termination for Cause: The District may terminate the Contractor and/or this Contract for the following reasons: persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials; persistently or repeatedly is absent, without excuse, from the job site; fails to make payment to subcontractors, suppliers,

materialmen, etc.; persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; fails to provide a schedule or fails or refuses to update schedules required under the Contract; falls behind on the Project and refuses or fails to undertake a recovery schedule; if the Contractor has been debarred from performing work; becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; Contractor or any of its subcontractors are not properly registered with DIR at all times; or is otherwise in substantial breach of a provision of the Contract Documents. When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District and after giving the Contractor written notice of five (5) days, terminate the Contractor and/or this Contract.

- B. **Payments Withheld:** If the District terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the Project is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor.
 - C. **Payments upon Completion:** If the unpaid balance of the Total Contract Price exceeds costs of completing the Project, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid to the Contractor, or District, as the case may be, shall be certified upon application. This payment obligation shall survive completion of the Contract.
 - D. **Termination for Convenience:** District may terminate the Contract upon five (5) days written notice to the Contractor and use any reasonable method the District deems expedient to complete the Project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or Contractor make it impossible or against the District's interest to complete the Project. In such a case, the Contractor shall have no claims against the District except for: (1) the actual cost for approved labor, materials, and services performed in accordance with the Contract Documents which have not otherwise been previously paid for and which are supported and documented through timesheets, invoices, receipts, or otherwise; and (2) profit and overhead of ten percent (10%) of the approved costs in item (1); and (3) termination cost of five percent (5%) of the approved costs in item (1). Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept.
16. **Subcontracts.** Subcontractors employed by Contractor on the execution of the Work covered in this Contract shall be only those given prior written permission from District, and otherwise comply with Sections 4100 to 4113 inclusive of the Public Contract Code of California, as applicable.
17. **Control and Payment of Subordinates; Contractual Relationship.** District retains Contractor on an independent contractor basis and Contractor is not an employee of District. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations

respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

18. Permits and Licenses. Contractor shall comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of public health and safety, obtaining all necessary permits and licenses for the construction of the project, pay all fees and post all deposits or bonds required by law. For the work to be performed hereunder, Contractor shall possess the following classification of State contractor's license throughout the duration of the Contract: **INSERT CONTRACTOR LICENSE REQUIRED**. During the performance of the work, Contractor shall take over all the necessary precautions and place proper guards for the prevention of accidents.
19. Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for District's review and approval 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 such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
20. Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify District of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by District; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such Contract work. Upon notification, District shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute
21. Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, District shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of District to provide for removal or relocation of such utility facilities.
22. Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify District against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or

regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

23. Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify District in writing and shall furnish all labor and material releases required by this Contract. District shall thereupon inspect the Work. If the Work is not acceptable to the District, the District shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the District. Once the Work is acceptable to District, District shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which District may be authorized or directed by law to retain.
24. Changes in the Scope of Work. In the event District orders changes in the Work, the Total Contract Price and the Contract Time will be adjusted accordingly. If a change is of an item not covered by the Contract, District and Contractor shall mutually agree upon the value of the work based on labor, materials and equipment involved. Regardless of ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. All changes in work shall be in writing and Contractor shall be responsible for any and all work done without District's prior written approval.
25. Brand Name or Equal. Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better for any material, process or article is identified by grade, patent or proprietary name or by name of manufacturer. Contractor bears the burden of proof as to the equality of any material, process or article and District may require Contractor to furnish the material, and article or process specified if it decides that Contractor has not met his or her burden.
26. Discrepancies and Omissions. Any discrepancies or omissions found in the Scope of Work shall be reported to District immediately. District will clarify discrepancies or omissions, in writing, within a reasonable time.
27. Labor Code Provisions. It shall be mandatory upon the Contractor herein and upon all subcontractors under Contractor to comply with all provisions of the Labor Code of the State of California relative to contracts for public works.
 - A. Prevailing Wages. District has copies of the general prevailing wage rate per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract which shall be posted at each job site and will be on file at the principal office of the District. Contractor shall, as a penalty to District, forfeit not more than the maximum applicable statutory rate for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by Contractor or by any subcontractors under Contractor. The difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by Contractor.

- B. Eight Hour Law. Eight hours labor shall constitute a legal day's hours per day, and forty hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to District the maximum statutory rate for each calendar day during which such worker is required, or permitted to work more than eight hours in any one day or forty hours in any one calendar week in violation of the provisions of said Labor Code.
- C. Payroll Records. 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 journey man, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. The Contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to District, forfeit not more than the maximum statutory rate for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner.

Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on the Contractor. In addition, the Contractor shall also comply with all applicable DIR requirements for submission of certified payroll records for prevailing wage enforcement

- D. Ineligible Contractors/Subcontractors/Debarment. A Contractor or subcontractor may not perform work who is ineligible pursuant to Labor Code Sections 1777.1 and 1777.7.
- E. Apprentice. Attention is called to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under Contractor.
- F. Contractor/Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, **if the Project is a public works project in excess of \$25,000 or a maintenance project in excess of \$15,000**, the Contractor and all subcontractors that bid on, are listed in a bid or proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations ("DIR"). No bid/proposal will be accepted nor any contract entered into without proof of the Contractor's and all subcontractors' current registration with the DIR to perform public work. The Contractor shall also, at all times, be

required to ensure compliance with the DIR by all of its subcontractors of all tiers. Contractor shall keep and maintain records documenting the DIR registration information for all such subcontractors and shall make such information available to the District upon request.

28. Assignment of Anti-Trust Claims. Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action as 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 Business and Professions Code), and any other applicable laws, arising from purchase of goods, services, or materials, pursuant to this Contract. This assignment shall become effective at the time that District tenders final payment to Contractor, without further acknowledgment by the Parties.
29. Procedure for Resolving Disputes. In the event of a dispute between the Parties as to performance of Work, Contract interpretation, or payment, the Parties shall resolve the dispute by the procedures set forth in Public Contract Code section 9204 which are hereby incorporated herein by reference. Pending resolution of the dispute, Contractor shall neither rescind the Contract nor stop work on the Project.
30. Notice of Third-Party Claims. Pursuant to Public Contract Code Section 9201, the District shall provide the Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. The District is entitled to recover its reasonable costs incurred in providing such notification.
31. Indemnification. Contractor shall defend, indemnify and hold harmless District, Architect, Construction Manager (if any), Inspector, the State of California and their officers, employees, agents and independent contractors (collectively, "Indemnitees") from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, Indemnitees from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this section.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless Indemnitees from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- A. Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the work called for in this Agreement or the Contract Documents, or (5) any claims of violation of the Americans with Disabilities Act ("ADA"), except for liability resulting from the sole or active negligence, or the willful misconduct of the District.
- B. Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any

person, firm or corporation, including the District, arising out of or in any way connected with work covered by this Contract or the Contract Documents, whether said injury or damage occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.

- C. Any dispute between Contractor and Contractor's subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by Contractor) to pay any subcontractor or materialman of any tier or any other person employed in connection with the work and/or filing of any stop notice or mechanic's lien claims.
- D. Any claims, allegations, penalties, assessments, or liabilities to the extent caused by the Contractor's failure or the failure of any subcontractor of any tier, to fully comply with the DIR registration requirements under Labor Code section 1725.5 at all times during the performance of any Work on the Project and shall reimburse the District for any penalties assessed against the District arising from any failure by the Contractor or any subcontractor of any tier from complying with Labor Code sections 1725.5 and 1771.1. Nothing in this paragraph, however, shall require the Contractor or any subcontractor to be liable to the District or indemnify the District for any penalties caused by the District in accordance with Labor Code section 1773.3 (g).

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Indemnitees, on account of or founded upon any cause, damage, or injury identified in this section and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

- 32. Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the District of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the District in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the District may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the District, regardless of whether or not such warranties and guarantees have been transferred or

assigned to the District by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the District. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the District, the District shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the District for any expenses incurred hereunder upon demand.

- 33. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor 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 employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and life-saving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site
- 34. Applicable Law and Venue. This Contract shall be governed by the laws of the State of California as effective and in force on the date of this Contract. This Contract shall be deemed to have been made in _____, California, regardless of the order of the signatures of the Parties affixed hereto.
- 35. Modifications. No terms or conditions contained in any writing, purchase order, acknowledgment, or form shall be of any effect unless agreed to in a written amendment or modification to this Contract which has been executed by the designated representative of both Parties.
- 36. Waiver. No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver is in writing.
- 37. Notice. All notices shall be given to the other Party at the address set forth herein. 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 by the receiving Party.

Contractor

District

**SCHOOL
DISTRICT**

Attn:

Attn:

38. Drafting of Contract. The Parties agree that this Contract shall not be construed in favor of, or against, any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Contract. The Parties represent that they have consulted legal counsel prior to the execution of this Contract and have executed this Contract with full knowledge of its meaning and effect.
39. Assignment or Delegation. Consultant may not assign or sub-contract its rights or obligations under this Contract without the consent of District, which may be withheld for any reason.
40. Severability. It is intended that each paragraph of this Contract shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Contract is unaffected.
41. Laws and Regulations; Provisions Required by Law Deemed Inserted. Contractor 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 Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If the Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the District in writing. Any necessary changes shall be made by written change order. Each and every provision or clause required by law to be inserted in this Contract shall be deemed to be inserted, and this Contract shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party this Contract shall be amended to make the insertion or correction. All references to statutes, rules or regulations shall include all amendments, replacements and enactments on the subject which are in effect as of the date of this Contract, as well as any later changes which do not materially and substantially alter the rights or obligations of the Parties.
42. Fingerprinting Requirements. Unless exempted, Contractor shall 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 Contractor shall also ensure that its consultants, as well as all subcontractors on the Project, comply with the requirements of Section 45125.1. To this end, the Contractor and its consultants and subcontractors must provide for the completion of the District's standard certification form prior to any of the Contractor's employees, or those of any other consultants, coming into contact with the District's pupils.
43. Drug/Smoke-Free Workplace. The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Contractor be subject to the requirements mandated by California Government Code Sections 8350, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Contractor to police and oversee its personnel on the Project. If the Contractor fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Contract and may pursue all other rights and remedies it may have against the Contractor at law and/or in equity.

