CCFC Regional Workshops

How to Comply with the New DIR Contractor Registration & Prevailing Wage Monitoring Program

Tuesday, December 2, 2014
Citrus College
Glendora, California

The District’s Perspective: Purchasing and Small Contracts

Guiselle Carreon
San Diego County Office of Education
California Uniform Public Construction Cost Accounting Act

SAMPLE DOCUMENTS

Compiled by
Guiselle Carreon, Commissioner
California Uniform Construction Cost Accounting Commission

This handout has been prepared by the San Diego-Imperial Section CASBO Purchasing Professional Council. It has not been reviewed for approval by the State CASBO and is not an official statement of CASBO. Any advice or comments made by the panel members are not intended to replace the advice of your legal counsel. Revised November, 2014.
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Regular Governing Board Meeting: April 29, 2004

Topic:
Adoption of Resolution (2004-11)

Issue:
Public projects contracts that exceed $15,000 in cost have traditionally been awarded by the District through the formal bidding process as outlined in Public Contract Code Section 20111. However, another option exists for award of public projects by public agencies for expenditures up to $100,000. Public Contract Code Section 22001 provides for the development of cost accounting standards and an alternative method for the bidding of public projects by public entities. This alternative method is known as the “Uniform Public Construction Cost Accounting Act”. This is a completely voluntary method and an option for awarding these contracts. The only contracts that can be awarded under this Act are public projects and not maintenance work, as defined in Public Contract Code Section 22002. Election to participate in this program does not require that the formal bid process cannot be utilized for contracts up to $100,000. The District will evaluate each project to determine if it is cost effective and in the best interest of the District to follow the traditional bid process or the alternative process.

Plan:
The adoption of resolution (2004-11) will provide the necessary authorization for the District to notify the State Controller’s Office of the District’s intent to participate and to enact an informal bidding policy to govern the selection of contractors to perform public projects. It will further provide authorization to waive the formal bid process, where applicable, for public projects up to $100,000.

Fiscal Impact:
There is no impact to the general fund in adopting this resolution. Where feasible, a cost savings of staff time will occur when the formal bid process does not have to be utilized for awarding of public projects.

Recommended Action:
Adoption of Resolution (2004-11) Authorizing Election Under Public Contract Code Section 22030 To Become Subject To Uniform Public Construction Cost Accounting Procedures; and Authorization for Superintendent or Designee to Execute Same

Originating Department:
Purchasing
GROSSMONT UNION HIGH SCHOOL DISTRICT

Resolution No. 2004-11

RESOLUTION AUTHORIZING ELECTION UNDER )
PUBLIC CONTRACT CODE SECTION 22030 )
TO BECOME SUBJECT TO UNIFORM PUBLIC )
CONSTRUCTION COST ACCOUNTING PROCEDURES )

ON MOTION OF Member_____________________, seconded by Member_________________, the following resolution is adopted:

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chap. 1054, Stats. 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code Section 22000 et seq., the Uniform Public Construction Cost Accounting Act, establishes such a uniform cost accounting standard; and

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

WHEREAS, the Grossmont Union High School District desires to elect and become subject to Uniform Public Construction Cost Accounting Procedures for the purpose of awarding public project contracts as appropriate under these procedures; and

WHEREAS, the Grossmont Union High School District finds that utilizing the procedures outlined by the Uniform Public Construction Cost Accounting Act may save administrative time and expense and will be in the best interest of the District; and

NOW THEREFORE BE IT RESOLVED, ORDERED, AND DECLARED that this Board finds that utilizing the procedures outlined by the Uniform Public Construction Cost Accounting Act may save administrative time and expense and will be in the best interest of the District; and

BE IT FURTHER RESOLVED, ORDERED, AND DECLARED that the Governing Board of the Grossmont Union High School District hereby elects under Public Contract Code Section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission’s policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the Assistant Superintendent, Business Services, and the Director, Purchasing, notify the State Controller forthwith of this election.

