VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

BID AND CONTRACT DOCUMENTS

Bid Packages Due on or Before:

Wednesday, June 18, 2025 – 2:00 p.m.

TABLE OF CONTENTS

NOTICE TO BIDDERS	SECTION 1
INSTRUCTIONS TO BIDDERS	SECTION 2
BID FORMS	SECTION 3
AGREEMENT	SECTION 4
PERFORMANCE BOND	SECTION 5
PAYMENT BOND	SECTION 6
GENERAL CONDITIONS	SECTION 7
SPECIAL CONDITIONS	SECTION 8
SPECIFICATIONS	SECTION 9
PROJECT FORMS	SECTION 10

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 1
NOTICE TO BIDDERS

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NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that the Vista Unified School District ("District") will receive bids up to, but not later than **02:00 p.m. on Wednesday, June 18, 2025,** sealed bids for the award of a contract for:

BID NO. V24251169B

Madison Middle School Fuel Management & Vegetation Removal

Bids shall be received at the Vista Unified School District Office, located at 1234 Arcadia Ave Vista, CA 92084 and shall be opened and publicly read aloud at the above state time and place. Responses must be sealed and clearly marked **Madison Middle School Fuel Management & Vegetation Removal**, BID NO. V24251169B Facsimile or electronic copies of the bid will not be accepted. Bids received after the above-specified time may be rejected.

The Project includes fuel management and vegetation removal at Madison Middle School. There will be a **mandatory** Pre-Bid Conference at Madison Middle School – 4930 Lake Blvd. Oceanside, CA 92056 on **Thursday, June 05, 2025, at 7:30 a.m.** for the purpose of acquainting all prospective bidders with the bid documents and the work sites. Check-in will be in front of the main office. Failure to attend this mandatory pre-bid conference may disqualify the non-attending bidder from the bid.

Each bid must conform and be responsive to this notice and all other documents comprising the contract documents. All interested parties may obtain additional information by contacting Kevin Lesko – kevinlesko@vistausd.org or by visiting the District's Purchasing Department Website: https://www.vistausd.org/departments/businessservices/fiscal-services/purchasing

All forms must be completed, signed, and returned with the bid. No bidder may withdraw its bid for a period of sixty (60) calendar days after the date set for the receipt of bids. The successful bidder shall file a payment bond issued by an admitted Surety authorized to conduct business in the State of California approved by the District. A performance bond will also be required.

This Project is a public works project and is subject to the payment of prevailing wages. The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the contract that will be awarded to the successful bidder, copies of which are available to the public on the internet at http://www.dir.ca.gov/DLSR/ or from the District Purchasing Department, upon request.

The successful bidder and all subcontractor(s) shall comply with all applicable Labor Code provisions, which include, but are not limited to, the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors.

Each Bidder submitting a bid must be a Department of Industrial Relations registered contractor pursuant to Labor Code section 1725.5 ("DIR Registered Contractor"), unless an exception expressly provided in the Labor Code applies. This project is subject to compliance monitoring and enforcement by the DIR. If awarded the Contract, at all times during performance of the work, the Bidder and all Subcontractors of any tier shall be DIR Registered Contractors and continue to comply with all DIR requirements.

Each bidder shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following classifications: **C-27 Landscaping License**. No bid will be accepted from a contractor who has not been licensed in accordance with the California Business and Profession Code at the time the bid is submitted.

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

Publication Dates: 05/27/25 & 06/03/25

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 2
INSTRUCTIONS
TO BIDDERS

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INSTRUCTIONS TO BIDDERS

1. Preparation and Availability of Bid Form; Deadline for Receipt of Bids

Each bid on the attached form shall be sealed and submitted to the District at such time and place as is stated in the Notice Inviting Bids, not later than **2:00 p.m. on June 18, 2025**. The District suggests that bids be hand delivered in order to ensure their timely receipt. Any bids received after the time stated, regardless of the reason, shall be returned, unopened, to the bidder. The District will not accept any bids or bid modifications submitted by facsimile or electronic mail transmission.

Bids shall only be prepared using the copy of the Bid Form, which is included and part of the Contract Documents for the Project. The use of substitute bid forms other than clear and correct photocopies of those provided by the District will not be permitted. Bids shall be received by the Vista Unified School District's Purchasing Department.

All blanks in the bid form must be appropriately filled in, and all prices must be stated in both words and figures. All items on the form shall be filled out in ink. Numbers should be stated in figures, and the signatures of all individuals must be in long hand. The completed form should be without interlineations, alterations, or erasures. If a different price is stated in words than is stated in figures, the price stated in words shall be the price bid.

QUESTIONS CONCERNING BID DOCUMENTS: Any questions pertaining to the bid documents are to be directed **via e-mail only** to the District's Director of Purchasing, Mr. Kevin Lesko at kevinlesko@vistausd.org Questions must be received before **2:00 p.m. on June 10, 2025, questions received after this time will NOT be addressed.**

Any clarification the District deems necessary as a result of questions received or to further clarify the bid documentation will be done via an addendum and shall be distributed to all firms participating in this opportunity who are known to have received a copy of the bid documents. Vendors shall contact the District to ensure they have receive all addenda issued.

2. Execution of Forms

Each bid shall give the full business address of the bidder and must be signed by the bidder or bidder's authorized representative with his or her usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters. Bids by corporations must be signed with the legal name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation in this matter. The name of each person signing shall also be typed or printed below the signature. When requested by the District, satisfactory evidence of the authority of the officer signing on behalf of the corporation or partnership shall be furnished. A bidder's failure to properly sign required forms may result in rejection of the bid. All bids must include the bidder's contractor license number(s) and expiration date(s).

3. Bidders' Conference

A bidders' conference will be held on Thursday, June 5, 2025, at 7:30 am, for the purpose of acquainting all prospective bidders with the Contract Documents and the Project site. The failure to attend the conference may result in the disqualification of the bid of the non-attending bidder.

4. Requests for Information

A bidder's failure to request clarification or interpretation of an apparent error, inconsistency or ambiguity in the Contract Documents waives that bidder's right to thereafter claim entitlement to additional compensation based upon an ambiguity, inconsistency, or error, which should have been discovered by a reasonably prudent Contractor, subject only to the limitations of Public Contract Code § 1104. To the fullest extent permitted by law District

expressly disclaims responsibility for assumptions a bidder may draw from the presence or absence of information in the bid documents. Any questions relative to the bid shall be in writing and directed to the District's Director of Purchasing, Mr. Kevin Lesko at kevinlesko@vistausd.org These requests shall be submitted to the District at least seven working days prior to the date the bid is due.

5. Bid Security

Bid proposals shall be accompanied by a certified or cashier's check or bid bond for an amount not less than ten percent (10%) of the bid amount, payable to the District. A bid bond shall be secured from an admitted surety company, licensed in the State of California, and satisfactory to the District. The bid security shall be given as a guarantee that the bidder will enter into the Contract if awarded the work, and in the case of refusal or failure to enter into the Contract within ten (10) calendar days after notification of the award of the Contract or failure to provide the payment and performance bonds and proof of insurance as required by the Contract Documents, the District shall have the right to award the Contract to another bidder and declare the bid security forfeited. The District reserves the right to pursue all other remedies in law or equity relating to such a breach including, but not limited to, seeking recovery of damages for breach of contract. Failure to provide bid security, or bid security in the proper amount, may result in rejection of the bid.

6. Faxed and Electronic Mail Bids

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

7. Withdrawal of Bids

Bid proposals may be withdrawn by the bidders prior to the time fixed for the opening of bids, but may not be withdrawn for a period of sixty (60) days after the opening of bids, except as permitted pursuant to Public Contract Code § 5103.

8. Addenda or Bulletins

The District reserves the right to issue addenda or bulletins prior to the opening of the bids subject to the limitations of Public Contract Code § 4104.5. Any addenda or bulletins issued prior to bid time shall be considered a part of the Contract Documents.

Please note: Bidders are responsible for ensuring that they have received any and all addenda. To this end, each Bidder should contact the Office of Purchasing to verify that he/she has received all Addenda issued, if any, prior to the bid opening.

9. Agreements and Bonds

The Agreement form, which the successful Bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds, which will be required to furnish at the time of execution of the Agreement, are included in the Contract Documents and shall be carefully examined by the Bidder. The required number of executed copies of the Agreement, the Performance Bond, and the Payment Bond is as specified in the Special Conditions.

The successful bidder shall be required to submit payment and performance bonds as specified in and using the bond forms included with the Contract Documents. All required bonds shall be based on the maximum total contract price as awarded, including additive alternates, if applicable. The Performance Bond must be executed by an admitted surety insurer approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established. The District reserves the right to approve or reject the surety insurer selected by the Contractor and to require the Contractor to obtain a bond from a surety satisfactory to the District. Bonds shall be in the form set forth in the Contract Documents.

10. Signing of Bids

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

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

11. Award of Contract and Rejection of Bids

The Contract shall be awarded to the lowest responsible and responsive bidder as interpreted by the District under California law and the Contract Documents, including the Notice to Bidders and these Instructions. The District reserves the right, without any liability, to cancel the award of any bid for any reason at any time before the full execution of the Agreement between District and Contractor.

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

The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bid or in the bidding process.

12. Execution of Contract

The successful bidder shall, within ten (10) calendar days of the Notice of Intent to Award of the Contract, sign and deliver to the District the executed contract along with the bonds and certificates of insurance required by the Contract Documents. In the event the successful bidder fails or refuses to execute the Contract or fails to provide the bonds and certificates as required, the District may declare the bidder's bid deposit or bond forfeited as liquidated damages, and may award the work to the next lowest responsible, responsive bidder, or may reject all bids and, in its sole discretion, call for new bids. In all cases, the District reserves the right, without any liability, to cancel the award of Contract at any time prior to the full execution of the Contract.

13. Modifications

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

14. Erasures/Mutilation of Bid Documents

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

Contractors should not deface or mutilate the bid documents to the extent that they may not be usable for

construction purposes. Bid documents obtained under deposit shall be returned within ten (10) days after bid opening.