44. Compliance With State Storm Water Permit:

- A. Contractor shall be required to comply with all aspects of the State Water Resources Control Board (“State Board”) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (“Permit”), as may be amended, for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.
- B. Contractor shall be responsible for all costs associated with filing the Notice of Intent (“NOI”) and for obtaining coverage under the Permit. This includes preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) for the Project site, and coordinating all submittals with the District’s Legally Responsible Person as that term is defined in the Permit. Before any NOI, SWPPP, or other Permit related document may be submitted to the State Board or implemented on the Project site, it must first be reviewed and approved by the District. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- C. The District retains the right to procure and maintain coverage under the Permit for the Project site if the Contractor fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is satisfactory to the District. Any costs incurred by the District in procuring and maintaining coverage under the Permit, or drafting an NOI or SWPPP shall be paid by the Contractor.
- D. Contractor shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. Contractor shall provide copies of all reports and monitoring information to the District Representative. If the Contractor has failed or is unable to maintain compliance with the Permit, the District reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Permit shall be the District’s sole determination. Any costs incurred by the District in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.
- E. In bidding on this Contract, it shall be Contractor's responsibility to evaluate and include in the contract amount the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to the District, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.
- F. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- G. Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. 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.

- H. Failure to comply with the Permit is a 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.
45. Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same Agreement.
46. Exhibits and Recitals. All Exhibits and Recitals referenced in this Contract and attached hereto are hereby incorporated by this reference into this Contract.
47. Time of Essence. Time is of the essence for each and every provision of this Contract.

IN WITNESS WHEREOF, this Contract is executed by the District's authorized representative.

[TO BE INSERTED]

_____ **SCHOOL**
DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Federal EIN: _____

District will require a Contractor doing business as Sole Proprietorship or Partnership to submit a W-9.

(Caution: Do not transmit documents electronically containing a full SSN unless using encrypted email.)

EXHIBIT "A"
SCOPE OF WORK

EXHIBIT "B"
SCHEDULE OF CHARGES
[INSERT SCHEDULE OF CHARGES]

**PAYMENT BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the _____ School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ (hereinafter referred to as the "Public Work or Project"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code section 9550;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the _____ School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of _____ Dollars (\$_____), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will 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 said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code section 9100; or 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 for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or 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 therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud

practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

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

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State (SEAL)

Commission expires: _____

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

**PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the _____ School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ (hereinafter referred to as the "Public Work or Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

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

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her 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 guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract. Obligee shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

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

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$_____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

_____ certifies that it has performed one of the following:
[Name of Contractor/consultant]

- Pursuant to Education Code section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the _____ School District, pursuant to the contract/purchase order dated _____, and that none have been convicted of serious or violent felonies, as specified in Penal Code sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code section 45125.1, attached hereto as Attachment "A" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

- Pursuant to Education Code section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:
 - 1. The installation of a physical barrier at the worksite to limit contact with pupils.
 - 2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date _____, 20__

[Name of Contractor]

By its: _____

ATTACHMENT A:

(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)

SECTION V
CONSTRUCTION
SERVICES
AGREEMENTS

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**INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES
(INSPECTOR OF RECORD SERVICES)**

This Independent Contractor Agreement for Professional Services ("Agreement") is made and entered into as of the _____ day of _____ by and between the _____ District, ("District") and _____ ("Contractor"), (together, "Parties").

RECITALS

WHEREAS, the District is in the process of renovation, modernization and construction projects as part of the District's [Measure ____ Bond Program, or insert appropriate description];

WHEREAS, the District anticipates design and construction of a work of improvement commonly referred to as [Name of Project] ("Project").

WHEREAS, the District has retained [Name of Architect] ("Architect") to provide certain design and/or construction services in connection with the Project.

WHEREAS, in connection with design and/or construction of the Project, the District desires to obtain certain consulting services for inspection and monitoring ("Project Inspector Services") as more particularly identified in this Agreement.

WHEREAS, Contractor is duly qualified and capable of providing and performing the Project Inspector Services set forth herein; if any portion of the Project Inspector Services require, by the Laws that Contractor or the personnel of Contractor providing such Project Inspector Services be licensed, certified or otherwise approved to provide the Project Inspector Services, Contractor and its personnel providing Project Inspector Services shall be properly licensed, certified or approved at all times while providing such Project Inspector Services.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **Services.** Contractor warrants that it is fully licensed, qualified, and willing to perform said services as required by this Agreement, and is specially trained, experienced, an expert in this field, and competent to perform such services.

By entering into this Agreement the Contractor affirms that it meets the qualifications for an on-site Project Inspector as provided for in the California State Building Code Part 1, Title 24, Section 4-333 of the California Code of Regulations. The Contractor shall have a the appropriate General Inspector classification as required from DSA to perform the duties of, and act as, a general building inspector on school building construction projects or modernization projects of the type and classification of the Project. The Contractor authorizes the District to confirm with DSA the status and history of the Contractor's DSA Certification. Contractor shall provide verbal or written permission to DSA to release information regarding the Contractor's DSA Certification consistent with this Article.

The Services shall be performed on the following project(s)/sites(s) ("Project"):

[Insert Project Name]

2. **Term.** Contractor shall commence providing services under this Agreement on _____ and will diligently perform as required and complete performance by _____ unless this Agreement is terminated and/or otherwise cancelled prior to that time.

3. **Submittal of Documents.** The Contractor shall not commence the Services under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- _____ Signed Agreement
- _____ Workers' Compensation Certification
- _____ Insurance Certificates and Endorsements
- _____ W-9 Form
- _____ DIR Registration Certificate
- _____ Proof of DSA Certification
- _____ Fingerprinting Certification Form

4. **Compensation.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed _____ (**\$_____**). District shall pay Contractor according to the following terms and conditions:

- 4.1. Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
- 4.2. The itemized invoice shall reflect the hours spent by the Contractor in performing its Services pursuant to this Agreement. The Services shall be performed at the hourly billing rates included in **Exhibit "A."**
- 4.3. If Contractor works at more than one site, Contractor shall invoice for each site separately.

5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, except as follows:

5.1. _____.

6. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Agreement.

7. **Materials.** Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

7.1. _____

8. **Performance of Services.**

8.1. **Standard of Care.** Contractor represents that Contractor has the qualifications and

ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

Contractor shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Contractor or its employees may discover. Contractor shall have responsibility for discovery of errors, inconsistencies, or omissions.

- 8.2. **Meetings.** Contractor agrees to attend meetings with the District, other professionals employed by the District and local and regional agencies, as needed, and as directed by the District.
- 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 8.4. **New Project Approval.** Contractor shall not undertake any work or services ostensibly pursuant to this Agreement and the District shall have no obligation to compensate the CONTRACTOR for any such work or services unless authorized in writing by the District.

9. Contractor's Authority.

- 9.1. **Full-Time Contractor under Direction of Architect.** The Contractor shall act as project Contractor on a full-time basis, including off hours, and weekend hours as deemed necessary by the Contractor, the Architect and/or the District. The Contractor shall be under the direction of the Architect and is subject to the supervision of Division of the State Architect ("DSA").
- 9.2. **Execution of Construction Work.** The Contractor shall not direct another contractor in the execution of the Construction Work. The Contractor does not have the authority to stop work on the Project. The Contractor shall have the authority to reject defective materials and to suspend any specific Construction Work that is being improperly performed, subject to the ultimate decision of the Architect and the District. The Contractor will have the authority to approve, disapprove, observe, and report matters pertaining to the Construction Work performed on the Project.
- 9.3. **Conflict of Interest.** The Contractor shall not have a financial or investment interest in any person, contractor, entity, or their employees, agents, or subcontractors with responsibilities for the construction of, design of, or other work or duties related to the Project. The Contractor shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of the any work on the Project. The Contractor shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors. It shall be understood, however, that the Contractor shall make every attempt to remove obstacles preventing the orderly progress of work on the Project.

10. Duties and Responsibilities.

The Contractor shall provide personal, competent, adequate and continuous construction inspections of all aspects of the Construction Work.

- 10.1. The Contractor shall be physically present at each Site at all times necessary for performance of its duties as project Contractor. The Contractor shall have personal knowledge of the Construction Work at all stages. The Contractor shall accompany the

- Architect, the District, the construction manager, or other Contractors when any of them are observing the Construction Work. The Contractor shall be physically present for all concrete work and masonry work
- 10.2. The Contractor shall endeavor to guard the District and the State of California ("State") against apparent defects and deficiencies in the Construction Work and shall act on behalf of the District to see that the Construction Work is executed and completed in accordance with the Contract Documents and applicable laws and regulations.
 - 10.3. The Contractor shall comply with all DSA requirements and complete, sign, and submit all DSA forms as necessary to ensure a proper project closeout.
 - 10.4. The Contractor shall complete and submit all reports to the District, Architect, and DSA as required by Title 24 of the California Code of Regulations and any agency of the state including but not limited to verified reports for the following:
 - 10.4.1. Suspension of work for a period of more than 30 calendar days.
 - 10.4.2. Occupancy of building or any part thereof prior to the completion of the entire project.
 - 10.4.3. Substantial completion allowing for occupancy.
 - 10.4.4. Termination of contract for cause or no cause prior to completion.
 - 10.4.5. Upon request of DSA.
 - 10.5. The Contractor shall obtain a copy of the DSA approved Construction Documents from the Architect prior to the commencement of construction and become familiar with said documents in order to provide competent inspection of all phases of the Construction Work.
 - 10.6. The Contractor shall become familiar with the testing and inspection program and shall monitor the work of the Laboratory of Record and Special Contractors to ensure the testing and special inspection programs are satisfactorily completed.