PASSED AND ADOPTED by the Governing Board of the Grossmont Union High School District at El Cajon, California, on this 29th day of April, 2004, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

STATE OF CALIFORNIA )
COUNTY OF SAN DIEGO )

I, Evelyn Wills, Clerk of the Governing Board of the Grossmont Union High School District of El Cajon, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by said Board at the regular meeting thereof at the time and place of vote stated, which resolution is on file and of record in the office of said Board.
BOARD POLICY

BP 3300

Note: Education Code 17605 authorizes the Board to adopt a rule delegating authority to purchase services and materials and prescribing time, money, and subject matter limits to this authority. The amount delegated may not be in excess of the amount specified in Public Contract Code 20111 and 22000 et seq. Pursuant to SB 429 (Ch. 897, Statutes of 1995), these limits are currently $45,000 for facilities projects and $50,000 for other expenditures. The amount shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction. Expenditures over these amounts must be competitively bid; see 3311 - Bids. The district may revise the following paragraph to specify financial limits equal to or lower than amounts specified in law, and to specify time limits as desired.

The Superintendent or designee may purchase supplies, materials, equipment, and services up to the amounts specified in Public Contract Code 20111 and/or 22000 et seq., beyond which a competitive bidding process is required.

(cf. 3310 - Purchasing Procedures)
(cf. 3311 - Bids)
(cf. 3312 - Contracts)

The Superintendent or designee may authorize an expenditure which exceeds the budget classification allowance against which the expenditure is the proper charge only if an amount sufficient to cover the purchase is available in the budget for transfer by the Governing Board.

(cf. 3100 - Budget)
(cf. 3110 - Transfer of Funds)

All transactions entered into by the Superintendent or designee on behalf of the Board shall be reviewed by the Board every 60 days. (Education Code 17605)

No district funds shall be expended for the purchase of alcoholic beverages. (Education Code 32435)

The Board shall not recognize obligations incurred contrary to Board policy and administrative regulations.

Note: Education Code 17605 states that the district officer invested by the Board with the power to contract is personally liable for all district funds paid out as a result of malfeasance of office.

Legal Reference:

EDUCATION CODE

17604 Delegation of powers to agents; liability of agents
Policy GROSSMONT UNION HIGH SCHOOL DISTRICT

Adopted: September 4, 1997 La Mesa, California
Revised: October 11, 2012
The district has adopted the California Uniform Public Construction Cost Account Act procedures under Public Contract Code 22000 et. seq.

Informal Bids:

Public projects, as defined by the Act and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

Contractors List:

A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission

Advertised Bids

The district shall seek competitive bids through advertisement for contracts involving an expenditure of greater than $175,000 for a public project, informally bid contracts involving an expenditure of less than $175,000, and seek quotes, when feasible, for projects involving an expenditure of $45,000 or less.

"Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a district owned, leased or operated facility. (Public Contract Code 22002)

Competitive bids shall be sought through advertisement for contracts exceeding $50,000, for the following: (Public Contract Code 20111; Government Code 53060). The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

1. The purchase of equipment, material or supplies to be furnished, sold or leased to the district

2. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters

3. Repairs, including maintenance that is not a public project
"Maintenance" means routine, recurring and usual work for preserving, protecting and keeping a district facility operating in a safe, efficient and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered or repaired. "Maintenance" includes, but is not limited to, carpentry, electrical, plumbing, glazing and other craft work designed to preserve the facility as well as repairs, cleaning and other operations on machinery and other permanently attached equipment. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security forces, nor does it include painting, repainting or decorating other than touchup. (Public Contract Code 20115).

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 for any transportation service expenditure of more than $10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally owned transit system or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder. (Education Code 39802)

No work, project, service or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the district, circulated in the county, or if no such paper exists then in some newspaper of general circulation, at least once a week for two weeks. The notice shall state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. (Public Contract Code 20112)

The notice shall contain the time, date and location of any mandatory prebid conference, site visit or meeting. The notice shall also detail when and where project documents, including final plan and specifications, are available. Any such mandatory visit or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

Bid instructions and specifications shall include the following requirements and information:

1. Recycled Content and Recycled Products (Public Contract Code 22150 et seq.)

a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the paper products offered, and both the postconsumer and secondary waste content.
b. Fitness and quality being equal, the District shall purchase recycled products whenever available at no more than the total cost of non-recycled products.