15. Examination of Site and Contract Documents

Each Bidder shall visit the site(s) of the proposed work and fully acquaint itself with the conditions relating to the construction and labor so that it may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the Drawings and Specifications. All Drawings, Specifications and other documents used or prepared during the project shall be the exclusive property of the District. The failure or omission of any Bidder to receive or examine any Contract Documents, forms, instruments, addenda, or other documents or to visit the site(s) and acquaint itself with conditions there existing shall in no way relieve any Bidder from obligations with respect to its bid or to the Contract. The Bidder is responsible to obtain any geotechnical and/or soils report pertaining to the site of the work at Bidder's expense, if applicable. Although any such report does not operate as a warranty or guarantee of site conditions, the submission of a Bid shall be taken as prima facie evidence of compliance with all terms of this section.

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

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

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

(a) Each Bidder, by making its bid, represents that it has read and understands the Contract and Contract Documents and any and all related reports and information. After executing the Agreement, no consideration will be given to any claim of misunderstanding of the documents.

(b) Each Bidder, by making its bid, represents that it has visited the site(s), inspected the area of the work, and familiarized itself with the local conditions under which the work is to be performed, including sub-surface conditions, as appropriate. Such inspection shall specifically consider requirements for accessing the site and determining the work can be completed as required by, and as shown in, the Contract Documents.

(c) No bidder shall visit the site without prior authorization of the District. Bidders shall the District's Director of Purchasing, Kevin Lesko at kevinlesko@vistausd.org for site visits.

16. Sales and Other Applicable Taxes, Permits, and Fees

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

17. Evidence of Responsibility

Upon the request of the District, a Bidder whose bid is under consideration for the award of the Contract shall submit promptly to the District satisfactory evidence showing the Bidder's financial resources, the Bidder's construction experience in the type of work being required by the District, and the Bidder's organization available for the performance of the Contract and any other required evidence of the Bidder's qualifications to perform the

Contract. The District may consider such evidence before making its decision awarding the Contract. Failure to submit requested evidence of a Bidder's responsibility to perform the Contract may result in rejection of the Bid.

18. Bid Exceptions

Bid exceptions are not allowed. If the Bidder has a comment regarding the bid documents or the scope of work, the Bidder shall submit those comments to the District for evaluation at least five (5) working days prior to the opening of the bids. No oral or telephonic modification of any bid submitted will be considered and a sealed written modification may be considered only if received prior to the opening of bids. Emailed or faxed bids or modifications will not be accepted.

19. Discounts

Any discounts which the bidder desires to provide the District must be stated clearly on the bid form itself so that the District can calculate the net cost of the bid proposal. Offers of discounts or additional services not delineated on the bid form will not be considered by the District in the determination of the lowest responsible responsive bidder.

20. Quantities

The quantities shown on the plans and specifications are approximate. The District reserves the right to increase or decrease quantities as desired.

21. Prices; Containers Costs and Delivery

Bidders must quote prices F.O.B. unless otherwise noted. Prices should be stated in the units specified and bidders should quote each item separately. All costs for containers shall be borne by the bidder. All products shall conform to the provisions set forth in the federal, county, state and city laws for their production, handling, processing and labeling. Packages shall be so constructed to ensure safe transportation to the point of delivery.

22. Samples

On request, samples of the products being bid shall be furnished to the District.

23. Substitutions

In describing any item, the use of a manufacturer or brand does not restrict bidding to that manufacturer or brand, but is intended only to indicate quality and type of item desired, except as provided in Public Contract Code § 3400. Substitute products may be considered either prior to or after the award of the Contract in accordance with § 3400 and as set forth in either the Special Conditions or the Specifications. All data substantiating the proposed substitute as an "equal" item shall be submitted with the written request for substitution. The District reserves the right to make all final decisions on product and vendor selection.

IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE FOR PROVIDING THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED AT NO ADDITIONAL COST TO THE DISTRICT. THE DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.

24. Bid Negotiations

A bid response to any specific item of the bid using terms such as "negotiable," "will negotiate," or similar phrases, will be considered non-responsive.

25. Prevailing Law

In the event of any conflict or ambiguity between these instructions and state or federal law or regulations, the latter shall prevail. All equipment to be supplied or services to be performed under the bid proposal shall conform to all applicable requirements of local, state and federal law, including, but not limited to, Labor Code §§ 1771, 1778 and 1779.

26. Allowances

An "allowance" means an amount included in the bid proposal for work that may or may not be included in the Project, depending on conditions that will become known only after the Project is underway.

27. Bidders Interested in More Than One Bid and Bidders Not Qualified to Bid

No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime proposal. No person, firm, or corporation shall be allowed to bid who has participated in the preparation of contract specifications; a bid by such a person, firm, or corporation shall be determined to be nonresponsive.

28. Additive and Deductive Items – Method of Determining Basis of Award

Pursuant to Public Contract Code §20103.8, should this bid solicitation include additive and/or deductive items, the checked [X] method shall be used to determine the lowest bid:

_____ (a) The lowest bid shall be the lowest bid price on the each respective base bid section 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.

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

Notwithstanding the method used by the District to determine the lowest responsible Bidder, the District retains the right to add to or deduct from the Contract any of the additive or deductive items included in the bid solicitation.

29. Listing Subcontractors

Pursuant to the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§ 4100 et seq., every bidder shall, on the enclosed Subcontractor List Form, set forth:

(a) The name, license number, and location of the place of business of each Subcontractor who will perform work or labor or render service to the bidder in or about the work or fabricate and install work in an amount in excess of one-half of the one percent (0.5%) of the bidder's total bid.

(b) If the bidder fails to specify a Subcontractor for any portion of the work to be performed under the Contract in excess of one-half of one percent (0.5%) of the bidder's total bid, bidder agrees that bidder is fully qualified to and shall perform that portion of the work. The successful bidder shall not, without the written consent of the District or compliance with Public Contract Code §§ 4100 et seq., either:

1) Substitute any person as Subcontractor in place of the Subcontractor designated in the original bid;

2) Permit any subcontract to be voluntarily assigned or transferred or allow the work to be performed by anyone other than the original Subcontractor listed in the bid; or

3) Sublet or subcontract any portion of the work in excess of one-half of one percent (0.5%) of the total bid as to which the bidder's original bid did not designate a Subcontractor.

30. Form and Approval of Contract

The Contract Documents must be approved by the Board of Education of the District. The bidder selected by the District shall execute the contract provided by the District.

31. Denial of Right to Bid

Contractors or Subcontractors who have violated state law governing public works shall be denied the right to bid on this public works contract pursuant to Labor Code § 1777.7.

32. Contractor's State License Board and Certifications

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

Bidder must have all certifications and/or factory authorizations required for the project prior to submittal of the Bid including, but not limited to, the specified manufacturer certifications described in the Special Conditions section of this document. Subcontractors must have all certifications and/or factory authorizations required for each specialty subcontract prior to submittal of the Bid including, but not limited to, the specified manufacturer certifications described in the Special Conditions section of this document.

33. Fingerprinting

By law it is the District's responsibility to determine whether a contractor must provide fingerprint certification. Pursuant to Education Code § 45125.2, the District considers the totality of the circumstances in order to determine if fingerprinting of employees of a contractor working on a school site is required. Factors to be considered include the length of time the contractor's employees are on school grounds, whether students are in proximity to the location where the contractor's employees are working, and whether the contractor's employees are working alone or with others.

34. Labor Compliance Monitoring

The project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. In accordance with Labor Code § 1771.1, all bidders, contractors and subcontractors working at the site shall be duly registered with the Department of Industrial Relations at time of bid opening and at all relevant times. Proof of registration shall be provided as to all such contractors prior to the commencement of any work.

35. Retention

The Project is not considered substantially complex and therefore requires a standard retention amount of 5%.

36. Disabled Veteran Business Enterprises

Compliance with Disabled Veteran Business Enterprise ("DVBE") contracting goals is not required for this project. Although, minority, women and disabled veteran contractors are encouraged to submit bids.

37. Bid Protests

A bidder may protest the bidding process for the project only by filing a written protest with the District's Director of Purchasing, Kevin Lesko at kevinlesko@vistausd.orgin accordance with the procedures set forth in this section. The District will not consider any verbal protests (e.g., by telephone) or any protests sent by electronic mail. In order for a protest to be valid and considered by the District, the protest must: (a) be filed not later than seventy-two (72) hours after the end of the bid opening; (b) clearly identify the bidder on whose behalf the protest is being filed, together with the name, address and telephone number of the person representing the bidder for purposes of the protest; (c) clearly identify the specific bidding process, bid or award of the Contract being protested; (d) clearly identify and describe in detail the specific basis or bases for the protest and all facts relevant thereto and in support thereof; (e) clearly identify all references to the specific portions of all documents relevant to the protest; (f) clearly identify and describe in detail all arguments in support of the protest, including, without limitation, any citations to all legal authorities; and (g) be submitted with all documentation that is relevant to and supports the basis or bases underlying the protest.

If a protest filed by a Bidder does not comply with each and every one of the foregoing requirements, the District may reject the protest as invalid. If a Bidder files a valid protest, the District shall review the protest and all relevant information and documents and will provide written decision to the protesting bidder. In response to a protest, the District may decline to award a contract, may award a contract to a bidder other than as previously intended, or may award a contract to a bidder as previously intended despite the protest. Such action by the District shall be a condition precedent to the filing of any claim or demand and to the initiation of any action (legal or equitable) or other proceeding arising from the matter(s) protested.

COMPLIANCE WITH THE FOREGOING REQUIREMENTS IS MANDATORY. Each bidder that desires to protest must file a protest in accordance with the foregoing requirements, and no bidder may rely on a protest by another bidder as a means of satisfying such requirements. Compliance with the foregoing requirements is the sole and exclusive means of protesting the bidding process, any bid, and/or the intended award of a contract for the project, and failure to so comply shall be deemed and construed as a waiver of any and all rights the Bidder may have to pursue a claim, demand or action based on the bidding, any bids, and/or any contract awarded for the Project.