11. Records, Job File, and Building Codes

- 11.1. **Inspection Records.** The Contractor shall maintain detailed, comprehensive, organized, accessible, and timely documentation of all inspections of the Construction Work ("Inspection Records"). The Inspection Records shall identify all compliant and non-compliant Construction Work. The Inspection Records shall include, without limitation:
 - 11.1.1. Marking a set of Construction Documents as work is completed in accordance with plans and specifications.
 - 11.1.2. Notifications to DSA
 - 11.1.3. Copies of all DSA Forms
 - 11.1.4. Construction Procedure Records
 - 11.1.5. Work deficiencies and resolution
 - 11.1.6. Daily job log of the Contractor's time spent on the Site(s).
- 11.2. **Project File.** The Contractor shall maintain a record of attendance on each project site and shall maintain files of schedules, notes, communications, forms, records, documents, and drawings on behalf of the District in an organized manner as directed by the District. The project file shall be kept in a location on the job site and shall be accessible to the Architect, Construction Manager, and District as applicable.
- 11.3. **Building Codes.** Contractor shall maintain a copy of the Building Codes on site.

12. Communications, Reporting, and Notifications

12.1. **DSA.** The Contractor shall provide DSA 48 hours' notice of commencement of construction work, pouring and/or placement of concrete, completion of foundations, excavations or trenches, and cessation of work lasting more than 30 calendar days.

12.2. **District, Architect, General Contractor and Subcontractor(s).** If, in the course of reviewing the work performed by a general or trade contractor (or approved subcontractor) the Contractor is of the opinion that the work is defective or deficient in any way, as being not in accordance with the plans and specifications or inconsistent with acceptable construction practices, the Contractor must immediately (within 24 hours) notify the general or trade contractor in writing, concurrently notifying the Architect and the District's representative by way of providing written copies of such Defective or Deficient Work correspondence (and relevant back up) to each party.

The Contractor shall inform the District, the Architect, and the construction manager of any ambiguity and/or inconsistencies in the Contract Documents.

12.3. **Contractor Inquiries.** Contractors are expected to document and direct inquiries regarding Construction Document interpretation to the Architect through the Contractor or the Construction Manager (if applicable).

12.4. **Construction Manager.** If applicable to the project, the Contractor shall also work with the construction manager.

13. **Laboratory Testing.** Contractor shall be responsible for coordinating the services of the outside agencies providing testing and special or deputy inspection services. This shall include advance notification or scheduling of upcoming needs to help assure availability to accommodate scheduled construction activities. Specific testing and inspection requests shall be coordinated with the Contractor to help insure that the work is ready to test or inspect when the request is made.

14. **Facilities/Equipment.** The Contractor will be given space and access to a phone and fax in the construction trailer or other space as appropriate near the construction site.

15. **Substitute Contractor and/or Assistant Contractor.** The Contractor shall provide the Services throughout the term of this Agreement, and shall not delegate its duties without the full knowledge and prior written consent of the District. In the event of the Contractor's absence for more than two (2) consecutive calendar days the Contractor shall provide a substitute Contractor equally qualified to complete the inspection services under the scope of work of this Agreement. Substitute contracts shall provide all the certifications as per Article 3.

16. **Other Jobs Outside of the Project.** The Contractor understands shall provide inspection services as required by the scope of the project. The Contractor agrees to be available for inspection until completion of this project and may request uncompensated leave to complete other projects but at no time shall concurrently invoice the District and another project owner.

17. **Accounting Records.** Contractor shall maintain accounting records in accordance with generally accepted accounting principles. The Contractor 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.

17.1. Contractor 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.

17.2. 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. Contractor

shall safeguard the accounting records and supporting documentation.

- 17.3. Contractor 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 Contractor's accounting records audited, at Contractor's expense, by an accountant licensed by the State of California.

18. Termination.

- 18.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be not less than fifteen (15) calendar days prior to effective date of termination. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.

With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. 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. Contractor 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 Contractor'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 Contractor, and the District's maximum liability shall not exceed the amount payable to Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Cause shall include:

- 18.1.1. material violation of this Agreement by the Contractor; or
- 18.1.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
- 18.1.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.
- 18.1.4. Violations: If the Contractor either (1) fails, neglects, or refuses to notify a contractor of any work on the Project that does not comply with the requirements of the DSA-approved documents, or (b) fails, neglects, or refuses to report immediately, in writing, any such violation to the Design Professional, to the District, and to the DSA, such failure, neglect or refusal shall constitute a violation of the Field Act and this Agreement, and shall be cause for DSA to take action and for the District to terminate this Agreement at its discretion.

19. **Indemnification.** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its Governing Board, agents, representatives, officers, Contractors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, its officers, employees, subcontractors, Contractors, or agents. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

20. Insurance.

- 20.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
Professional Liability Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
Workers Compensation	Statutory Limits

20.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

20.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

20.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Contractor's profession.

20.1.4. **Additional Provisions.** The following endorsements must be provided in the policy:

- If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
- The policy must cover personal injury as well as bodily injury.
- Blanket contractual liability must be afforded and the policy must contain cross liability or severability of interest endorsement.
- Broad Form Property Damage Liability must be afforded.
- Products and Completed Operations coverage must be provided.
- The 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 Contractor's insurance to indemnify District in contravention of Insurance Code 11580.04.

- An endorsement shall also state that there shall be a waiver of any subrogation.
- If the Contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Contractor.
- Primary Insurance: For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respect to the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not conflict with it.
- Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- Claims-Made Policies: If any of the required policies provide coverage on a claims-made basis: (a) the retroactive date must be shown and must be before the date of the contract or the beginning of contract work; (b) insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement; and (c) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Agreement.

20.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

20.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

20.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

21. **Assignment.** The Contractor 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.

22. **Compliance with Applicable Laws.** 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. Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. All duties and obligations of the parties created hereunder are performable in _____ 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.

The Contractor certifies that it is aware of the provisions of California Labor Code, the California Code of Regulations, and/or precedential decisions of the California Department of Industrial Relations and/or any of its subsidiary divisions that require the payment of

prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance projects ("Prevailing Wage Laws"). Since the Contractor is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, the Contractor agrees to fully comply with and to require its Contractor(s) and/or Sub-Contractor(s) to fully comply with all applicable Prevailing Wage Laws.

23. Certificates/Permits/Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

24. Department of Industrial Relations Registration.

24.1. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

24.2. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

24.3. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

24.4. [To be determined]: The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

24.5. The Contractor is required to be registered at the Department of Industrial Relations as required by SB 854 for Prevailing Wage Rate Compliance, and qualified to perform public work pursuant to Section 1725.5 of the CA Labor Code.

24.6. The District is required to include Project Inspection on the PWC-100 form.

24.7. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

25. Employment with Public Agency. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

26. Anti-Discrimination. It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Contractor agrees to require like compliance by all of its subcontractor(s).

27. Disabled Veteran Business Enterprises. The District may have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the District for disabled veteran business enterprises ("DVBE"). The Contractor will be notified by the District if DVBE is required on any project and will request submittal of a DVBE packet prior to assignment and commencement of work on said project.

28. Fingerprinting Requirements. Contractor agrees to provide the District with written certification that Contractor has complied with the fingerprinting and criminal background investigation requirements of the California Education Code with respect to all Contractor'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.

29. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

DISTRICT	CONTRACTOR
c/o	c/o
Address	Address
Email:	Email:

Any notice personally given or sent by email or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

30. **Entire Agreement and Modification.** This Agreement constitutes the entire understanding of the parties hereto. Contractor 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. Contractor specifically acknowledges that in entering into and executing this Agreement, Contractor relies solely upon the provisions contained in this Agreement and no others.
31. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
32. **Attorney Fees.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
33. **Enforceability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
34. **Cost Disclosure - Documents and Written Reports.** Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the CONTRACTOR 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 sub agreement numbers and dollar amounts shall be contained in a separate section of such document or written report.
35. **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 this Contract shall be read and enforced as though it were included therein.
36. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

37. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

38. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

39. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

DISTRICT

Signature of Authorized Agent

Typed or Printed Name

Title

Board Approval Date: _____

CONTRACTOR

Signature of Authorized Agent

Typed Name

Social Security or Taxpayer I.D. No.

(Area Code) Telephone Number

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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

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

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

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

Date: _____

Name of Contractor: _____

Signature: _____

Print Name and Title: _____

(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 District prior to performing any Work under this Contract.)

EXHIBIT "A"

Insert Rate Schedule

EXHIBIT "B"

SAMPLE

PROJECT INSPECTOR'S SCOPE OF SERVICES

Agreement

between

_____ School District

and

for

Inspector of Record Services

[Project Name]

The Contractor's Services shall include but not be limited to the following tasks:

A. Provide continuous inspection services to ensure construction compliance with code, plans, specifications and quality control required of public schools in the State of California. Perform all services required of the Division of the State Architect (DSA) Project Inspector and Education Code Section 17309. Issue appropriate notices and notify the District and its representative(s) in writing if work does not conform to the codes, plans, and specifications. If the Contractor fails to immediately correct the deviation, Contractor shall promptly notify the District and its representative(s) in writing of the continued deviation and simultaneously send copies of such notice(s) to the Architect-Engineer and the DSA. Written notice of deviations shall be made utilizing DSA Form 154. The status and resolution of all deviations must be documented on the semi-monthly reports submitted by Contractor.