2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)
   
a. Cash
   
b. A cashier's check made payable to the district
   
c. A certified check made payable to the district
   
d. A bidder's bond executed by an admitted surety insurer and made payable to the district
   
The security of unsuccessful bidders shall be returned in a reasonable period of time, in no event any later than 60 days after the bid is awarded. (Public Contract Code 20111)

3. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)

4. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)

5. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, depending on the availability of funds, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #a, below, will be used: (Public Contract Code 20103.8)
   
a. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
   
b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
   
c. The lowest bid shall the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.
   
d. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

6. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

7. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board policy, and administrative regulation.
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)

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)

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.

(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).

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.
Bids shall also not be required for day labor under circumstances specified in law. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

Public projects of $45,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (Public Contract Code 22032)

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined above

Sole Sourcing Brand Names

Specifications for contracts for construction, alteration or repair of school facilities may not limit bidding to any one product or supplier. Specifications designating a particular brand name shall list at least two brands of comparable quality or utility and follow the description with the words “or equal.” (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name when one or more of the following conditions apply: (Public Contract Code 3400)

1. In order that a field test or experiment may be made to determine the product's suitability for future use.
2. In order to match other products in use on a particular public improvement either completed or in the course of completion.
3. In order to obtain a necessary item that is only available from one source.
4. (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals. (B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

If the district specifies a brand name for a designated material, product, thing, or service by the specification shall be followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the District shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.
Prequalification Procedure

For any contract for which bids are legally required, the Board may require that each prospective bidder complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall supply a form which requires a complete statement of the bidder’s financial ability and experience in performing public works. Prospective bidders shall submit the questionnaire and financial statement at least five days before the date fixed for public opening of sealed bids. The information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Public Contract Code 20111.5) The Superintendent or designee shall establish a uniform system for rating bidders on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid. Bidders must be deemed prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

The Superintendent or designee shall furnish each qualified bidder with a standardized proposal form. Bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)

The district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

For any contract awarded after January 1, 2014, using funds from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond if the project has projected expenditures of one million dollars or more, the District must prequalify all bidders. (Public Contract Code 20111.6) The District shall comply with all requirements of the PCC 20111.6 until 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):

- The District’s Executive Director Facilities Management
- The District’s Director of Purchasing
- A member of an outside agency.

The sole issue before the Appeals Panel shall be the scoring of a Contractor. The decision of the Appeals Panel shall be the District’s final administrative decision.

The date for submission and opening of bids for a specific project will not be delayed or postponed to allow for completion of an appeal process.
Process:
1) Prior to disqualifying a contractor, the District shall serve written notice on the contractor:
   a. Setting forth the reasons for the disqualification.
   b. Indicating that the contractor will be afforded an opportunity to appeal the disqualification as outlined below. Effective notice shall be accomplished by certified mail, return receipt requested, to the last known address of the contractor, or the contractor’s agent for service of process, or any of its principal officers, partners, owners or affiliated.

2) The contractor shall submit his appeal in writing with the Executive Director Facilities Management no later than 4:00 p.m. of the FIFTH business day following the day on which the notice of rejection was mailed to the contractor.

3) The District shall act upon properly filed requests within ten calendar days from the date of receipt of such request. If, after review, the District again rejects the contractor’s application, the contractor may request an administrative hearing with the panel.

4) At the hearing, the contractor may present oral testimony concerning the contractor’s capability and responsibility. The District shall notify the contractor of his decision within five business days following the hearing. The decision of the panel is final.

5) A contractor, who is denied prequalification, shall be disqualified in the same type of work or category of value for a period of one year thereafter.

Protests by Bidders

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

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

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

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

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

Regulation GROSSMONT UNION HIGH SCHOOL DISTRICT

Approved: January 1, 2001 La Mesa, California
Revised: January 5, 2009
Revised: April 15, 2013
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 2015 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. We launched a web-based prequalification process in December. To apply for prequalification go to: (url)

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:

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<tr>
<th>Company Name</th>
<th>Phone No.</th>
<th>Fax No.</th>
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</thead>
<tbody>
<tr>
<td>Address</td>
<td>Contact Name:</td>
<td></td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>Email Address</td>
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</tr>
<tr>
<td>Type of Work</td>
<td>License Classification(s)</td>
<td>License No.</td>
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Information should be sent to:
__________________________, Director of Purchasing
__________________________, District
__________________________, CA 92111
Fax: xxx-xxx-xxxx
E-mail:

Questions? Call _________________ at XXX-XXX-XXXX

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

**MAIN STREET SCHOOL DISTRICT**

**Main Street School Remodel**

**Project Manager:** Sanders

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<td><strong>Total Materials/Supplies/Subcontracts w/Overhead</strong></td>
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<td>2,800.00</td>
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**TOTAL PROJECT COST**

$8,594.83
1. What is the Uniform Public Construction Cost Accounting Act?