38. Ethics in Bidding

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

39. Insurance Requirements

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

40. Debarment of Contractors and Subcontractors

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for

performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

41. Public Records

All documents included in the bids become the exclusive property of the District upon submittal to the District. All Bids and other documents submitted in response to the Notice to Contractors Calling for Bids become a matter of public record, except for information contained in such bids deemed to be trade secrets, as defined in California Civil Code Section 3426.1. A Bidder that indiscriminately marks all or most of its Bid as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law by an order of court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bids are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such bids, by request made to the District in conformity with the California Public Records Act, Government Code § 7920.000 et seq.

42. Prequalification

This Contract is not subject to prequalification.

[END OF INSTRUCTIONS TO BIDDERS]

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 3
BID FORMS

00 42 00
BID FORM AND PROPOSAL

To: Governing Board of Education of the Vista Unified School District ("District")

From: _____

(Insert Proper Name of Bidder)

The undersigned declares that the Contract Documents including, without limitation, the Notice to Bidders and the Instructions to Bidders have been read and agrees and proposes to furnish all necessary labor, materials, and equipment to perform and furnish all work in accordance with the terms and conditions of the Contract Documents, including, without limitation, the Drawings and Specifications of the **Madison Middle School Fuel Management & Vegetation Removal , Bid No. V24251169B** ("Project") and will accept in full payment for that Work the following total lump sum amount, all taxes included:

A. _____ Dollars $_____
Base Bid (Plant Material & Tree Mitigation)

B. _____ Dollars $_____
$25,000 Owner's Contingency (Allowance)

C. _____ Dollars $_____
Alternate Scope #1 (Brow Ditch Clearing & Plant Material Removal)

D. _____ Dollars $_____
Alternate Scope #2 (North Side of Campus – Brow Ditch)

The Owner's Contingency of ten percent (10%) shall only be allocated for items relating to the Work that could not reasonably have been foreseen at the time of bid. Contractor shall not bill for or be due any portion of this allowance unless the District has identified specific work, Contractor has submitted a price for that work or the District has proposed a price for that work, the District has accepted the cost for that work, and the District has authorized Contractor's use of the Owner's Contingency. Contractor hereby authorizes the District to execute a unilateral deductive change order at or near the end of the Project for all or any portion of the allowance not allocated.

E. _____ Dollars $_____
TOTAL BASE BID (BASE BID PLUS OWNER'S CONTINGENCY AND ALL ALTERNATES) **AWARD TO BE BASED ON THIS AMOUNT**.

The undersigned has checked carefully all the above figures and understands that the District is not responsible for any errors or omissions on the part of the undersigned in making this bid.

Enclosed find certified or cashier's check no._____ of the

_____ Bank for _____ Dollars ($_____) or Bidder's Bond of the _____ surety company in an amount of not less than ten percent (10%) of the entire bid. The undersigned further agrees, on the acceptance of this proposal, to execute the Contract, provide the required bonds and insurance, and that, in case of default in executing these documents within the time fixed by the Contract Documents, the proceeds of the check or bond accompanying this bid shall be forfeited and shall become the property of the District.

Descriptions of alternates are primarily scope definitions and do not necessarily detail the full range of materials and processes needed to complete the construction.

1. Contractor agrees to commence and complete the work within the time specified in the Notice to Proceed. It is understood that this bid is based upon completing the work within the number of calendar days specified in the Contract Documents.

2. The liquidated damages clause of the General Conditions and Special Conditions is hereby acknowledged.

3. The following documents are attached hereto:

   Bid Bond on the District's form or other security
   Designated Subcontractors List
   Non-Collusion Affidavit
   Project Warranty

4. Receipt and acceptance of the following Addenda is hereby acknowledged:

   Addendum No. 1 _____ Dated: _____

   Addendum No. 2 _____ Dated: _____

   Addendum No. 3 _____ Dated: _____

   Addendum No. 4 _____ Dated: _____

   Addendum No. 5 _____ Dated: _____

5. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Contractor may be subject to criminal prosecution.

6. The undersigned Bidder certifies that it is, at the time of bidding, and shall be throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Contract Documents.

   Furthermore, Bidder hereby certifies to the District that all representations, certifications, and statements made by Bidder, as set forth in this bid form, are true and correct and are made under penalty of perjury.

Dated this _____ day of _____, 202_

Name of Bidder_____

Type of Organization _____

Signature _____

Signed by _____

Title of Signer _____

Address of Bidder _____

Bidder's Taxpayer Identification No. _____

Telephone Number _____

Fax Number _____

E-mail _____ Website _____

Contractor's License No(s).: No.: _____ Class:_____ Expiration Date: _____

No.: _____ Class:_____ Expiration Date: _____

No.: _____ Class:_____ Expiration Date: _____

If Bidder is a corporation, affix corporate seal.

Name of Corporation: _____

President: _____

Secretary: _____

Treasurer: _____

Manager: _____

00 61 10
BID BOND

WHEREAS, _____, as Principal, and _____ _____, as Surety, a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business as a surety in the State of California, are held and firmly bound unto the Vista Unified School District ("District"), as Obligee, in the sum of _____ DOLLARS ($_____), being not less than ten percent (10%) of the Total Bid Price; for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has submitted a bid to the District to perform all Work required for the **Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B** as set forth in the Notice to Bidders and accompanying Contract Documents.

NOW, THEREFORE, if said Principal is awarded a Contract for the Work by the District and, within the time and in the manner required by the above-referenced Contract Documents, enters into the written form of Contract bound with said Contract Documents, furnishes the required bonds (one to guarantee faithful performance and the other to guarantee payment for labor and materials), furnishes the required insurance certificates and endorsements, and furnishes any other certifications as may be required by the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

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

The bid security will be held by the District for ten (10) days after the period for which bids must be held open or until posting by the successful bidder(s) of the bonds, certificates of insurance required and return of executed copies of the Agreement, whichever first occurs, at which time the bid security will be returned.

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

SIGNED AND SEALED, this _____ day of _____, 20____.

_____	_____
Principal	Surety
By: _____	By: _____
Signature	Signature
(SEAL)	(SEAL)

00 43 36
DESIGNATED SUBCONTRACTORS LIST

In compliance with the "Subletting and Subcontracting Fair Practices Act," California Public Contract Code sections 4100 to 4114, and any amendments thereto, each Bidder shall provide the information requested below for each subcontractor who will perform work, labor or render service to Bidder in or about the construction of the Work in an amount in excess of one-half of one percent (greater than 0.5 %) of the Bidder's Total Bid Price and shall further set forth the portion of the Work which will be done by each subcontractor. Bidder shall list only one subcontractor for any one portion of the Work.

If the Bidder fails to specify a subcontractor for any portion of the Work to be performed under the Contract, it shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the Work except under the conditions hereinafter set forth below.

Subletting or subcontracting of any portion of the Work in excess of one half of one percent (greater than 0.5%) of the Total Bid Price for which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after District approval.

Project **Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B**

Name of Bidder: ____

Bidder's
Authorized Signature: ___________________________________

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ________________________________ ____

Address: ________________________________ ____

Ph: ______________________ Fax: __________ License No. _______________________

~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ________________________________ ____

Address: ________________________________ ____

Ph: ______________________ Fax: __________ License No. _______________________

~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ________________________________ ____

Address: ________________________________ ____

Ph: ______________________ Fax: __________ License No. _______________________

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~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ______________________ ______________________

Address: ______________________ ______________________

Ph: ______________ Fax: ________ License No. ______________

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ______________________ ______________________

Address: ______________________ ______________________

Ph: ______________ Fax: ________ License No. ______________

~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ______________________ ______________________

Address: ______________________ ______________________

Ph: ______________ Fax: ________ License No. ______________

~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ______________________ ______________________

Address: ______________________ ______________________

Ph: ______________ Fax: ________ License No. ______________

~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ______________________ ______________________