Continuous inspection services means complete and timely inspections of every part of the construction of the Project, as the work progresses. Contractor must have actual personal knowledge of the continuous construction of the Project, obtained from their personal continuous inspection of the Project during all stages of its progress when work is performed at the Project site. For work performed at locations other than the Project site, the Contractor must have personal knowledge obtained through the reporting of others on the testing or inspection of materials and workmanship for compliance with the plans, specifications, or applicable standards for the Project.

B. Prior to signing off on the Contractor's monthly payment request, Contractor shall conduct a review of the record documents to verify that they have been updated.

C. Maintain liaison with the District, the Architect-Engineer, the District's designated Representative(s) for the Project and all other consultants hired by the District, the Testing Lab, appropriate regulatory agencies and any governing bodies as necessary to maintain Project continuity.

D. Report to the Architect-Engineer and the District in writing all uncertainties in the Contractor's comprehension of the DSA Approved Documents.

E. Under the direction of the Architect-Engineer, monitor the work of any special inspectors and materials testing laboratories to ensure that all materials testing and special inspections required for the Project are satisfactorily completed in accordance with the DSA Approved Documents.

The Contractor shall monitor the following aspects of the "Materials Testing and Special Inspection Program":

1. Identify and report any special inspectors on the Project site that are not DSA-approved;
2. Verify that the materials testing laboratory is included on the "List of DSA Accepted Testing Laboratories" published on the DSA website at <https://www.apps.dgs.ca.gov/tracker/ApprovedLabs.aspx>, and that all sampling and testing is performed by the testing laboratory;
3. Verify that the materials testing lab and special inspectors have received sufficient advance notice to perform the required material sampling or special instruction;
4. Verify that all required material sampling and special inspections have been performed, and to observe any special inspector's on-site presence, performance of duties, the special inspector's documentation of complying and non-complying work, and the issuance of deviation notices; and
5. Review all materials tests and special inspection reports, and report the status and resolution of deviations reports by any materials testing lab or special inspector on the Semi-Monthly Reports.

F. Comply with any specific instructions from DSA, for additional reporting and/or oversight of construction or otherwise, arising in connection with a documented non-compliant condition that causes, or results in, a work stoppage. Such additional reporting may be required in the case of a Stop Work Order, Order to Comply, or Request for District/Owner to Stop Work, arising in accordance with DSA IR A-13.

G. Consistent with the requirements of Section 4-336 of Part 1 of Title 24 of the CCR, electronically submit verified reports ("Verified Reports"), utilizing DSA Form 6-PI and DSA Form 152, as appropriate, directly to DSA (with copies to the Design Professional and District) when any of the following occur, including, but not limited to:

1. Work on the Project is suspended for more than one (1) month.
2. Inspector is terminated for any reason prior to the completion of the Project, and termination is not a result of a work stoppage.
3. DSA requests a Verified Report.
4. The District occupies any building involved in a Project before the completion of the entire DSA approved scope of work for the Project.
5. The Project is substantially complete. "Substantially complete" shall mean that the Project is sufficiently complete in accordance with the DSA Approved Documents that the District may occupy or utilize the Project for its intended use, as determined by the District or Architect.

H. Sign-off on applicable blocks and sections of DSA form 152 when: (1) the completed work is in compliance with the DSA Approved Documents; (2) all necessary testing and inspections are complete; (3) any deviations from the DSA Approved Documents are resolved; (4) any DSA field trip note issues are resolved; and (5) all necessary documents are received by the Inspector.

I. Submit, detailed daily reports to the District, or its representative(s), including, but not limited to the following information:

1. Names of any and all persons performing services for the Contractor;

2. Activities performed by the contractors, and areas where work is performed with relation to the plans and specifications.
3. Manpower assigned to the Contractor and subcontractor(s), including the number of individuals in each trade and the type of work being performed.
4. Weather conditions.
5. Equipment and materials delivered to the site.
6. Construction equipment and vehicles utilized and duration on Project.
7. Nature and location of the work being performed (starting and completion dates for various portions of the work).
8. Verbal communication and clarifications of the work given to the Contractor.
9. Inspection by representatives of regulatory agencies.
10. Occurrences or conditions that might affect Contract Sum or Contract Time.
11. Visitors to the site, titles, and employers of visitors, and reasons for visit.
12. DSA Project Inspector's record journal to include "Pertinent Calls" relating to conflicting issues regarding changes to documents, i.e., plans, specifications, change orders and job conditions affecting the interests of the District.
13. Any work or material in place that does not correspond with the codes, drawings or specifications, as well as resulting action taken. List any other problems or abnormal occurrences that arise during each day, including notations of any particular lack of activity on the part of the Contractor, and detailed information concerning delays encountered. Note corrective actions taken.
14. Times of day Contractor was present on site.

The preceding items are given as a minimum and are not intended to limit information required to be placed in the Contractor's daily reports. Contractor shall use his/her judgment and comply with the direction of the Architect-Engineer and Program Manager to determine what additional information is necessary to provide a factual record of daily activities.

J. Keep the District and the Architect-Engineer thoroughly informed as to the progress of the work by making semi-monthly reports in writing, as required by Section 4-342 of Part 1 of Title 24 of the CCR ("Semi-Monthly Reports"). The Semi-Monthly Reports shall be made utilizing DSA Form 155. Unless otherwise required by law or regulation of DSA, the Semi-Monthly Reports shall be made and submitted electronically on the 1st and 16th of every month consistent with DSA IR A-8. Copies of the Semi-Monthly Reports shall be provided electronically, unless otherwise requested, to the Design Professional, the District, and DSA.

The Semi-Monthly Reports shall contain the following information:

1. Inspection by representatives of regulatory agencies.
2. Occurrences or conditions that might affect Contract Sum or Contract Time.
3. Visitors to the site, titles, and employers of visitors, and reasons for visit.
4. Any work or material in place that does not correspond with the codes, drawings or specifications, as well as resulting action taken. List any other problems or abnormal occurrences that arise during each day, including notations of any particular lack of activity on the part of the Contractor. Note corrective actions taken.

K. Notwithstanding anything expressed or implied to the contrary, the Contractor shall comply with all federal, state, county and local governmental requirements bearing on the performance of its work.

L. Review and monitor Contractor's construction methods and procedures during all construction activities.

M. Attend all meetings as required and as requested by District, or its representative(s), e.g. pre-construction meetings, payment review meetings, specification review meetings, coordination

meetings, weekly progress meetings, pre-installation meetings, schedule review meetings, etc.

N. Assist the District or its representative in scheduling all required site tests and testing laboratory visitations required. Observe and record dates and times of all test procedures and results.

O. Inspect, verify, and document Contractor's delivered equipment and materials to ensure that they meet submittal and specification requirements. Such inspection must occur within twenty-four (24) hours of delivery to the job site.

P. Assist the District's Representative with the review of the review Contractor's Monthly Progress Payment Requests at payment review meetings and initial off on request.

Q. Assist the District's Representative(s) in the review of Contractor's submittals.

R. When the Contractor's work or a designated portion thereof is substantially complete, prepare for the District a list of incomplete or unsatisfactory items via a "punch list" and submit to the District's Representative.

S. Prior to commencement of work, Contractor will cooperate with the District and its representative(s) to develop an inspection plan for all inspection required for the construction of the Project.

T. Monitor and sign Contractor's extra work forms for tracking time and material change order work.

U. Attend regular Project Inspector meetings conducted by District or its representative(s) for purposes of coordination and training.

V. The Contractor shall maintain a file including, but not limited to, approved plans and specifications (including all approved addenda and change orders), project correspondence, and complete and accurate testing and inspection records with respect to all records for the Project ("Job File"), and shall immediately return any unapproved documents to the Architect-Engineer or Design Professional for proper action. The Contractor shall have and maintain on the Project site at all times all codes and documents referred to in the plans and specifications for the Project. The Job File shall be kept and maintained in an organized manner and readily accessible to DSA during site visits. The Contractor shall make the Job File available to the District and any members of the District's staff at the direction of the District.

W. At the completion of construction, the Contractor shall provide a copy of the Job File, with the exception of building codes and standards, to the District for its permanent records. The Job File shall include all records required to be maintained by the Contractor by DSA IR A-8 and DSA Procedure 13-01. Consistent with the requirements of DSA, the Job File should be maintained in electronic format, and it shall be sufficient if the Job File is maintained by the Contractor within the DSA's electronic database.

X. The Contractor shall make a copy of the Job File available to DSA on request, and shall submit a portion of the Job File to DSA when (1) the Contractor's services of terminated for any reason before completion of the Project; (2) the Project is substantially complete; or (3) work on the Project is suspended for more than one (1) year. The portion of the record submitted to DSA pursuant to this subsection shall be that portion described in Section 3.3.2 of DSA Procedure 13-01.

Y. Additionally, the Job File shall comply with Government Code Section 8546.7, which authorizes the State Auditor and public entities, for a period of three (3) years following final payment to the Inspector, to review, audit or copy records of contracting parties with respect to

each contract providing for expenditure of public funds in excess of ten thousand dollars (\$10,000). Therefore, the Contractor shall maintain and made make such records available at all reasonable times during any period which services are provided for the Project and for three (3) years from the date of the final District payment to the Contractor pursuant to this Agreement. Prior to destruction of any records, Contractor shall notify District of its intent to destroy such records. District shall notify Contractor within sixty (60) days of receipt of notice if the District desires that said records be sent to the District, and the Contractor shall deliver all such records to the District.