A program created in 1983 which allows local agencies to perform public project work up to $45,000 with its own work force if the agency elects to follow the cost accounting procedures set forth in the Cost Accounting Policies and Procedures Manual of the California Uniform Construction Cost Accounting Commission (Commission). The Act is enacted under Public Contracts Code Section 22000 through 22045 (hereafter abbreviated as PCC 22000-22045).

In addition, the Act provides for alternative bidding procedures when an agency performs public project work by contract.

a) Public projects of $45,000 or less may be performed by negotiated contract or by purchase order (PCC 22032(a)).

b) Public projects of $175,000 or less may be let to contract by the informal procedures set forth in the Act (PCC 22032(b)).

c) Public projects of more than $175,000 shall be let to contract by formal bidding procedures (PCC 22032(c)).

Every five years, the Commission shall consider whether there have been material changes in public construction costs and make recommendations to the State Controller regarding adjustments to the bidding procedure monetary limits (PCC 22020). Adjustments should be effective for the fiscal year that commences not less than 60 days following the State Controller’s notification to all participating agencies.

2. What are the benefits of the program?

a) Increased force account limit

b) Informal bidding for projects between $45,001 and $175,000 which do not require advertising.

c) Reduces the number of formal bids.

d) Expedited contracting for small projects.

Many participants laud the program because it gives them more leeway in the execution of public works projects; has speeded up the awards process; has improved timeliness of the project completion; has eliminated considerable red tape and cumbersome paperwork relative to advertising and filing of reports; and has simplified administration. Many agencies have encountered only minimal problems with the accounting requirements and the overhead portion. Moreover, where required, the adjustment was relatively simple; most of the required procedures were already actually in place, so there was no noticeable change in the existing operations. The Standard Accounting Codes Structure will satisfy the reporting requirements when used properly.

3. Is the Uniform Public Construction Cost Accounting Act mandatory for local agencies?

No. The Act is a voluntary program. However, it is available to all local agencies, counties, and cities, both general law and charter.

4. How does a local agency become subject to the Act?

The governing body must elect by resolution to become subject to the Act and file a copy of the resolution with the State Controller’s Office (PCC 22030). Sample documents are available at: http://www.sco.ca.gov/ard_cuccac.html
5. May a local agency withdraw from the Act?

An agency may withdraw by filing a resolution of the agency’s election to withdraw with the State Controller’s Office.

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

A state commission created under the Act (PCC 22010). It consists of fourteen (14) members: thirteen (13) members are appointed by the State Controller and one is a designated member of the Contractors’ State License Board. Seven members represent the public sector (counties, cities, school districts, and special districts). Seven 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. The Commission is responsible for administration of the Act. The State Controller provides limited staff and other support to the Commission (PCC 22015(a)).

7. What are the Uniform Public Construction Cost Accounting Procedures?

The cost accounting procedures were developed by the Commission. They are to be used to estimate costs for determining if a public project is required to be bid out and to capture and record actual costs when a public project is performed by the agency’s own work force. The procedures follow normal accounting in the industry and in many cases are not much different from those already in place at the agency. Sample forms are available in the CUCCAC Cost Accounting Policies and Procedures Manual.

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

8. Are the cost accounting policies and procedures applicable for agencies whose work force only performs maintenance tasks as defined in the Act and whose public projects are all contracted out?

The cost accounting policies and procedures are only applicable for agencies that perform public project work by force account. This does not exclude from the program agencies whose public projects are all contracted out. In fact, they might want to review the benefits available and elect to participate now in the event conditions change at some time in the future.

9. Can a local agency disqualify or exclude certain contractors from the Qualified Contractors List required pursuant to PCC 22034(a)?

Agencies may disqualify contractors from the Qualified Contractors List when a contractor fails to furnish information to meet the minimum criteria as established by the Commission pursuant to PCC 22034(a).

10. For agencies that do not maintain an informal bidders list, are they allowed to choose who will get notifications on information projects?