Address: ______________________ ______________________

Ph: ______________ Fax: ________ License No. ______________

~~~~~~

Name and Location of Subcontractor | Description of Work to be Subcontracted

Name: ______________________ ______________________

Address: ______________________ ______________________

Ph: ______________ Fax: ________ License No. ______________

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NON-COLLUSION AFFIDAVIT

In accordance with Public Contract Code section 7106, the undersigned declares that he or she holds the position listed below with the bidder, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

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

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

_____
Signature

_____
Typed or Printed Name

_____
Title

_____
Bidder

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

Subscribed and sworn before me [Seal]
This ____ day of _____, 20____

_____
Notary Public in and for
the State of California

00 65 36
PROJECT WARRANTY

We, the undersigned, do hereby warrant and guarantee all products and services described within which we have provided for:

[Madison Middle School Fuel Management & Vegetation Removal]

Bid No. V24251169B

are in accordance with the Contract Documents and that all such Work as installed will fulfill or exceed all minimum warranty requirements. We agree to repair or replace Work installed by us for a period of at least two years after the date of recording the Notice of Completion, together with any adjacent Work which is displaced or damaged by so doing, that proves to be defective in workmanship, material, or function at no expense to the Vista Unified School District, ordinary wear and tear and unusual abuse or neglect excepted. Manufacturers' and suppliers' warranties may be longer than the two year period described above, but not shorter.

In the event of our failure to comply with the above-mentioned conditions within seven (7) business days, after notification in writing, we, the undersigned, all collectively and separately, hereby authorize the District to have said defective Work, repaired or replaced to be made good, and agree to pay to the District upon demand all moneys that the District may expend in making good said defective Work, including but not limited to all collection costs and reasonable attorneys' fees.

Company Name:_____

Signed: _____
(Contractor's signature)

Name: _____
(printed)

Date: _____

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 4
AGREEMENT

00 52 00
AGREEMENT

THIS AGREEMENT is made this ___ day of _____ in Los Angeles County, State of California, by and between the **VISTA UNIFIED SCHOOL DISTRICT** (the "District") and _____ (the "Contractor"). The District and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. District is contracting for **Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B** ("Project").

B. Contractor has been selected as the lowest responsible and responsive bidder to perform the work for the Project.

C. District desires that the Contractor complete the Project in accordance with the terms and conditions set forth in this Agreement and all Contract Documents incorporated herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - SCOPE OF WORK. The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in connection with the following titled Project:

Madison Middle School Fuel Management & Vegetation Removal

Bid No. V24251169B

in strict compliance with the Contract Documents as specified in Article 4 below, which shall be free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project.

ARTICLE 2 - TIME FOR COMPLETION. The Contractor shall mobilize and commence work on the Project at the direction of District staff. Time is of the essence for this Contract and the Contractor shall complete the Project within the period specified in the Special Conditions and in accordance with the schedule for the Project developed by the District and the Construction Manager, if applicable. Any additional projects will be coordinated between the District and Contractor. In entering into this Agreement, Contractor acknowledges and agrees that the duration stipulated herein is adequate and reasonable for the size and scope of the Project.

ARTICLE 3 - CONTRACT PRICE. As full compensation for the Contractor's complete and satisfactory performance of the work and activities described in the Contract Documents, the District agrees to pay Contractor, and Contractor agrees to accept the sum of _____ Dollars ($ _____), which shall be paid to the Contractor according to the Contract Documents. Payment and performance bonds are to be issued each in the amount of one hundred percent (100%) of the total amount payment under the Contract. Contractor shall adjust the payment and performance bonds if outstanding work exceeds the original amount of the bonds.

The Contract Price is subject to increases or decreases as provided in the Contract Documents. The District shall pay the Contract Price to the Contractor in accordance with the General Conditions.

ARTICLE 4 - COMPONENT PARTS OF THE CONTRACT. The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Notice to Bidders
Instructions to Bidders
Bid Form and Proposal, as accepted
Bid Bond
Designated Subcontractors List
Non-Collusion Affidavit
Project Warranty
Agreement
Performance Bond
Payment Bond
General Conditions
Special Conditions
Drawings and Specifications
Notice of Award
Notice of Proceed
Workers' Compensation Certification
Drug-Free Workplace Certification
Contractor Certification Re Alcoholic Beverage and Tobacco Free Campus Policy
Contractor Fingerprinting Certification
Asbestos-Free Materials Certification
Bidder's Acknowledgement of Project Schedule
Certificate Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Iran Contracting Act Certificate
CARB Certification
Escrow Agreement for Security Deposit in Lieu of Retention, if applicable
Addenda Nos. _____, _____, _____, as issued

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

ARTICLE 5 - PREVAILING WAGES. This Project is a public works project subject to prevailing wage requirements and Contractor and its Subcontractors are required to pay all workers employed for the performance of this Contract no less than the applicable prevailing wage rate for each such worker. Contractor acknowledges that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations in accordance with Labor Code § 1770 et seq.

ARTICLE 6 - LIQUIDATED DAMAGES. Liquidated damages for the Contractor's failure to complete the Contract within the time fixed for Substantial Completion are established in the amount of $500 per calendar day and as further set forth in the Special Conditions.

ARTICLE 7 - CONTRACTOR'S LICENSE. The Contractor must possess throughout the Project the legally-required contractor's license classification for this Project, issued by the State of California, which must be current and in good standing.

ARTICLE 8 – NOTICES. Notices of the District and Contractor to the other shall be transmitted in accordance with the Contract Documents. The effective date of notices transmitted in accordance with the Contract Documents shall be as set forth in the Contract Documents. Notices under the Contract Documents shall be addressed as follows:

If to the District:	If to the Contractor:
[Insert Name]	_____
[Insert Title]	_____
Vista Unified School District	_____
1234 Arcadia Avenue	_____

Vista, California 92084

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named Parties, on the day and year first above written. To the extent that there exists any conflicts or inconsistencies between this Agreement and the General Conditions, the provisions contained in the General Conditions shall govern.

CONTRACTOR:

License No. _____

By _____

Title _____

(Corporate Seal)

DISTRICT:

VISTA UNIFIED SCHOOL DISTRICT

By _____
[Insert Name]

Governing Board Date _____

[END OF DOCUMENT]

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 5
PERFORMANCE BOND

00 61 13
PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)

WHEREAS the **VISTA UNIFIED SCHOOL DISTRICT** (also referred to herein "Obligee") has awarded to _____ (hereinafter "Contractor"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the **Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B** the "Project");

WHEREAS, the Work to be performed by the Contractor is more particularly set forth in that certain Agreement between the Obligee and Contractor dated _____, which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, the Contractor is required by said Contract Documents furnish a bond ensuring the Contractor's prompt, full and faithful performance of the Work under the Contract Documents ("Bond"),

NOW, THEREFORE, we _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto the **VISTA UNIFIED SCHOOL DISTRICT** in the sum of _____dollars, $_____, said sum being not less than 100% of the total amount payable by the said Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his or its heirs, executors, administrators, successors or assigns, promptly, fully and faithfully performs each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents, as they may be modified or amended from time to time, and if the Principal indemnifies and saves harmless the Obligee, its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or obligations of the Contract Documents, including all modifications and amendments thereto, and any warranties or guarantees required thereunder, as set forth in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Obligee's rights hereunder. Surety hereby waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Obligee's termination of the Contract due to the Principal's breach or default of the Contract Documents, within twenty (20) days after written notice from the Obligee to the Surety of the Principal's breach or default of the Contract Documents and Obligee's termination of the Contract, the Surety shall notify Obligee in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Obligee within the time specified herein, the Obligee may take all such action or actions necessary to cure or remedy the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes of any Work which increases the Contract Price.

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

In the event that suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees.

[Remainder of page intentionally left blank.]

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

_____
Principal/Contractor

By:_____
President

_____
Surety

By:_____
Attorney-in-Fact

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

The total amount of premium charged, $_____.

(The above must be filled in by corporate surety.)

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

State of California)
)
County of _____)

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

_____
Notary Public in and for said State

(SEAL)

My Commission expires _____.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal to the within bond; that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its Governing Board.

(Corporate Seal)

_____
Signature

_____
Date

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

[This space intentionally left blank.]

IMPORTANT: THIS IS A REQUIRED FORM.

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

Any claims under this bond may be addressed to:

(Name and Address of Surety)	(Name and Address of agent or representative for service for service of process in California)
_____	_____
_____	_____
Telephone:_____	Telephone: _____

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____ (SEAL)
Notary Public in and for said State

Commission expires:_____

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

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 6
PAYMENT BOND

00 61 14
PAYMENT BOND
(CALIFORNIA PUBLIC WORK)

WHEREAS, the **VISTA UNIFIED SCHOOL DISTRICT** (the "Obligee") has awarded to _____ (the "Principal") a contract for the Work commonly described as the: **Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B** (the "Project"); and

WHEREAS, the Work to be performed by the Principal is more particularly set forth in that certain Agreement between the Principal and the Obligee, dated _____, 20__ which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, by the terms of the Contract Documents, and in accordance with California Civil Code §§ 9550 et seq., the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor, materials or services used, or reasonably required for use, in the performance of the Work on the Project ("Bond"); and

WHEREAS, the term "Claimant" shall refer to any of the persons described in California Civil Code § 9100, who provide or furnish labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard to whether such labor, materials or services were sold, leased or rented.

NOW THEREFORE, we, _____, as Principal, and _____, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto VISTA UNIFIED SCHOOL DISTRICT, as Obligee, for payment of the penal sum of _____ Dollars ($_____), said sum being not less than one hundred percent (100%) of the total amount payable by the Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

The condition of the obligation is such that if the Principal, or its subcontractors, heirs, executors, administrators, successors or assigns fail to pay (1) any Claimant, (2) amounts due under the Unemployment Insurance Code with respect to Work or labor performed on the Project, or (3) amounts required to be deducted, withheld, and paid to the Employment Development Department from the wages of employees of the Principal and its subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the Work and labor, then Surety will pay for the same in an amount not to exceed the sum specified above and, if an action is brought to enforce the liability on the Bond, the Surety shall pay such reasonable attorneys' fees as fixed by the court, as set forth in Civil Code § 9554.

If the Principal promptly, fully and faithfully makes payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work, then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agents or representatives.

(Corporate Seal)

_____
(Principal Name)

By: _____
(Signature)

_____
(Typed or Printed Name)

Title: _____

(Corporate Seal)

_____
(Surety Name)

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

(Attach Attorney-in-Fact Certificate)

_____
(Typed or Printed Name of Attorney-in-Fact)

_____
(Address)

_____
(Area Code and Telephone Number of Surety)

IMPORTANT: THIS IS A REQUIRED FORM.

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

Any claims under this bond may be addressed to:

(Name and Address of Surety)	(Name and Address of agent or representative for service for service of process in California)