EXHIBIT "C"

SAMPLE

PROJECT INSPECTOR'S CERTIFICATION

Agreement

between

_____ School District

and

for

Inspector of Record Services

[Project Name]

I, _____, on behalf of [_____], 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 _____ School District on behalf of this business entity, and that none of those persons have been reported by the Department of Justice as having been convicted of a serious or violent felony as specified in Penal Code sections 667.5(c) and/or 1192.7(c). I understand that this Certification is not to be signed and submitted until I have received clearance from DOJ regarding those persons named. As further required by Education Code 45125.1, attached hereto as Exhibit "D" is a list of names of the employees or agents of Contractor who will be providing services to the _____ School District and who are required to be fingerprinted. I agree to keep this list current and to notify the _____ School District of any addition/deletions as they occur.

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

Executed this _____ 2015, in _____ County, California.

(Seal of business)

By: _____

(Signature)

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT ("Agreement" or "Contract"), is entered into this ___ day of _____, 20___, by _____ and _____ between _____ the _____ SCHOOL DISTRICT, herein called "DISTRICT," and _____, herein called "CONSULTANT."

WHEREAS, the DISTRICT has a need for [enter brief description of services needed] ("Services" or "Work") with respect to the work described herein;

WHEREAS, CONSULTANT warrants that it is fully licensed and qualified to perform such Services, and is specially trained, experienced, an expert and competent to perform such services; and

WHEREAS, [Government Code section 53060 or Public Contract Code section 20111] authorizes DISTRICT to contract with CONSULTANT for the Services described herein.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. **Scope of Work.** CONSULTANT shall provide the Services to District, as generally described above and as more specifically stated in Exhibit A, attached hereto and incorporated herein by this reference [NOTE: Attach list of services or scope of work as Exhibit A], from time to time as District may request. District shall request performance of the Services by issuing to Consultant a "Project Authorization Letter," as further explained below. 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.
2. **Project Authorization Letter.** Each Project Authorization letter will identify the campus and project name(s), the project specific scope of services and the required deliverables. Upon receipt of a Project Authorization Letter, 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. District will then submit to Consultant a finalized Project Authorization Letter, which 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.

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.

3. **Standard of Care.** 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.

4. **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.

5. **Term.** The term of this Agreement shall be from _____ through _____.

6. **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.

- b. Reimbursables – 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 reimbursable 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. The District shall pay all undisputed amounts within thirty (30) days of District's receipt of Consultant's invoice.

7. 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.

8. 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.

9. 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.

10. Insurance. [NOTE: District Risk Management must review and approve this provision for each individual contract! This is only a sample!] 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 a 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, \$2,000,0000 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 [enter district name] 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.

11. Indemnification. To the furthest extent permitted by law, Consultant, at Consultant's own expense, shall defend, indemnify, and hold harmless District, and its Board of Trustees, agents, representatives, officers, contractors, employees, trustees, and volunteers ("District Indemnitees"), from any and all claims, damages, losses, and expenses, arising from, pertaining to, or relating to, the negligence, recklessness, errors, or omissions, or willful misconduct of Consultant or its agents. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the District Indemnitees.

12. 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.

- 13. 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.
- 14. 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.
- 15. 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.
- 16. 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 as set forth in this Agreement.
- 17. 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.
- 18. 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.
- 19. 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.

20. 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. The parties agree that (1) Consultant shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Consultant's personnel shall only perform work that is outside the usual course of the District's business; and (3) Consultant's personnel shall be engaged in business independent of the District. Consultant shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

21. 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.

22. 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.

23. 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.

24. Sub-consultants.

- 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 sub-consultants must be approved in writing by the DISTRICT in advance of assigning work to a substitute sub-consultant.

25. 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 [enter name of county] 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.

26. 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 as follows:

To the DISTRICT at:

[enter District contact name]
[enter District address]

To the CONSULTANT at:

[enter Consultant contact name]
[enter Consultant address]

27. 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.

28. 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.

29. 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.

30. 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 sections 45122.1 through 45125.5.

31. Nondiscrimination. Consultant agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons

32. Force Majeure. In the event either party is unable to perform its obligations under the terms of this Contract because of acts of God, strikes, pandemics, or other such events reasonably beyond the parties' control, such non-performing party shall not be liable for damages resulting from such failure to perform; provided, however, that such non-performing party must notify the other party of its inability to perform due to a force majeure event and must resume performance as soon as is reasonably practicable thereafter.

IN WITNESS THEREOF, DISTRICT and CONSULTANT have executed this Agreement on the day and year first hereinabove set forth.

_____ SCHOOL DISTRICT

_____ CONTRACTOR

Signature of Authorized Agent

Signature of Authorized Agent

Typed or Printed Name

Typed Name

Title

EIN or Last 4 Digits of SSN (Attach W-9)

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 sub-consultant, 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 who may come in contact with pupils to perform services 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: _____

_____ **School District**

**REQUEST FOR
QUALIFICATIONS/ PROPOSALS
CONSTRUCTION MANAGEMENT
SERVICES**

**[INSERT DATE]
[INSERT CONTACT INFORMATION]**

**REQUEST FOR QUALIFICATIONS (RFQ)/
REQUEST FOR PROPOSAL (RFP) -
CONSTRUCTION MANAGEMENT SERVICES**

_____ School District (hereinafter District) is requesting proposals for Construction Management services from interested firms for services related to _____, 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 _____**, at _____ School District, in the [INSERT LOCATION].
Attention: [INSERT TITLE AND EMAIL ADDRESS].

A. INTRODUCTION

[INSERT INFORMATION ON SCHOOL DISTRICT].

B. 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-14 Schools arena, as there are unique challenges to each project delivery method, depending on the size, complexity, time constraints, and bid climate.

C. 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 _____, 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.

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.

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 \$___M Construction Value (_____ School Site)

Duration: (indicate duration of construction)

Labor (Staffing)	FT/ Hourly Rates*	Hr/ PT	Wk	# of Weeks	Amoun
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)

Assume a \$_____ Construction Value (_____ 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:				

D. 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 [INSERT TIME AND LOCATION], _____ School District, Attention: _____.

E. QUESTIONS

All questions, interpretations or clarifications, either administrative or technical must be requested in writing and directed to:

_____ SCHOOL DISTRICT
 [INSERT CONTACT INFORMATION]

F. BASIS OF SELECTION OR RANKING OF QUALIFIED FIRMS, AND DETERMINATION OF

AWARD

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.

The District reserves the right to contract with any entity responding to this Request for Proposals, to reject any proposal as non responsive, and not to contract with any firm for the services described herein. The District makes no representation that participation in the Request for Proposal process will lead to an award of contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any proposal in response to the Request for Proposals. The awarding of a contract is at the sole discretion of the District.

G. 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.

H. SCHEDULE

RFQ – solicitation date _____
Questions (deadline by 4:00 p.m.) _____
(Submit via email to _____ - _____
(Copy to _____)

Response to Questions _____
Deadline for submission of SOQs/Proposal _____
(Submit Fee Proposal (1 original): **in a separate sealed envelope**)

Notification of Finalists _____
Interview of Finalists _____
Board Approval, Authorize to Negotiate _____

I. 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.

J. 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 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.

K. 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.

L. 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 [INSERT CONTACT PERSON AND ADDRESS]. All consultants must present their written request for withdrawal in person with proof that they are representatives of the company withdrawing the SOQ.

M. 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

[INSERT DISTRICT'S INSURANCE LIMIT REQUIREMENTS]

- (a) 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.
- (b) 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 effect such insurance for one year after the performance of work under this agreement, including warranty periods, is completed.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

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*****

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 _____ School District.

Consultant/Sub-consultant: _____

Address: _____

City, State, Zip Code: _____

Phone Number: _____

Fax Number: _____

Name, Title: _____

Signature: _____

**SECTION VI
INDEPENDENT
CONTRACTOR &
SERVICES
AGREEMENTS**

DEFINITION OF AN INDEPENDENT CONTRACTOR

The following guidelines are intended to assist you in determining whether or not it is permissible to hire a person as a "consultant" or "independent contractor," and knowing the legal restraints on administrators in directing the work of such contractors.

California Labor Code section 3353: "Independent Contractor means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished." (Emphasis added.) California recently passed AB 5 and AB 2257, which further define independent contractors.

Specifically, under the "ABC" Test, a person must meet three conditions in order to be an independent contractor:

- A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of work and in fact.
- B. The person performs work that is outside the usual course of the hiring entity's business.
- C. The person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

NOTE: Mistakenly classifying a person as an independent contractor can result in fines and penalties.

An independent contractor works independently, normally performing a service with a specific scope of work for a set fee, and within a defined period of time. An independent contractor is not an employee, and no such arrangement may be used to circumvent employment procedures or employee contracts. Payments to a District employee who performs any kind of additional services for the District must be processed through the payroll system (i.e., an independent services contract is not permissible with a District employee).

A few facts about independent contractors...

- Contractors are hired to provide a result and usually have the right to hire others to do the actual work.
- Contractors are generally responsible for their incidental expenses.
- Contractors should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible:
 - If the contractor hires and pays assistants
 - If the contractor has his own office, equipment, materials, or facilities
 - If the contractor has continuing and reoccurring liabilities
 - If the contractor has agreed to perform specific jobs for prices agreed upon in advance
 - If the contractor's services affect his own business reputation
- Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

IRS Publication SWR 40, *Public Schools and Employment Taxes*, lists workers that have already been determined by IRS to be employees. These are individuals performing the duties of:

Administrators	Examination Monitors	Specialty Teachers (art, poetry, etc.)
Athletic Coaches	Individuals "filling in"	Substitutes
Cafeteria Workers	Librarians	Teachers/Instructors
Clerical Staff	Nurses	Tutor
Counselors	Proctors	

DISTRICT PROCEDURES FOR INDEPENDENT CONTRACTORS

POLICIES AND PROCEDURES

Districts should ensure that their board policies and administrative regulations define independent contractors by using the ABC Test set forth above. Additionally, it is a best practice for districts to provide training to their staff that will be procuring and contracting with independent contractors, so that such staff can accurately make the independent contractor status determination.