The Act requires that an informal bid project is either advertised and/or notifications are sent to all contractors on the informal bidders list. We have noticed that a very large percentage of signatory local public agencies do not maintain or update an informal bidders list and are sending notices to only one or two contractors.

There is no exemption to maintaining a list of bidders. PCC 22034 (a). The public agency shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the commission. If an
agency is not maintaining a list or notifying all contractors or trade papers, then they are not in compliance with the Act.

The Code says that participating agencies shall adopt an ordinance requiring that a list of all qualified contractors, identified according to categories of work be maintained. It does not require the list to be used however, and allows notifications to the required trade journals and exchanges be used as an alternate if desired. For agencies who elect to use the alternative authorized method of advertising, the purpose of the list is effectively negated.

If an agency is using the contractor's list then they must send the notification to all contractors on the list for that category of work and the list must be maintained in accordance with the Manual.

11. What is the difference between qualifying contractors under UPCCAA and prequalification of contractors under PCC 20101?

Qualification of contractors is a process that allows contractors to register with the agency for notification of public works opportunities. The prequalification process under PCC 20101 is a more complex process that requires a standardized questionnaire and evaluation of contractors using standard scoring criteria.

12. Must a local agency: (1) Notify contractors pursuant to PCC 22034(b) if the contractor is believed not to have the skills, credentials, or experience to perform the work? (2) Consider bids submitted if the agency believes the contractor does not have the skills, credentials, or experience to perform the work?

   a) If a contractor is on the Qualified Contractors List (PCC 22034(b)), the contractor must be notified by the agency of public projects for which he is licensed to perform.
   b) All bids received from qualified contractors must be considered.

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

PCC 22035 provides that in cases of great emergency the governing body may, by majority vote, proceed without adopting plans and giving notice to bids to let contracts. In addition, this section provides that the governing body may delegate to the appropriate agency manager the power to declare an emergency and/or proceed with repairs or replacements without approval by the board. PCC 22050 provides contracting procedures without giving notice for bids to let contracts for these emergencies.

14. Do the alternative bidding procedures apply only to public projects as defined in PC 22002(c) or can they be used for the following types of items:

   a) Maintenance work to be performed by contract?
   b) Purchase of heavy equipment?
   c) Purchase of materials?

Pursuant to PCC 22003, a participating agency may use the alternative bidding procedures on maintenance work as defined in PC 22002(d), items 1-5. PCC 22003 is permissive and agencies can continue to exclude maintenance from the alternative bidding procedures. However, if an agency misclassifies a project ($45,001 or more) as maintenance and therefore, does not uses the applicable bidding procedures, a review by the Commission may be conducted pursuant to PCC 22042(c).

The purchase of equipment and supplies fall under PCC 20111; however, when purchased or used as part of a public works project, the costs associated with the purchase or use become part of the project cost and must be considered when applying the bid limits under the Act.
15. What will membership in the Act cost my agency?

At the present, no required membership fees or dues are assessed. However, the Commission has only received direct state funding for a short period of its history. The State has indicated that the participating agencies, contractors, and unions that benefit from the Commission should be responsible for its funding. Therefore, in November 2004, the Commission asked member agencies, contractor’s associations, and construction related unions for voluntary donations to support the Commission. There may be additional requests for voluntary support. Any mandatory fees or dues would require legislation and would be for a nominal amount.

16. What are the most common concerns?

There are three leading areas of expressed concern and mostly all are quickly alleviated when addressed properly. These are:

a) Cost accounting policies and procedures;
b) Informal bidding procedures;
c) Accounting review procedures.

The cost accounting requirements follow those common to the construction industry. The informal bidding up to $175,000 is seen by the agencies as an asset enhancing project completion. Maintenance of a Qualified Contractor Bid List is routine, since interested contractors make it a point to be included on the list. While a review could potentially hold up a project for 30 days pursuant to PCC 22043, formal complaints have been rare in the Commission’s history.

17. Does an agency have to calculate an overhead rate in order to apply the accounting procedures?

Cities with populations of less than 75,000 may use an overhead rate of 20% of all direct costs in lieu of the overhead rate calculation specified in Section VI of the Cost Accounting Policies and Procedures Manual. Cities with a population of more than 75,000, counties, special districts, and school districts may use an overhead rate of 30% of all direct costs, in lieu of a calculated rate.