_____	_____
_____	_____
Telephone:_____	Telephone: _____

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____ (SEAL)
Notary Public in and for said State

Commission expires:_____

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

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 7
GENERAL CONDITIONS

TABLE OF CONTENTS

Article 1. DEFINITIONS

Article 2. ARCHITECT

Article 3. DRAWINGS AND SPECIFICATIONS

Article 4. TRADE DIVISIONS

Article 5. MASTER MANDATORY PROVISIONS

Article 6. COPIES FURNISHED

Article 7. OWNERSHIP OF DRAWINGS

Article 8. DETAIL DRAWINGS AND INSTRUCTIONS

Article 9. CONTRACTOR

Article 10. RESPONSIBILITY OF CONTRACTOR

Article 11. SUBCONTRACTORS & SUBCONTRACTING

Article 12. CONFERENCES AND MEETINGS

Article 13. REQUESTS FOR INFORMATION

Article 14. SAFETY/PROTECTION OF PERSONS AND PROPERTY

Article 15. PERFORMANCE AND PAYMENT BONDS

Article 16. TIME

Article 17. CONSTRUCTION SCHEDULE

Article 18. DELAYS AND TIME EXTENSIONS

Article 19. LIQUIDATED DAMAGES

Article 20. ASSIGNMENT

Article 21. PROHIBITED INTERESTS

Article 22. SEPARATE CONTRACTS

Article 23. COORDINATION WITH OTHER CONTRACTS

Article 24. DISTRICT'S RIGHT TO STOP WORK; TERMINATION OR SUSPENSION OF THE CONTRACT

Article 25. GUARANTEE

Article 26. NOTICE AND SERVICE THEREOF

Article 27. WORKERS

Article 28. WAGE RATES, PAYROLL RECORDS AND DEBARMENT

Article 29. APPRENTICES

Article 30. HOURS OF WORK

Article 31. INSURANCE

Article 32. PROOF OF CARRIAGE OF INSURANCE

Article 33. INDEMNIFICATION

Article 34. LAWS AND REGULATIONS

Article 35. PERMITS AND LICENSES

Article 36. INSPECTION FEES FOR PERMANENT UTILITIES AND EASEMENTS

Article 37. SURVEYS

Article 38. EXCISE TAXES

Article 39. PATENTS, ROYALTIES, AND INDEMNITIES

Article 40. MATERIALS

Article 41. SUBSTITUTIONS

Article 42. SUBMITTALS, SHOP DRAWINGS, CUTS AND SAMPLES

Article 43. INSTRUCTIONS AND MANUALS

Article 44. CLOSEOUT SUBMITTALS

Article 45. PROGRESS PAYMENTS AND RETENTION

Article 46. PAYMENTS WITHHELD

Article 47. CHANGES AND EXTRA WORK

Article 48. DEDUCTIONS FOR UNCORRECTED WORK

Article 49. WARRANTY OF TITLE

Article 50. CONTRACTOR'S SUPERVISION

Article 51. DOCUMENTS ON WORK

Article 52. RECORD ("AS BUILT") DRAWINGS

Article 53. UTILITY USAGE

Article 54. TRENCHING OR OTHER EXCAVATIONS

Article 55. PROTECTION OF WORK AND PROPERTY

Article 56. LAYOUT AND FIELD ENGINEERING

Article 57. HAZARDOUS MATERIALS

Article 58. TEMPORARY FACILITIES

Article 59. SANITARY FACILITIES

Article 60. USE OF ROADWAYS AND WALKWAYS

Article 61. SIGNS

Article 62. CUTTING AND PATCHING

Article 63. CLEANING UP

Article 64. CORRECTION OF WORK BEFORE FINAL PAYMENT

Article 65. ACCESS TO WORK

Article 66. OCCUPANCY

Article 67. DISTRICT'S INSPECTOR

Article 68. TESTS AND INSPECTIONS

Article 69. SOILS INVESTIGATION REPORT

Article 70. DISTRICT'S STATUS

Article 71. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Article 72. LABOR/EMPLOYMENT SAFETY

Article 73. ASSIGNMENT OF ANTITRUST ACTIONS

Article 74. SUBSTITUTION OF SECURITY

Article 75. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION.....

Article 76. RECORD KEEPING

Article 77. PROJECT COMPLETION

Article 78. DISPUTE RESOLUTION

Article 79. FORCE MAJEURE

Article 80. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOILS

Article 81. FINGERPRINTING

Article 82. LABOR COMPLIANCE MONITORING

Article 83. DRUGS, TOBACCO, ALCOHOL, ANIMALS

Article 84. NO DISCRIMINATION

Article 85. GENERAL PROVISIONS

Article 1. DEFINITIONS

Addendum: A written change or revision to the Contract Documents issued to the prospective bidders prior to the time of receiving bids.

Alternate: The sum to be added to or deducted from the base Bid if the change in scope of work as described in Alternates is accepted by the District.

Approved: Approved by the District or the District's authorized representative unless otherwise indicated in the Contract Documents.

Architect: The person or firm holding a valid license to practice architecture or engineering which has been designated (if any designated) to provide architectural or engineering design services on this Project. When Architect is referred to within the Contract Documents and no architect or engineer has in fact been designated, then the matter shall be referred to the Director of Maintenance or his/her designee.

As Directed: As directed by the District or its Architect, unless otherwise indicated in the Contract Documents.

As Selected: As selected by the District or its Architect, unless otherwise indicated in the Contract Documents.

Bid: The properly completed and signed proposal to perform the construction work for the Project as described in the Contract Documents.

Board of Education: The Board of Education of the District.

Construction Manager: The individual or entity named as such by the District. If no Construction Manager is designated for the Project, all references to the Construction Manager in these Contract Documents shall mean the District and/or its designee.

Contract: The legally binding agreement between the District and the Contractor wherein the Contractor agrees to furnish the labor, materials, equipment, and appurtenances required to perform the work described in the Contract Documents and the District agrees to pay the Contractor for such work.

Contract Documents: The Contract Documents are described in the Contract for this Project.

Contractor: The person or entity holding a valid license in the State of California required for performing this Project and who has contracted with the District to perform the construction work described in the Contract Documents. The term Contractor shall be construed to mean all of the officers, employees, Subcontractors, suppliers, or other persons engaged by the Contractor for the work of this Project.

Day: As used herein shall mean calendar day unless otherwise specifically designated.

District and/or Owner: The District, its Board of Education, authorized officers and employees, and authorized representatives.

DSA: The State of California Division of the State Architect which has the authority to review, approve and inspect the design, alteration and construction of school buildings.

Final Completion: Final Completion is achieved when the Contractor has fully completed all Contract Document requirements, including, but not limited to, all final punch list items, to the District's satisfaction.

Furnish: Purchase and deliver to the site of installation.

Improvements: The buildings, structures and/or sites that will constructed, renovated and/or remodeled as part of the Project.

Indicated or As Shown: Shown on drawings and/or as specified.

Inspector: The person engaged by the District to conduct the inspections required by the Education Code and Title 24.

Install: Fix in place, for materials; and fix in place and connect, for equipment.

Modification: An authorized change to the Contract Documents which may or may not include a change in contract price and/or time.

Perform: The Contractor, at Contractor's expense, shall perform all operations necessary to complete the Work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.

Project: The total construction work and activities described in these Contract Documents.

Secure: Obtain.

Subcontractor: A person, firm, or corporation, duly licensed by the State of California, who has a contract with the Contractor to furnish labor, materials and equipment, and/or to install materials and equipment for work in this Contract.

Substantial Completion: Substantial Completion is achieved when the District has the occupation, beneficial use, and enjoyment of the improvement, excluding any final punch list items to be performed by the Contractor at District's direction.

Surety: The person, firm, or corporation, admitted as a California admitted surety that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works.

Work: "Work" of the Contractor or subcontractor includes labor or materials or both.

Miscellaneous terms and phrases:

Where the words "equal," "equivalent," "satisfactory," "directed," "designated," "selected," "as required," and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the District is required.

Where the word "required" and words of similar meaning are used, it shall mean, "as required to properly complete the work as required by the District," unless stated otherwise.

Where the words "acceptable," "acceptance," or words of similar import are used, it shall be understood that the acceptance of the District is intended.

Article 2. **ARCHITECT**

The Architect is responsible for the overall design of the Project. The working drawings, technical Specifications, sketches and other information necessary to define the work covered by these Contract Documents have been prepared by the Architect. The Architect shall visit, inspect and observe the construction to determine general compliance with the Contract Documents, and interpret the drawings and Specifications consistent with their intent. The Architect shall evaluate the samples and other submittals required in the technical Specifications, and maintain an up-to-date log of all such items processed. The Architect will consult with the District, Contractor, and any state, county or city agency having jurisdiction over the work whenever necessary to further the best interests of the Project.

Article 3. **DRAWINGS AND SPECIFICATIONS**

a. **Contract Documents.** The Contract Documents consist of the executed Contract and all Addenda, all approved change orders, the completed Bid Form, the required Bonds and the Insurance forms, the Notice to Bidders, the Instructions to Bidders, the Notice of Intent to Award, the Notice to Proceed, the General Conditions, the Special Conditions, the drawings and Specifications. Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, he or she shall promptly notify the District in writing and any necessary changes shall be adjusted as provided in the Contract for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

1. Special Conditions shall take precedence over General Conditions.

2. Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event of conflict between the Technical Specifications and the General Conditions, the General Conditions shall take precedence.

3. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.

4. With regard to drawings:

   (a) Figures govern over scaled dimensions;
   (b) Larger details govern over general drawings;
   (c) Addenda/change order drawings govern over contract drawings;
   (d) Contract drawings govern over standard drawings.

5. Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

c. **Ambiguities, Errors and Inconsistencies.** If, in the opinion of the Contractor, the construction details indicated on the drawings or otherwise specified are in conflict with accepted industry standards for quality construction and therefore might interfere with its full guarantee of the work involved, the Contractor shall promptly bring this information to the attention of the Architect for appropriate action before submittal of the bid. Contractor's failure to request clarification or interpretation of an apparent ambiguity, error or inconsistency waives that Contractor's right to thereafter claim any entitlement to additional compensation

based upon an ambiguity, inconsistency, or error, which should have been discovered by a reasonably prudent Contractor, subject to the limitations of Public Contract Code §1104. During the Project, should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Contract Documents, the matter shall be promptly referred to the Architect (with written notice to the District's Construction Manager), who will issue instructions or corrections. Misunderstanding of drawings and specifications shall be clarified by the District, whose decisions shall be final.

d. **Lines and Planes.** All lines and planes appearing on Contract drawings to be horizontal or vertical and not explicitly indicated otherwise shall be constructed true and plumb. All lines and planes appearing on Contract drawings to intersect at right angles and not explicitly indicated otherwise shall be constructed at true right angles. Where details are indicated covering specific conditions, such details also apply to all similar conditions not specifically indicated.

e. **Standards.** Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. The specification standards of the various sections of the Specifications shall be the procedural, performance, and material standards of the applicable association publications identified and shall be the required level of installation, materials, workmanship, and performance for the applicable work. Except where a specific date of issue is mentioned hereinafter, references to specification standards shall mean the edition, including amendments and supplements, in effect on the date of the Notice to Bidders. Where no standard is identified and a manufacturer is specified, the manufacturer's specifications are the standards. All standards shall be subordinate to the requirements of the applicable codes and regulations.

f. **Reference to the Singular.** Wherever in the Specifications an article, device or piece of equipment is referred to in the singular number, such reference shall include as many such items as are shown on drawings or required to complete the installation.

g. **Intent of Drawings and Specifications.** It is the intent of the drawings and Specifications to show and describe complete installations. Items shown but not specified, or specified but not shown, shall be included unless specifically omitted.

1. The Specifications shall be deemed to include and require everything necessary and reasonably incidental to the completion of all work described and indicated on the drawings, whether particularly mentioned or shown, or not.

2. Figured dimensions shall be followed in preference to scaled dimensions, and the Contractor shall make all additional measurements necessary for the work and shall be responsible for their accuracy. Before ordering any material or doing any work, the Contractor shall verify all measurements at the Project site and shall be responsible for the correctness of same.

Article 4. TRADE DIVISIONS

Segregation of the Specifications into the designated trade divisions is only for the purpose of facilitating descriptions and shall not be considered as limiting the work of any subcontract or trade. Subject to other necessary provisions set forth in the Specifications, the terms and conditions of such limitations or inclusions shall lie solely between the Contractor and its Subcontractors. "Scope" as indicated in each section of the Specifications shall serve only as a general guide to what is included in that section. Neither the stated description nor the division of the plans and Specifications to various sections, which is done solely for convenience, shall be deemed to limit the work required, divide or indicate it by labor jurisdiction or trade practice, or set up any bidding barriers to the various sub-contractors or suppliers.