NOTE: Misclassifying someone as an independent contractor, when that person really should have been classified as an employee, can subject the district to penalties. Thus, it is important to establish written procedures to prevent misclassification penalties.

PERMISSIBLE WORK FOR INDEPENDENT CONTRACTORS TO PERFORM

Districts work with independent contractors for a variety of services and work. Some examples include graphic designers, architects, and yearbook photography studios. Most consultants are also independent contractors. The legal authority for different types of independent contractor agreements comes from different areas of the law. Below are some examples.

Government Code section 53060

Districts may utilize independent contractors for certain specialized services. Contracts for the services of persons who qualify as professional experts may be let without competitive bidding. Professional experts are persons specially qualified to provide services and advise in financial, economic, accounting, engineering, legal or administrative matters. They must be specially trained, experienced and competent to perform the services required. Compensation for special services and advice from professional experts may be paid from available funds in the amounts deemed proper for the services rendered.

Public Contract Code section 20111

Districts may utilize independent contractors for non-specialized services. If the value of the services is below the bid limit set forth in this Section, then the district is not required to bid the services. If the value of the services is over the bid limit, the district is typically required to bid the services, usually through a RFP.

Education Code section 88003.1

The District may enter into personal services contracts to achieve cost savings when each of the following conditions is met:

- It can be clearly demonstrated that the proposed contract will result in actual overall cost savings to the District;
- The contractor's wages are at the industry's level and do not undercut District pay rates;
- The contract does not cause the displacement of district employees;
- The savings are large enough to ensure that employees will not be eliminated by the private sector and District cost fluctuations that could normally be expected during the contracting period;
- The amount of savings clearly justifies the size and duration of the contracting agreement;
- **The contract is awarded through a publicized, competitive bidding process** when bid limit is exceeded;
- The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards;
- The potential for future economic risk to the District from potential contractor rate increases is minimal:
 - The contract is with a firm; and
 - The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the District.

Personal service contracts are also permissible when anyone of the following conditions is met:

- The contract is for new functions mandated or authorized by the Legislature to be performed by independent contractors;

- The services are not available within the District or cannot be satisfactorily performed by district employees;
- The services are incidental to a purchase or lease contract;
- The policy, administrative, or legal goals and purposes of the District cannot be accomplished through the regular or ordinary hiring process;
- The work meets the criteria for emergency appointment;
- Equipment, materials, facilities, or support services could not feasibly be provided by the District; or the services are of an urgent, temporary, or occasional nature.

INDEPENDENT CONTRACT AGREEMENT PACKET

It is a best practice for districts to maintain some form of template independent contractor agreement, and all of the forms that independent contractors are required to submit (see below). Some districts use a very basic template independent contractor agreement, and also maintain template “addendums” that can be added to the template independent contractor agreement when the nature of the services to be provided calls for as much. For example, a district might have a data privacy addendum that it adds to independent contractor agreements for independent contractors that will work with school district data.

FORMS

All vendors shall provide a completed "IRS W-9" form to the District before commencing services. All independent contractors shall provide the District with a completed "EDD Report of Independent Contractor(s)" form. A completed District "Business Enterprise Certification" form is also strongly recommended, providing information on racial/ethnic/sex ownership of the vendor.

INDEPENDENT CONTRACTOR DETERMINATION

Use the following checklist to define the role of independent contractor vs. employee. The person must pass this test in order to comply with IRS regulations governing independent contracts. (*Attach to Agreement.*)

PART I	Yes	No																					
<p>1. Has this category of worker already been classified an "employee" by the IRS?</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">administrators</td> <td style="width: 33%;">individuals "filling in"</td> <td style="width: 33%;">psychologists</td> </tr> <tr> <td>ASB workers</td> <td>on an individual basis</td> <td>school bus drivers</td> </tr> <tr> <td>athletic coaches</td> <td>intern psychologists</td> <td>specialty teachers</td> </tr> <tr> <td>cafeteria workers</td> <td>librarians</td> <td>substitutes</td> </tr> <tr> <td>clerical staff</td> <td>nurses</td> <td>teachers/instructors</td> </tr> <tr> <td>counselors</td> <td>proctors</td> <td>tutors</td> </tr> <tr> <td>examination monitors</td> <td></td> <td></td> </tr> </table>	administrators	individuals "filling in"	psychologists	ASB workers	on an individual basis	school bus drivers	athletic coaches	intern psychologists	specialty teachers	cafeteria workers	librarians	substitutes	clerical staff	nurses	teachers/instructors	counselors	proctors	tutors	examination monitors				
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cafeteria workers	librarians	substitutes																					
clerical staff	nurses	teachers/instructors																					
counselors	proctors	tutors																					
examination monitors																							
<p>2. Is this individual working as an employee prescribed by the Education Code?</p> <p>Education Code sections 45100-45451 define what constitutes the classified service. Education Code sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.</p>																							
<p>3. Is the individual already an employee of the district in another capacity?</p>																							
<p>4. Has the individual performed substantially the same services for the district as an employee in the past?</p>																							
<p>5. Are there currently employees of the district doing substantially the same services as will be required of this individual?</p>																							
<p>If the answer to any of the above questions is "YES" --- STOP HERE !!! Do not complete the rest of the questions. The individual is a district employee and must be paid and reported accordingly. Call Human Resources for further details.</p> <p>NEXT, you will apply the "ABC" test.</p>																							
<p>8. Is the worker free from the control and direction of the District in connection with the performance of the work?</p> <p>NOTE: To answer yes to this question, the contract must state that the worker is free from control and direction of the District, and the worker must actually be free from control and direction of the District.</p> <p>TIP: What does it mean to be free from the "control and direction" of the District? This means that the worker has freedom in determining how to get the work done. The District determines the specific result it is looking for from the work, but the worker decides the means and methods to get there.</p>																							
<p>9. Is the worker performing work that is outside the usual course of the District's business?</p> <p>NOTE: This is usually the hardest prong to meet when applying the ABC test. If you have questions, do not hesitate to reach out to your supervisor. There are some unique exceptions that may allow you to pass this prong, even if it at first seems impossible.</p> <p>TIP: Think of the District's "usual course of business" as educating children.</p>																							
<p>10. Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed?</p>																							

	Yes	No
If the answer to the questions 8, 9, AND 10 is "YES", this is an independent contractor relationship.		
If the answer to any of questions 8, 9 OR 10 is "NO," there is a good possibility that an employment relationship exists. Work with your supervisor to determine if an exception to the ABC test applies.		

By signing below, Contractor and District Representative certify that they have reviewed District guidelines and that the information is true and correct.

Contractor Signature _____ Date _____

District Representative _____ Date _____

Independent Contractor Tests

Basic Test (“ABC” Test or *Dynamex* Test)

This is the main test to determine whether someone is an independent contractor. To be an independent contractor, the worker must meet all three conditions.

- A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- B. The person performs work that is outside the usual course of the hiring entity’s business.
- C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Labor Code section 2775(b)(1).

Business-to-Business Test

Section 2775 and the ABC test do not apply to a “bona fide business-to-business contracting relationship,” as defined below, under the following conditions.

If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to the District (“contracting business”), the determination of employee or independent contractor status of the business services provider shall be governed by *Borello*, if the contracting business, the District, demonstrates that all of the following criteria are satisfied:

- A. The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- B. The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This criteria does not apply if the business service provider’s employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.
- C. The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.
- D. If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.
- E. The business service provider maintains a business location, which may include the business service provider’s residence, that is separate from the business or work location of the contracting business.
- F. The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.
- G. The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.

- H. The business service provider advertises and holds itself out to the public as available to provide the same or similar services.
- I. Consistent with the nature of the work, the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.
- J. The business service provider can negotiate its own rates.
- K. Consistent with the nature of the work, the business service provider can set its own hours and location of work.
- L. The business service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

Labor Code section 2776.

The *Borello* Test

If you determine that a worker falls under the business to business exception to the ABC test, then the relevant test to determine whether the worker is an independent contractor is the *Borello* test. Under *Borello*, the main question to determine whether someone is an independent contractor or an employee is whether the entity to whom service is rendered, so here the District, has the right to control the manner and means of accomplishing the result desired. If the District has a right to control, then the person is an employee. To apply this test, consider the following factors:

1. The right to discharge the worker at will, without cause.
2. Whether the one performing the services is engaged in a distinct occupation or business.
3. The kind of occupation, with reference to whether in the locality the work is usually done under the direction of the principal or by a specialist without supervision.
4. The skill required in the particular occupation.
5. Whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work.
6. The length of time for which the services are to be performed.
7. Method of payment, whether by the time or by the job.
8. Whether or not the work is part of the regular business of the principal.
9. Whether or not the parties believe they are creating the relationship of employer-employee.

CONTRACTING OUT – Classified Services: EDUCATION CODE SECTION 45103.1

(a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when **all the following conditions are met:**

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the school district, provided that:

(A) In comparing costs, there shall be included the school district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the school district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the school district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing school district costs that would be directly associated with the contracted function. These continuing school district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut school district pay rates.

(3) The contract does not cause the displacement of school district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the school district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A “firm” means a corporation, limited liability company, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the school district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new school district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within the district, cannot be performed satisfactorily by school district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements,” shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. “Emergency appointment” means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the school district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all school districts, including districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

[INSERT NAME] SCHOOL DISTRICT

Independent Contractor Agreement Contract No. _____

This agreement ("Agreement") is hereby entered into on _____ between _____ School District, hereinafter referred to as "District," and, _____ hereinafter referred to as "Contractor."