18. When a local 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?

The Act only superscedes the bidding procedures used once a public agency has adopted a resolution and notified the Controller. All other contracting requirements are applicable whether or not a public entity opts into the Act.

The specific mention of bidding procedures emphasizes the omission of other statutory requirements (such as bond payments, prevailing wages, addenda, change orders, etc) and implies that their applicability is found in specific statutory provisions rather than the Act.

Therefore, the Act does not supersede other contracting requirements for performance bonds, prevailing wages, and certificates of insurance, etc.

19. Can a signatory agency, claim to be to be exempt from requirements in the Public Contract Code (PCC) by claiming they only have to follow the language and procedures within the Act? CIFAC has found signatory agencies that ignore the following requirements because these requirements are found in the language in other parts of the PCC that is outside the Act.

a) Subcontractor listing – all subcontractors in excess of ½ of 1%
b) Mandatory pre-bid notice – a minimum of 5 days notice before the meeting
c) 72-hour bid opening extension on monetary specification changes
d) All bids opened in public
No. The Commission has ruled in the past that where the Act is silent, the standard code applies.

20. If the Construction Industry Force Account Council (CIFAC) finds signatory agencies that are not following the advertising requirements in the Act, will the Commission address those agencies? Can CIFAC bring a complaint against them to the Commission?

PCC 22042 lists the categories of complaints that the Commission can consider. A complaint of agencies not following advertising requirements is not one of the categories listed. PCC 22044 seems to suggest that we can make findings on any violation of the chapter but then later seems to limit our response to the categories in PCC 22042.

21. PCC 20112 specifically requires school districts to advertise twice for a two week period, while PCC 22037 requires advertising once, 14 days in advance of the date of opening of bids. Which code applies to school districts?

PCC 22037. When the Act is in conflict with any other code, the Act shall supersede. However, most districts chose to maximize their outreach by continuing to advertise twice.

22. May an agency contract separately for like work at individual sites using the under lower Force Account limit?

No.

23. May an 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 being competitively bid.

24. How do agencies process change orders when the standard code conflicts with the Act?

For contracts below $45,000, the total cost of the contract may not exceed $45,000. For informal contracts, the total cost of the project may not exceed $187,500.

Change orders for formal bids would follow the requirements in PCC 20118.4.

25. Does an agency by opting into the Act automatically bring

a) All departments of the agency into the Act?
b) Districts under control of the governing board into the Act?

When a local agency elects to become subject to the uniform construction cost accounting procedures, the entire entity is considered subject to the Act and no departments will be exempt.

Special Districts, which are governed by a board of supervisors or city council, are only subject if a separate election is made.

Additional inquiries and questions can be directed to:
State Controller’s Office
Division of Accounting and Reporting
Local Government Policies Section
3301 C Street, Suite 740
Sacramento CA, 95816
[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 $45,000)

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 $45,000) to be paid in full within thirty (30) days after completion and acceptance

2. Contractor shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following classification: ____________________________. This contract shall commence on __________________ with work to be completed within __________________ (___) consecutive days and/or by ___________________________.

3. SCOPE OF WORK: By submitting a proposal, contractors warrant that they have made a site examination as they deem necessary as to the condition of the site and certify all measurements, specifications and conditions affecting the work to be performed at the site. Proposals are subject to acceptance by the signing of a contract and issuance of an appropriate purchase order. The District reserves the right to accept or reject any and all quotes and reserves the right to waive any informality in any quote. CONTRACTOR PROPOSES TO FURNISH LABOR AND MATERIAL IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS: Describe in detail the scope of the proposed project and materials to be furnished. 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 & B take precedence over any Contractor supplied attachments!

SCOPE OF WORK

Prevailing Wages Apply

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

Revised: March 2014
NONCOLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

The undersigned declares: I am the ____________________________, 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: ______________________________________________________

_____ 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 Collusion Affidavit
_____ Certificates of Insurance  _____ Workers’ Compensation Certificate
_____ Contractor Certification Form, Attachment A  _____ Terms and Conditions dated Attachment B
_____ 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.