a. The Contractor shall be responsible for the proper execution of all work required by the Contract Documents and for allocating such portions as the Contractor sees fit to the various Subcontractors, subject to applicable law. The Contractor is cautioned that the various individual sections may not contain all work that the

Contractor may wish to allocate to a particular Subcontractor or everything bearing on the work of a particular trade, some of which may appear in other portions of the plans or Specifications.

b. If the Contractor elects to enter into any subcontract for any section of the work the Contractor assumes all responsibility for ascertaining that the Subcontractor for the work is competent, licensed, solvent, thoroughly acquainted with all conditions and legal requirements of the work, has included all materials and appurtenances in connection therewith in the subcontract, and has performed its work in strict compliance with the Contract Documents.

c. It shall be the responsibility of the Contractor to notify each prospective Subcontractor at the time of request for bids of all portions of the Contract Documents, including the General Conditions, special conditions and any parts of sections of Specifications or plans that the Contractor intends to include as part of the subcontract.

Article 5. MASTER MANDATORY PROVISIONS

a. Any material, item, or piece of equipment mentioned, listed or indicated without definition of quality, shall be consistent with the quality of adjacent or related materials, items, or pieces of equipment on the Project.

b. Any method of installation, finish, or workmanship of an operation called for, without definition of standard of workmanship, shall be followed or performed and finished in accordance with best practices and consistent with adjacent or related installations on the Project.

c. Any necessary material, item, piece of equipment or operation not called for but reasonably implied as necessary for proper completion of the work shall be furnished, installed or performed and finished; and shall be consistent with adjacent or related materials, items, or pieces of equipment on the Project, and in accordance with best practices.

d. Names or numbered products are to be used according to the manufacturers' directions or recommendations unless otherwise specified.

Article 6. COPIES FURNISHED

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

Article 7. OWNERSHIP OF DRAWINGS

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

Article 8. DETAIL DRAWINGS AND INSTRUCTIONS

a. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the District Representative of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

b. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the District Representative will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of the Work.

c. **Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with the Work without obtaining first from the District Representative such approval as may be necessary for the proper performance of Work.

d. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, including all rules, policies, and regulations of the Vista Unified School District Board of Education, including any rules and regulations related to COVID-19 or other global pandemics, and all federal, state, and local laws, ordinances and regulations, are to be observed strictly by Contractor during the performance of Services pursuant to this Agreement. the District Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

Article 9. **CONTRACTOR**

a. Quality of Work: The Contractor shall perform all the work and activities required by the Contract Documents and furnish all labor, materials, equipment, tools and appurtenances necessary to perform the work and complete it to the District's satisfaction within the time specified. The Contractor shall at all times perform the work of this Contract in a competent and workmanlike manner and, if not specifically stated, accomplish the work according to the best standards of construction practice. The Contractor in no way is relieved of any responsibility by the activities of the architect, engineer, inspector or DSA in the performance of such duties.

b. Full-Time Superintendent: The Contractor shall employ a full-time competent superintendent and necessary assistants who shall have complete authority to act for the Contractor on all matters pertaining to the work. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. Also, the superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

c. Field Measurements: Contractor shall make the layout of lines and elevations and shall be responsible for the accuracy of both the Contractor's and the Subcontractors' work resulting therefrom. All dimensions affecting proper fabrication and installation of all Contract work must be verified by the Contractor prior to fabrication and installation by taking field measurements of the true conditions. The Contractor shall take, and assist Subcontractors in taking, all field dimensions required in performance of the work, and shall verify all dimensions and conditions on the site. If there are any discrepancies between dimensions in drawings and existing conditions which will affect the work, the Contractor shall promptly bring such discrepancies to the attention of the Architect for adjustment before proceeding with the work. Contractor shall be responsible for the proper fitting of all work and for the coordination of all trades, Subcontractors and persons engaged upon this Contract.

d. Contractor shall do all cutting, fitting, or patching of Contractor's work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors as shown, or reasonably implied by, the drawings and Specifications for the completed work. Any cost incurred by the District due to defective or ill-timed work shall be borne by the Contractor.

Article 10. RESPONSIBILITY OF CONTRACTOR

a. Contractor shall be held strictly responsible for the proper performance of all work covered by the Contract Documents, including all work performed by Subcontractors. All work performed under this Contract shall comply in every respect to the rules and regulations of all agencies having jurisdiction over the Project or any part thereof.

b. Contractor shall submit Verified Reports as defined in 24 California Code of Regulations ("CCR") §§ 4-336 and 4-343(c). The duties of the Contractor are as defined in 24 CCR § 4-343. Contractor shall keep and make available a copy of Title 24 of the CCR at the job site at all times.

c. Where any item of fabricated materials and/or equipment, indicated on drawings or specified is unobtainable and it becomes necessary, with the consent of the Architect and District, to substitute equivalent items differing in details or design, the Contractor shall promptly submit complete drawings and details indicating the necessary modifications of the work. To the extent the items represent a lower cost to contractor than what was originally specified, District shall be entitled to a corresponding decrease in the contract price. This provision shall be governed by the terms of the General Conditions regarding Submittals, Shop Drawings, Cuts and Samples.

d. With respect to work performed at or near a school site, Contractor shall at all times take all appropriate measures to ensure the security and safety of students and staff, including, but not limited to, ensuring that all of Contractor's employees, Subcontractors, and suppliers entering school property strictly adhere to all applicable District policies and procedures, e.g., sign-in requirements, visitor badges, and access limitations.

Article 11. SUBCONTRACTORS & SUBCONTRACTING

a. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the District. The District shall be deemed to be the third party beneficiary of the contract between the Contractor and each Subcontractor. If the Contractor does not specify a Subcontractor for any portion of the work to be performed under this Contract, as required by law, Contractor shall perform that portion of the work with its own forces. The Contractor shall not substitute any other person or firm as a Subcontractor for those listed in the bid submitted by the Contractor, without the written approval of the District and in conformance with the requirements of the Public Contract Code, including but not limited to sections 4100, et seq.. The District reserves the right of approval of all Subcontractors proposed for use on this Project, and to this end, may require financial, performance, and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another firm of the same trade for approval.

b. The Contractor shall insert appropriate provisions in all subcontracts pertaining to work on this Project requiring the Subcontractors to be bound by all applicable terms of the Contract Documents. The Contractor shall be as fully responsible for the acts and omissions of the Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor

c. Substitution or addition of subcontractors shall be permitted only as authorized in California Public Contract Code Sections 4100 et seq.

Article 12. CONFERENCES AND MEETINGS

a. A material obligation of the Contractor under the Contract Documents is the attendance at required meetings by the Contractor's supervisory personnel for the Work. The Contractor's personnel participating

in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor.

b. Pre-Construction Conference: The Contractor's representatives and those representatives of the subcontractors as requested by the District, shall attend a Pre-Construction Conference at such time and place as designated by the District. The Pre-Construction Conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures.

c. Progress Meetings: Progress Meetings will be conducted on regular intervals (weekly unless otherwise agreed to by the Parties). The Contractor's representatives will attend the meeting, which shall be chaired by the Construction Manager or Architect, as designated. Contractor shall submit all Change Order Requests for initial review by the District at the Progress Meeting.

d. Meeting Minutes: The Architect or Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference.

Article 13. REQUESTS FOR INFORMATION

a. Contents of RFI: Any Requests for Information ("RFI") shall reference all applicable Contract Document(s), including Specification Section, detail(s), page number(s), drawing numbers(s) and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issues raised by each Request for Information. By itself, an RFI cannot modify Project price, scheduled completion date or the Contract Documents.

b. Unnecessary RFIs: The Contractor may be responsible for any costs incurred for professional services the District may deduct from any amounts owing to the Contractor, if any RFI requests an interpretation or decision of a matter where the information is equally available to the party making the request.

Article 14. SAFETY/PROTECTION OF PERSONS AND PROPERTY

a. Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during the performance of the Work. This will apply continuously and not be limited to normal working hours. The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

b. The Contractor shall furnish to the District a copy of the Contractor's safety plan within thirty (30) after the issuance of the Notice to Proceed. Contractor shall designate a responsible member of the company to post information regarding protection and obligations of workers, to comply with reporting and other occupational safety requirements. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health Administration, Contractor shall correct such violation promptly. Upon notice from the District of a safety or health complaint from the surrounding community, Contractor shall work with the District to address the complaint, including where applicable, modifying the schedule and/or the manner of work to avoid undue disruption or safety risks to the community.

Article 15. PERFORMANCE AND PAYMENT BONDS

a. Contractor shall file with the District the following bonds, using the bond forms provided with these Contract Documents:

1) A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract, to guarantee the faithful performance of the Contract.

2) A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract, to

guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract.

b. Corporate sureties on these bonds and on bonds accompanying bids must be admitted sureties as defined by law, legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties and bond forms must be satisfactory to the District. Failure to submit the required bonds within the time specified by the Notice of Intent to Award, using the forms provided by the District, may result in cancellation of the award of Contract and forfeiture of the Bid Bond.

c. The amount of the Contract, as used to determine the amounts of the bonds, shall be the total amount fixed in the Contractor's proposal for the performance of the required work.

d. During the period covered by the Contract, if any of the sureties upon the bonds shall become insolvent or unable, in the opinion of the District, to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor, within thirty (30) days after notice given by the District to the Contractor, shall provide supplemental bonds or otherwise substitute another and sufficient surety approved by the District in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such thirty (30) day period to substitute another and sufficient surety, the Contractor shall, if the District so elects, be deemed to be in default in the performance of its obligations hereunder and upon the bid bond, and the District, in addition to any and all other remedies, may terminate the Contract or bring any proper suit or other proceedings against the Contractor and the sureties or any of them, or may deduct from any monies then due or which thereafter may become due to the Contractor under the Contract, the amount for which the surety, insolvent or unable to pay, shall have been liable on the bonds, and the monies so deducted shall be held by the District as collateral security for the performance of the conditions of the bonds.

Article 16. TIME

a. The Contractor shall commence the work on the date indicated in the Notice to Proceed. Time is of the essence regarding the Contract work, and the Contractor shall prosecute the work diligently and regularly at such a rate of progress as to ensure completion of this Project within, or sooner than, the time specified.