WHEREAS, District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and **[NOTE: Section 53060 only applies to specific specialized services. Please confirm that the proposed independent contractor fits within the definition of Section 53060 prior to using this template.]**

WHEREAS, District is in need of such special services and advice, and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis.

NOW, THEREFORE, the parties agree as follows:

1. **Services.** The Contractor shall perform the following services ("Services")

[NOTE: If the Contractor provided a scope of work, that can be referenced here and attached as Exhibit A.]

2. **Term.** Contractor shall commence providing services under this Agreement on _____, _____, and will diligently perform as required and complete performance by _____.

3. **Rate & Compensation.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement at a rate of \$_____ per hour and \$_____ per hour for travel time. Total contract shall not exceed the sum of _____ (\$_____).

4. **Expenses.**

____ A. Contractor shall not be reimbursed for travel or other expenses.

____ B. In addition to the compensation specified in Paragraph 3 above, travel and/or expenses will be reimbursed as follows:

Airfare	Actual Cost at Lowest Available Airfare
Lodging	\$_____ / Night Max. (Actual Cost will be billed)
Meals	\$_____ per diem (IRS rate) (Actual Cost will be billed)
Car Rental	\$_____ per day (Actual Cost will be billed)
Gas (Rental Car):	Actual cost paid.
Mileage:	Current IRS reimbursement rate.

5. **Precedence of Agreement Over Exhibits.** Should there be any ambiguity or inconsistency between any exhibits to this Agreement and the terms of this Agreement, the terms of this Agreement take precedence.

6. **Standard of Performance.** Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities and all other means whatsoever, except as herein otherwise expressly specified to be furnished by District, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, or agents of the District, and are not entitled to benefits of any kind or nature normally provided to employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Agreement. The Parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor's personnel shall only perform work that is outside the usual course of the District's business; and (3) Contractor's personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.
8. **Taxes.** Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state, or local tax authority. No part of Contractor's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
9. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with general and currently accepted principles and practices of his/her profession.

10. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other sources, except that submitted to Contractor by District as a basis for such services.
11. **Confidentiality and Use of Information.**
 - a.) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs, but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.
 - b.) Contractor shall advise District of any and all materials used or recommended for use by Contractor to achieve the project goals, that are subject to any copyright restrictions or

requirements. In the event Contractor shall fail to so advise District and, as a result of the use of any programs or materials developed by Contractor under this Agreement, District should be found in violation of any copyright restrictions or requirements, or District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

12. Audit and Inspection of Records. At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

13. Works for Hire/Copyright/Trademark/Patent. Contractor understands and agrees that all matters produced under this Agreement shall be works for hire and shall become the sole property of the District and cannot be used without District's express written permission. District shall have all rights, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

14. Termination.

Termination for Convenience. At any time and without need for cause, the District may terminate this Agreement by delivering written notice of termination to the Contractor. The Contractor shall be deemed to have received written notice either upon actual receipt or five days after the District mails the notice to the address of the Contractor specified in Section 26, whichever occurs first. The termination shall take effect immediately upon receipt of the written notice, unless the notice specifies a later date as the effective date of the termination. As of the effective date of the termination, the Contractor shall cease all work pursuant to this Agreement. The District and the Contractor expressly agree that, in the event of termination for convenience, the District will be required to compensate the Contractor only for services satisfactorily rendered prior to the effective date of termination.

Termination for Cause. At any time it believes it has sufficient cause the District may deliver written notice to the Contractor of the District's intent to terminate this Agreement for cause. The Contractor shall be deemed to have received the written notice either upon actual receipt or five days after the District mails the notice to the address of the Contractor specified in Section 26, whichever occurs first. The written notice shall set forth in reasonable detail the cause(s) underlying the District's intent to terminate this Agreement. Sufficient cause for termination shall include: (a) any material breach of this Agreement by the Contractor, including any failure by Contractor to reasonably perform its obligations pursuant to this Agreement; (b) any act by Contractor exposing the District to liability for, or resulting in District liability for, personal injury or property damage; (c) any act by Contractor exposing the District to liability for, or resulting in District liability for, fraudulent or other wrongful acts; and (d) if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. This Agreement shall terminate fifteen days after receipt by the Contractor of the written notice, unless Contractor has corrected or eliminated the matters forming the cause(s) for termination and provided evidence thereof satisfactory to the District, or Contractor has made arrangements for the correction or elimination of such matters satisfactory to the District. In the event of such termination for cause, all work and services of the Contractor provided prior to the termination shall be the property of the District, and the District may complete the services required under this Agreement by any other means the District determines reasonable. The Contractor shall be liable for all damages incurred by the District as a result of the Contractor's breach of its

obligations pursuant to this Agreement, acts exposing the District to liability, and/or acts resulting in District liability. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

15. **Indemnification**. To the furthest extent permitted by law, Contractor, at Contractor's own expense, shall defend, indemnify, and hold harmless District, and its Board of Trustees, agents, representatives, officers, Contractors, employees, trustees, and volunteers ("District Indemnitees"), from any and all claims, damages, losses, and expenses, arising from, pertaining to, or relating to, the negligence, recklessness, errors, or omissions, or willful misconduct of Contractor or its agents. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District Indemnitees.
16. **Insurance**. Contractor shall obtain and maintain during the term of this Agreement a professional liability policy providing coverage in an amount not less than \$1,000,000 per occurrence. Prior to commencement of work on this Agreement, the Contractor shall provide to the District a certificate of insurance evidencing the required insurance coverage. *[NOTE: The insurance requirements of each individual contract should be reviewed by Risk Management before the District signs.]*
17. **Fingerprinting Requirements**. The District anticipates that the Contractor will not have contact with any students of the District. However, if the Contractor determines that a visit to a school campus is necessary, the Contractor shall arrange with the District to be accompanied by a District employee at all times or comply with Education Code 45125.1.
18. **Assignment**. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
19. **Compliance with Applicable Laws**. The service completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
20. **Permits/Licenses**. Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.
21. **Employment with Public Agency**. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
22. **Entire Agreement/Amendment**. This Agreement and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, any may be amended only by a written amendment executed by both parties to the Agreement.
23. **Nondiscrimination in Employment**. Contractor agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.
24. **Non-waiver**. The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that

party or such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

25. **Administrator of Agreement.** This Agreement shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

For District: [enter District contact name and address]

For Contractor: [enter Contractor contact name and address]

26. **Notice.** All notices or demands to be given under this Agreement by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally serviced or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are set forth above.

27. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. **Force Majeure.** In the event either party is unable to perform its obligations under the terms of this Contract because of acts of God, strikes, pandemics, or other such events reasonably beyond the parties' control, such non-performing party shall not be liable for damages resulting from such failure to perform; provided, however, that such non-performing party must notify the other party of its inability to perform due to a force majeure event and must resume performance as soon as is reasonably practicable thereafter.

29. **Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in [enter county name] County, California.

30. **Warranty of Authority.** Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

This Agreement is entered into this ____ day of _____, _____.

SCHOOL DISTRICT
SCHOOL DISTRICT

_____, CONSULTANT
CONTRACTOR

Signature of Authorized Agent

Signature of Authorized Agent

Typed or Printed Name

Typed Name

Title

Address

Board Approval Date: _____

(Area Code) Telephone Number

Short Form

[SAMPLE] Vista Unified School District

PERFORMANCE AGREEMENT FOR CONSULTANTS

THIS AGREEMENT made this _____ day of _____, 20___, in the County of San Diego, California, by and between the Vista Unified School District (hereinafter "DISTRICT") and _____ (hereinafter "CONSULTANT").

DISTRICT AND CONSULTANT hereby agree to the following:

1. TERM. The term of this Agreement shall be for the period _____ through _____ inclusive:
2. SERVICES. The CONSULTANT shall furnish the following services (state specifically the materials and/or equipment to be provided by CONSULTANT) CONSULTANT shall be responsible for all costs/expenses incident to the performance of services rendered to the DISTRICT. DISTRICT shall not be responsible for any expenses incurred by the CONSULTANT except as provided by the agreement:
3. LOCATION. The services listed in paragraph 2 shall be provided at _____
4. DISTRICT'S OBLIGATIONS (if any). (e.g., provide publicity for lecture/workshop, provide facilities, equipment, etc.)
5. COMPENSATION. In consideration of the services to be rendered by CONSULTANT and subject to the payment provisions expressed herein, DISTRICT agrees to pay CONSULTANT \$ _____ upon submission of a properly documented demand for payment which shall be submitted not less than 30 days from the end of the month in which the services were rendered, and upon approval of such demand by the DISTRICT.
6. INDEMNITY. The CONSULTANT agrees and shall defend, indemnify, save and hold harmless the DISTRICT, its agents, officers and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the CONSULTANT, its agents, officers, employees, or subcontractors hereunder, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the CONSULTANT in the performance of this agreement.
7. INSURANCE. The CONSULTANT will maintain general liability insurance, including automobile coverage, in an amount as may be reasonably necessary to assure compliance with the indemnification provision in paragraph of this provision may be waived by the DISTRICT; however, any waiver shall not affect the CONSULTANT's liability to the DISTRICT under paragraph 6. The CONSULTANT shall provide workers' compensation insurance or self-insure his/her services. The CONSULTANT agrees to provide proof of required insurance upon request by the DISTRICT.
8. STATUS OF CONSULTANT. This agreement is by and between two independent parties and is not intended to and shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association. In executing this agreement, the CONSULTANT certifies that no one who has or who will have any financial interest under this agreement is an officer or employee of the DISTRICT. It is expressly understood that CONSULTANT is acting as an independent contractor and not as an officer, agent, or employee of the DISTRICT. The Parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor's personnel shall only perform work that is outside the usual course of the District's business; and (3) Contractor's personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.
9. TERMINATION. This contract may be terminated at the sole discretion of the DISTRICT, upon five-day advance written notice thereof to the CONSULTANT. CONSULTANT shall be paid the reasonable value of the services rendered up to the date of such termination, as determined by the DISTRICT, and CONSULTANT hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein. Contract may be cancelled immediately by written mutual consent by both the DISTRICT AND CONSULTANT.
10. COMPLETENESS OF AGREEMENT. This agreement constitutes the entire understanding of the parties and any change or modification shall be in writing and signed by both parties hereto.
11. GOVERNING LAW. The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California.
12. TAX REPORTING/PAYMENT RESPONSIBILITIES. DISTRICT shall provide an annual statement (IRS form 1099) of compensation paid if said amount for services is greater than \$600. CONSULTANT is responsible for payment of any federal and/or state tax amounts due.
13. FINGERPRINTING AND CRIMINAL RECORDS CHECK. CONSULTANT shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice. CONSULTANT shall not permit any employees to have any contact with DISTRICT pupils until such time as CONSULTANT has verified in writing to the DISTRICT that all employees have complied with Education Code section 45125.1. This section may be waived (site administrator initial to waive if the DISTRICT determines that CONSULTANT and/or its employees will have limited contact with DISTRICT pupils or if CONSULTANT and/or its employees will be supervised at all times by DISTRICT employees.
14. ASSIGNMENT. This agreement is not assignable by the CONSULTANT in whole or in part without the express written consent of the DISTRICT.
15. Complete a W-9 Form.