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<td>Corporation</td>
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License No: ______________________ Classification: ______________________ Expiration Date: ______________________
I hereby agree to abide by these terms and conditions if awarded the project as described herein. Under penalty of perjury I certify that I am a duly authorized agent/representative of the company providing this proposal. I also certify that none of the individuals identified on attached certification form (if applicable) or any individual identified above as been convicted of a felony as defined in Education Code 45122.1

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:________________________________________
Date:________________________________________________
Address:_____________________________________________
Authorized Signature:___________________________________
Printed Name:_________________________________________
Title:_________________________________________________
Phone:________________________ Fax:_________________
Email Address:________________________________________
ATTACHMENT A – CONTRACTOR 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, 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.

<table>
<thead>
<tr>
<th>Name</th>
<th>Social Security No.</th>
</tr>
</thead>
</table>

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)
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
ARTICLE 1. PROPOSAL ACCEPTANCE: Proposals are subject to acceptance by the signing of a contract and issuance of an appropriate purchase order and same 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.

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: 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.

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 fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or by any subcontractor under him. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor’s mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the
Contractor in meeting his prevailing wage obligations, or the Contractor’s willful failure to pay the correct rates of prevailing wages. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor, and the Contractor shall be bound by the provisions of Labor Code section 1777.5.

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 the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

c) A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Contractor.

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

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

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

ARTICLE 8. 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 in which the public work is located 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. 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 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 counted on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor
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 in excess of 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, by which shall be set forth in 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 in 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 the 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 council under this section are subject to Labor Code Section 3081.

ARTICLE 9. 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 of this section, work shall be permitted upon application of a joint apprenticeship committee to the Division of Labor Standards Enforcement to exceed the 1-to-5 ratio set forth in this section when it finds that the journeymen in the same craft or trade are employed at the time of service of any worker employed at any time by the Contractor or by any subcontractor for any of the reasons previously stated.

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 10. 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 and 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 11. 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, superintendent, 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 12. 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 13. 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 14. 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, lights and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of 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 15. 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 be remedied, and shall furnish District copies of all reports and monitoring certificates upon completion of repairs, 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 16. 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 17. CLEAN UP: Contractor at all times shall keep premises free from debris such as waste, rubbish and excess

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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 18. 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 19. 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 Contractor’s cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this contract, but shall proceed with all work to be performed under the contract. A contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE 20. 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 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 these duties or functions is the owner of the utility facility not identified by the public agency in the contract plans or specifications, he shall immediately notify the public agency and utility and 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 21. CHANGES AND CHANGE ORDERS: Change orders may not cause the total aggregate cost of the project to exceed $45,000 or the project will become subject to competitive bidding. The District, without invalidating contract, 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 22. 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 23. 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

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ARTICLE 24. 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 25. 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 26. SUBSTITUTIONS: No substitutions of materials from those specified in the Work Specifications shall be made without the prior written approval of the District.

ARTICLE 27. 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 28. 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 29. 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 30. 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 31. 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 32. 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 venturer of the District.

ARTICLE 33. 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
ARTICLE 34. 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.

ARTICLE 35. 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 36. GOVERNING LAW: This contract shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 37. NO ORAL MODIFICATION: Any waiver, amendment, modification, consent or acquiescence with respect to this contract or any provision of this contract or with respect to any failure to perform in accordance therewith shall be set forth in writing, 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.

ARTICLE 38. ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA): All contract work that is performed for the School 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 39. 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 40. DRUG FREE/SMOKE FREE/ALCOHOL FREE POLICY: All District sites are designated drug free/smoke free/alcohol free. The use or abuse of controlled substances, tobacco products and alcohol will not be tolerated.

ARTICLE 41. LABOR COMPLIANCE: If the District is using funds derived from the Kindergarten-University Public Education Facilities Bond Acts of 2002, 2004 or 2006 for this Project, then the Contractor may be required to enforce the District’s Labor Compliance Program (“LCP”).

ARTICLE 42. DIR REGISTRATION: In accordance with Labor Code 1725.5, Contractor and Subcontractors must be registered as of the date of this Agreement.

ARTICLE 44. DVBE PARTICIPATION: This contract will be subject to disabled veterans participation goals and record retention program if State funding is used for the Project. If applicable, in accordance with Education Code section 17076.11, this District will implement its participation goal for disabled veteran business enterprises (“DVBE”) of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such project, Contractor shall provide appropriate documentation to the District identifying the amount paid to 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 43. 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 43