b. The Contractor and Subcontractors shall investigate and become aware of the amount of time required for the delivery of all equipment and materials required to perform the work under this Contract, and no extension of time shall be granted due to failure to order the equipment and materials sufficiently before their incorporation into the work so as to avoid delay to the Project.

c. The Contractor and Subcontractors shall provide and maintain enough manpower, materials and equipment to ensure a rate of construction progress that will complete the Project within or sooner than the time specified and according to the schedule of work. If, in the District's opinion, the Contractor and/or Subcontractors are not prosecuting the work at a sufficient rate of progress to meet the Project schedule, the District may direct the Contractor to provide additional manpower, materials or equipment, or to work additional hours, holidays or weekends without additional cost to the District until the work is progressing in a manner satisfactory to the District. Failure to prosecute the work in a timely manner according to the Project schedule is considered a breach of Contract and shall be cause for termination of the Contract.

Article 17. CONSTRUCTION SCHEDULE

a. Within fifteen (15) calendar days after the award of the Contract, the Contractor shall prepare and submit to the Architect and District an as-planned construction schedule showing in detail how the Contractor plans to prosecute the work within the time set for Final Completion. The schedule shall include the work of all trades necessary for construction of the Project, and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-by-day basis. The information for each

activity shall include at a minimum the activity description, duration, start date and completion date. The first payment will not be made unless the District has been provided and has accepted the project schedule.

b. The Contractor shall take care in the preparation of the schedule to ensure that it represents an accurate and efficient plan for accomplishing the work. If the Project is more than one week behind schedule, it must be promptly revised showing how the Contractor plans to complete the work, but in no case shall it show a completion date later than that required by the Contract, unless a time extension has been granted. The current schedule shall be kept posted in the Contractor's project office on site. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims. Contractor shall, at the request of the District, prepare a recovery schedule when Contractor's Work has fallen behind schedule.

c. The Contractor shall be responsible for the coordination of all work necessary and pertaining to the construction whether actually a part of this Contract or attendant thereto. The Contractor shall notify the District and various utility companies, as far as possible in advance of their required work, in order that work schedules may be developed for all concerned, which will permit the most effective and timely accomplishment of the entire Project.

Article 18. <u>DELAYS AND TIME EXTENSIONS</u>

a. The Contractor may be granted a time extension if the Contractor encounters an unavoidable delay of the work due to causes completely beyond the Contractor's control and which the Contractor could not have avoided by the exercise of reasonable care, prudence, foresight and diligence. Causes for which a claim for extension of time may be made include: acts of the public enemy, acts of another contractor in the performance of another contract with the District, priority of a governmental agency for materials or equipment, fire, flood, violent wind storm, pandemic, epidemic, quarantine restriction, strike, freight embargo, or weather of an unusually severe nature. The Contractor will not be granted time extensions for weather conditions which are normal for the location of the Project, according to the U.S. Weather Bureau Records.

b. A request for extension of time and compensation related thereto shall be made in writing to the Architect and District within ten (10) calendar days of the date the delay is encountered, or shall be deemed waived. The request shall include a detailed description of the reasons for the delay and corrective measures by the Contractor. The request shall be accompanied by evidence that the insurance policies required by the Contract shall be in effect during the requested additional period of time. In order for the Architect to consider a request for time extension, the Contractor must prove that the reasons stated for the delay actually caused a delay in portions of the work which will result in completion beyond the date specified in the Contract. The Contractor may also be granted a time extension for a significant change in the scope of work which request for extension of time shall be included in a Contract modification proposal.

c. No damages or compensation or any kind shall be paid to a Contractor because of delays in the progress of work, whether such delays be avoidable or unavoidable, that are not the responsibility of District. District's liability to Contractor for delays for which District is responsible shall be limited to an extension of time unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the Parties when the Contract was awarded. The Contractor shall provide to the District the actual, substantiated costs to Contractor for which the Contractor may claim damages from District. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and ongoing insurance costs. Delay damages shall not include Contractor or Subcontractor markup for overhead and profit, but only actual, documented, and direct actual costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the more judicious handling of forces or equipment.

d. The granting of an extension of time because of unavoidable delays shall in no way operate as a waiver on the part of the District of the right to collect liquidated damages for other delays or of any other rights to which the District is entitled.

Article 19. LIQUIDATED DAMAGES

a. The Parties understand and agree that the goodwill, educational process, and other business of District will be damaged if the Project is not completed and the Improvements cannot be occupied by the date of the stated Project completion. The Parties have further agreed that the exact amount of damages for failure to complete the Work within the time specified is, in some cases, extremely difficult, impractical, or impossible to determine. As to those damages that are difficult, impractical, or impossible to determine, should the Contractor fail to achieve Substantial Completion of this Contract within the time fixed for Substantial Completion, together with extensions granted by the District for unavoidable delays, Contractor shall become liable to the District in the amount specified in the Contract per calendar day for each day the Contract remains incomplete beyond the time for Substantial Completion, as liquidated damages and not as a penalty. Contractor shall not be charged with liquidated damages when the delay in completion of the work beyond the time for Substantial Completion is due to acts of the District. These liquidated damages will compensate the District only for its loss of use and the inability to occupy or otherwise utilize the Improvements. The costs and fees, including attorneys' fees, incurred by the District and its consultants and suppliers for extended performance as the result of any delays shall be added in Article 19.b., as set forth below.

b. In addition to any liquidated damages which may be assessed, if Contractor fails to achieve Substantial Completion of this Contract within the time fixed for Substantial Completion, together with extensions granted by the District for unavoidable delays, and if as a result District finds it necessary to incur any costs and/or expenses, or if District receives any claims by other contractors, subcontractors, or third parties claiming time or other compensation by reason of Contractor's failure to complete work on time, Contractor shall pay all those costs and expenses incurred by District. These costs and expenses may include but are not limited to such items as rental payments, extended performance by the architect, construction manager and Project Inspector, increased insurance costs, equipment rentals and allocable administrative salaries, whether related to the acquisition of facilities or caused by the delay in completion. The District may, without waiving any of its rights, assess liquidated damages after Substantial Completion of the Project.

c. Any money due or to become due to the Contractor may be retained to cover liquidated and other delay damages. Should such money not be sufficient to cover those damages, the District shall have the right to recover the balance from the Contractor or Contractor's sureties.

d. Should the District authorize suspension of the work for any cause, the time work is suspended will be added to the time for completion. Suspension of the work by the District shall not be a waiver of the right to claim liquidated or other delay damages as set forth in this section.

Article 20. ASSIGNMENT

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

Article 21. PROHIBITED INTERESTS

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

Article 22. SEPARATE CONTRACTS

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

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

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

Contractor shall ascertain to his own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at the Project site. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. District shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

Article 23. COORDINATION WITH OTHER CONTRACTS

a. The District reserves the right to do other work or award other contracts in connection with this Project. By entering into this Contract, Contractor acknowledges that there may be other contractors on or adjacent to the Project site whose work must be coordinated with that of its own. Contractor expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other contractors, or that of the District, its Architect and Construction Manager. Contractor also expressly agrees that in the event its work is hindered, delayed, interfered with, or otherwise affected by a separate contractor, its sole remedy will be a direct action against the separate contractor. To the extent allowed by law, the Contractor expressly waives any remedy against the District, its Architect and Construction Manager on account of delay, hindrance, interference or other such events caused by a separate contractor.

b. If any part of Contractor’s work depends upon the work of a separate contractor, Contractor shall inspect such other work and promptly report in writing to the District and Architect any defects in such other work that render it unsuitable to receive the work of Contractor. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor’s work, except as to defects which the

Contractor could not have detected through the reasonable inspection of the other contractor's work prior to the execution of Contractor's work.

c. If Contractor is aware of a current or potential conflict between Contractor's work and the work of another contractor on the site, and is unable to informally resolve the conflict directly with the other contractor, Contractor shall promptly provide written notice to the District, with a copy to the Architect and the other contractor, specifying the nature of the conflict, the date upon which the conflict arose, and the steps taken to attempt to resolve the conflict. The District may issue written instructions to address the conflict.

If, through Contractor's negligence, any other contractor or subcontractor shall suffer loss or damage to the work, Contractor shall make a reasonable effort to settle with such other contractor and subcontractor by agreement or arbitration. If such other contractor or subcontractor shall assert any claim against the District or Architect, on account of any damage alleged to have been so sustained, the District or Architect shall notify the Contractor, who shall defend such proceedings at Contractor's own expense and save harmless and indemnify the District and the Architect from any such claim.

Article 24. DISTRICT'S RIGHT TO STOP WORK; TERMINATION OR SUSPENSION OF THE CONTRACT

a. District's Right to Stop Work:

In addition to or as an alternative to any and all other remedies available to the District, if the Contractor fails to correct work which is not performed in accordance with the Contract Documents, or if the Contractor persistently fails to perform the work in accordance with the Contract Documents, the District may by written order direct the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated to the satisfaction of the District. However, the right of the District to stop the work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity, and the failure of the District to do so shall not be raised as a defense to the Contractor's failure to perform the work in accordance with the Contract Documents.

b. Termination for Cause:

1) If the Contractor refuses or fails to furnish sufficient materials, work force, equipment, and appurtenances to properly prosecute the work in a timely manner, or if Contractor refuses or fails to comply with any provisions of the Contract Documents, or if Contractor should file a bankruptcy petition or make a general assignment for the benefit of Contractor's creditors or if a receiver should be appointed on account of Contractor's insolvency, then the District may give the Contractor and Contractor's Surety written notice of intention to terminate the Contract. Unless within seven (7) calendar days after the serving of such notice upon the Contractor and Contractor's Surety such violation shall cease and arrangements for correction of such conditions shall be made satisfactory to the District, the Contract shall cease and terminate. In the event of such termination, the District shall immediately serve written notice thereof upon the Contractor and Contractor's Surety.