IN WITNESS WHEREOF, the DISTRICT and CONSULTANT have executed this Agreement effective as of the date first written above.

INSTRUCTIONS FOR PROCESSING:

A copy of the Purchase Requisition and the Performance Agreement for Consultants form (3000.5) must be forwarded to a cabinet member for approval prior to performance of services. All agreements once signed by cabinet member will be forwarded to Human Resources for approval.

***CONSULTANT/COMPANY:**

Check will be made payable to the name of the person listed on the W-9 form.

Name: _____

Contact Person: _____

Address: _____

Phone: _____ Fax: _____

Social Security # or Tax ID: _____

*May not be a VUSD current or retired employee

Site Administrator Approval: _____ Date

Cabinet Member Approval: _____ Date

Approval of Human Resources: _____ Date

This is a time extension amendment. Verbiage can be changed to incorporate needed items such as additional services.

_____ SCHOOL DISTRICT
AMENDMENT NO. 1
TO
AGREEMENT FOR CONSULTANT SERVICES

This FIRST AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES (“First Amendment”) dated as of [enter date] is entered into by and between the [insert name] School District hereinafter referred to as “DISTRICT”, and _____, hereinafter referred to as “CONSULTANT”.

WHEREAS, the District and Consultant entered into that certain Agreement for Consultant Services dated [enter date] (“Original Agreement”).

WHEREAS, the parties desire to extend the term of the Original Agreement.

WHEREAS, in light of the foregoing, the parties wish to execute this First Amendment to modify the Original Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Recitals**. The foregoing recitals are true and corrects.
2. **Definitions**. Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings set forth in the Original Agreement.
3. **Amendment Provisions**. The parties hereby amend the Original Agreement as follows:
 - a. **Term**. The term shall extend and continue to [enter new termination date].
4. **Miscellaneous**.
 - a. **Ratification**. Except as otherwise modified by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect, and the Parties do hereby ratify and confirm the Agreement as amended.
 - b. **Amendment**. This First Amendment may not be amended except in writing by the Parties, duly executed by their authorized agents.
 - c. **Execution**. This First Amendment may be executed in several counterparts, electronic or otherwise, each of which shall be an original and all of which shall constitute but one and the same agreement. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

- d. Choice of Law. This First Amendment has been negotiated and executed in the State of California and shall be governed and construed by the laws of that state without regard to the conflicts of laws principles.
- e. Captions. The captions, headings, and titles to the various articles and paragraphs of this First Amendment are not a part of this First Amendment, are for convenience and identification only, and shall have no effect upon the construction or interpretation of any part hereof.
- f. No Third Party Benefit. This First Amendment is by and between the Parties named herein, and unless expressly provided in the foregoing provisions no third party shall be benefited hereby. This First Amendment may not be enforced by anyone other than a Party hereto or a successor to such Party who has acquired his/her/its interest in a way permitted by the above provisions.
- g. Successors and Assigns. All of the covenants, stipulations, promises, and agreements contained in this First Amendment by or on behalf of, or for the benefit of, either of the Parties, shall bind or inure to the benefit of the successors and assigns of the respective Parties.

[insert DISTRICT name]

BY: _____ Signature: _____

TITLE: _____

ADDRESS:

Dated at **[insert county]**, California, this ___ day of _____, 20__.

[insert Consultant Name]

BY: _____ Signature: _____

TITLE: _____

ADDRESS:

Dated at **[insert county]**, California, this ___ day of _____, 20__.

Note: Amendments require Board approval / ratification and cannot conflict with competitive bidding requirements or any state or federal laws.

**SECTION VII
ATTORNEY
GENERAL
OPINIONS**

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. Janssen* (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.” ’
[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.

SECTION VIII
ENERGY
SERVICES



Proposition 39 Energy Efficiency Financing Program Selection/Procurement Process Tip Sheet

As school districts receive approval for their Proposition 39 projects and funds are disbursed, districts should take care to fulfill the legal requirements so that those funds aren't withdrawn by the State when audits are submitted at the end of the project. Proposition 39 projects (projects being paid for with Proposition 39 funds) must comply with the requirements of the Public Resources Code and the California Energy Commission ("CEC") Guidelines. Don't confuse legal requirements for approving solar projects (Government Code Sections 4217.10 et seq.) with legal requirements for energy efficiency projects funded by Proposition 39 (Public Resources Code and CEC Guidelines).

A. Proposition 39 Requirements. (Public Resources Code § 26235 and others; CEC Guidelines)

1. Selection Process. Comparative process for selection of company doing projects

(we recommend an RFP or RFQ)

- No sole source. (Public Resources Code Section 26235 (c))
- Competitive bid not required but some type of comparative process required
- Statute permits (but does not require) use of "best value criteria" (Public Resources Code § 26235 (c))

2. Board approval of company selection and Proposition 39 project contract

Board Resolution approving selection of company (with regular agenda notice – 72 hours)

3. Contract must include:

- Clear and accurate description of the eligible energy project (Pub. Res. Code § 26206(d));
- Identification of the materials, products, or services; and
- Budget with costs and an estimate of the projected energy savings. (Pub. Res. Code § 26206(d))
(comparison of District's energy use before efficiency upgrades and projected reduction of energy use after upgrades)
 - Results of Investment Grade Audit (including an energy survey and energy analysis) which complies with Guidelines as part of the comparison
- Scope of services
 - Language that vendor agrees to ensure all Proposition 39 project services will comply with Guidelines
 - Language that vendor agrees that the project/expenditure will meet Proposition 39 funding requirements
 - Language that vendor agrees to provide necessary data and coordinate project with all submission and reporting requirements
 - Language that vendor agrees to amend contract to reflect reduced funding allocation and change in energy expenditure plan if Proposition 39 monies are reduced
 - District must have authority to review and approve projects
 - Sample language: ["Vendor] acknowledges that all Work must qualify as an eligible project under Proposition 39; and that the Scope of Work may be amended to reflect changes in funding allocation and District's energy expenditure plan, upon mutual agreement of the Parties and a written amendment to this Contract related to any changes in scope, payment and duration. Prior to commencement of any Work, District shall review and approve the Project."

This information is a summary only and not legal advice.

We recommend that you consult with legal counsel to determine how this may apply to your specific facts and circumstances.

Please call 323.330.6300.

4.	Contract should include:	
	<ul style="list-style-type: none"> • Compensation <ul style="list-style-type: none"> - Not-to-exceed cap based on estimated funding allocation - Agreement to modify if Proposition 39 funds change - Payment schedule consistent with funding allocation schedule • Records <ul style="list-style-type: none"> - Language that vendor agrees to maintain and make available records for inspection by District and other agencies - Language that vendor will provide or assist District in providing required annual and final reports for each Proposition 39 funded project - Language that vendor will provide data for reports to Citizens Oversight Board • Compliance with laws <ul style="list-style-type: none"> - Language that vendor will comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work, including but not limited to data and reports to CEC required under Proposition 39 	
B. Solar Project. (Govt Code sections 4217.10 et seq.)		
1.	Selection Process	
	<ul style="list-style-type: none"> • Not legally required to use competitive bidding or even comparative process for solar projects, but Districts must make specific findings at regularly scheduled Board meeting noticed two weeks prior. We recommend RFP or RFQ as best practice. (Government Code §§ 4217.10 et seq.) 	
2.	Board approval of company selection and solar contract. Board resolution approving selection of company and approval of contract (Requires two week notice prior to meeting)	
	<ul style="list-style-type: none"> • Findings at a Board meeting by the District that the solar project is projected to save money and is in the district's best interest. Requires financial analysis. • Outside consultant (or competent staff member) financial evaluation of projected savings • Extended public notice – public needs to be notified of Board meeting in which findings will be made 2 weeks prior to the meeting. Ensure public comment • Documents consistent with the above (public notice, resolution, agenda item, solar contract) • Agenda item must be on regularly scheduled Board meeting 	
3.	Contract. Depending on what type of contract is being entered into (Power Purchase Agreement, Design-Build, etc.), significant terms for review (specific to solar projects) include:	
	<ul style="list-style-type: none"> • Energy production guarantee • Protection of system (security) • Construction provisions • DSA approval of facilities • Environmental incentive 	<ul style="list-style-type: none"> • CEQA • Bonds • Prevailing wage • Damage or loss of use • Public information