2) In the event of termination for cause, in addition to all remedies available to the District, the Contractor's Surety shall have the right to take over and perform the Contract; provided, however, that if the Surety does not commence performance within five (5) calendar days from the date of the issuance of such notice of termination, the District may take over the work and prosecute the same to completion by letting another Contract, or by any other method that the District deems advisable. The Contractor and Contractor's Surety shall be liable for any excess cost incurred by the District thereby, and in any such event the District may take possession of such materials, equipment, and other property belonging to the Contractor as may be on the site and use same in completing the work.

c. Termination or Suspension for Convenience:

The District reserves the right, in its sole discretion, to terminate or suspend all or part of the Contract for convenience following three (3) days written notice to the Contractor. In the event of termination or suspension for convenience, Contractor shall have no claims against the District, except:

1) The actual cost of labor, materials and services provided pursuant to the Contract, and which have not yet been paid for, as documented by timesheets, invoices, receipts and the like; and

2) Five percent (5%) of the total cost of the work performed as of the date of notice of termination or suspension or five percent (5%) of the value of the work yet to be completed, whichever is less. The Parties agree that this amount shall constitute full and fair compensation for all Contractor's lost profits and other damages resulting from the termination or suspension for convenience.

Article 25. GUARANTEE

Contractor warrants to the District that material and equipment furnished under the Contract will be of the highest quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. So long as District forwards written notification of any warranty item to Contractor within the warranty period, Contractor's obligation to correct the warranty item continues until the correction is made. As stated in the Project Warranty form, the warranty period is at least two years. In the event of failure of the Contractor to repair a defect within seven (7) days after being notified in writing, the District is hereby authorized to proceed to have defects repaired and made good at expense of the Contractor who shall pay costs and charges therefore immediately on demand.

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

This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District with all appropriate guarantee or warranty certificates, in a form acceptable to District, prior to the final payment made to Contractor.

Article 26. NOTICE AND SERVICE THEREOF

a. Any notice from one Party to the other under the Contract shall be in writing and shall be dated and signed by the Party giving such notice or by the duly authorized representative of such Party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

1) If notice is given to District, by personal delivery thereof to District's representative or by depositing same in United States mail, enclosed in a sealed envelope addressed to District for attention of said representative or District, postage prepaid and registered;

2) If notice is given to Contractor, by personal delivery thereof to said Contractor or to his foreman at site of the Project, or by depositing same in United States mail, enclosed in a sealed envelope

addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered;

3) If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to Party giving notice, postage prepaid and registered.

4) If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

Article 27. WORKERS

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

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

c. The District reserves the right to request that the Project Supervisor be replaced immediately.

Article 28. WAGE RATES, PAYROLL RECORDS AND DEBARMENT

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

b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than Two Hundred Dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

c. As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board members, and its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent

counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

d. Accurate payroll records shall be kept by the Contractor and each subcontractor, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work.

e. It shall be the responsibility of Contractor to comply with Labor Code section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. Labor Code section 1776 provides in relevant part,

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by that person's employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) (1)Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(2) Copies of electronic certified payroll records shall not satisfy payroll records requests made by Taft-Hartley trust funds and joint labor-management committees. Any copy of records requested by, and made available for inspection by or furnished to, a Taft-Hartley trust fund or joint labor-management committee shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, the contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit One Hundred Dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

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

Article 29. <u>APPRENTICES</u>

Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall be knowledgeable of and comply with all California Labor Code sections including 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments; each of these sections is incorporated by reference into this Contract. The responsibility for compliance with these provisions for all apprenticeable occupations rests with the Contractor. Knowing violations of Section 1777.5 will result in forfeiture not to exceed $100 for each calendar day of non-compliance pursuant to Section 1777.7.

Article 30. <u>HOURS OF WORK</u>

a. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

b. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

c. The Contractor 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 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.

d. Any work necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to District. Refer to Special Conditions for information on specific time-of-day and weekend hour restrictions which apply to this Contract.

e. For projects occurring on or adjacent to an operating school site, Contractor shall schedule activities to ensure education operations will not be unduly disrupted by significant noise, dust or other impacts reasonably expected to be disruptive to any educational or District programs.

Article 31. INSURANCE

a. Contractor shall obtain insurance from a company or companies acceptable to District. All required insurance must be written by an admitted company licensed to do business in the State of California at the time the policy is issued. All required insurance shall be equal to or exceed an A VIII rating as listed in Best's Insurance Guide's latest edition. On a case-by-case basis, the District may accept insurance written by a company listed on the State of California Department of Insurance List of Eligible Surplus Lines ("LESLI List") with a rating of A:VIII or above as listed in Best's Insurance Guides' latest edition. Required documentation of such insurance shall be furnished to the District within the time stated in the Notice of Intent to Award. Contractor shall not commence work nor shall it allow its employees or Subcontractors or anyone to commence work until all insurance required hereunder has been submitted and approved by the District and a notice to proceed has been issued.

b. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

c. Contractor shall take out and maintain at all times during the life of this Contract, up to the date of acceptance of the work by the District, the following policies of insurance:

1) **General Liability Insurance**: Personal injury and replacement value property damage insurance for all activities of the Contractor and its Subcontractors arising out of or in connection with this Contract, written on a comprehensive general liability form including contractor's protected coverage, blanket contractual, completed operations, vehicle coverage and employer's non-ownership liability coverage, in an amount no less than either:

(a) $1,000,000.00 combined single limit personal injury and property damage for each occurrence and $2,000,000.00 annual aggregate with a $2,000,000.00 umbrella/excess; or

(b) $2,000,000.00 annual combined single limit.

Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect Contractor and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this Article, and shall be in the form and amounts as set forth in the Special Conditions. The limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.

Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of Education, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, and the District's consultants, individually and collectively, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

Contractor shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of $25,000. District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such

review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 33 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described in paragraphs (d) and (e), above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.

Contractor and District release each other, and their respective authorized representatives, from any Claims (as further defined in Article 33), but only to the extent that the proceeds received from any policy of liability insurance carried by District or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.

2) **Builders Risk Insurance:**

_____ Contractor is not required to procure and maintain builders' risk insurance (all-risk coverage).

____ Contractor shall procure and maintain builders' risk insurance (all-risk coverage) on a one hundred percent completed value basis on the insurable portion of the project for the benefit of the District, and the Contractor and subcontractor as their interest may appear.

It is the Contractor's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Contract is formally accepted by the Governing Board for the Work. The Contractor is required to file with the District a certificate evidencing builder's risk or applicable installation of not less than the amount identified in the Special Conditions insurance coverage.

Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
2. Coverage shall include all materials stored on site and in transit.
3. Coverage shall include Contractor's tools and equipment.
4. Insurance shall include boiler, machinery, and material hoist coverage.

3) **Automobile Liability Insurance**: Covering bodily injury and property damage in an amount no less than $1,000,000 combined single limit for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned vehicles and be included on the umbrella/excess policy.

d. The certificate(s) for the General Liability Policy(ies) and the Automobile Liability Policy specified above must state that the insurance is under an occurrence based, and not claims made, policy(ies) and shall be endorsed with the following specific language:

The "Vista Unified School District" is an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly in the performance of the Contract."

e. The certificate(s) for the both the General Liability Policy and the Automobile Liability Policy, as well the Builders' Risk Policy if required above, shall be endorsed with the following specific language:

1) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverages afforded shall apply as though separate policies have been issued to each insured.

2) The insurance provided herein is primary and no insurance held or owned by the District shall be called upon to contribute to a loss.

3) Coverage provided by this policy shall not be reduced or canceled without thirty (30) days written notice given to the Owner by certified mail.

4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

5) The certificates must state that the insurance is under an occurrence based, and not a claims-made, or "modified occurrence," policy (policies).

f. Within ten (10) days following issuance of the Notice of Intent to Award of the Contract, the following documentation of insurance shall be submitted to District for approval prior to issuance of the Notice to Proceed: Certificates of insurance showing the limits of insurance provided, certified copies of all policies, and signed copies of the specified endorsements for each policy. At the time of making application for an extension of time, the Contractor shall submit evidence that the insurance policies will be in effect during the requested additional period of time.

g. If the Contractor fails to maintain such insurance, the District may take out such insurance to cover any damages of the above mentioned classes for which the District might be held liable on account of the Contractor's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Contractor under the Contract.

h. **Workers' Compensation Insurance:**

1) Within ten (10) calendar days following issuance of the Notice of Intent to Award of the Contract, the Contractor shall furnish to the District satisfactory proof that the Contractor and all Subcontractors it intends to employ have procured, for the period covered by the Contract, full Workers' Compensation insurance and employer's liability with limits of at least $1,000,000 with an insurance carrier satisfactory to the District for all persons whom the Contractor may employ in carrying out the work contemplated under this Contract in accordance with the Workers' Compensation Insurance and Safety Act, approved May 26, 1913, and all acts amendatory or supplemental thereto (the "Act"). Such insurance shall be maintained in full force and effect during the period covered by the Contract. In the event the Contractor is self-insured, Contractor shall furnish a Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California.

2) If the Contractor fails to maintain such insurance, the District may take out worker's compensation insurance to cover any compensation which the District might be liable to pay under the provisions of the Act, by reason of any employee of the Contractor being injured or killed, and deduct and retain the amount of the premiums for such insurance from any sums due the Contractor under the Contract, or otherwise recover that amount from the Contractor or the Surety.

3) If an injury occurs to any employee of the Contractor for which the employee, or the employee's dependents in the event of the employee's death, is entitled to compensation under the provisions of the Act, or for which compensation is claimed from the District, the District may retain from the sums due the Contractor under this Contract an amount sufficient to cover such compensation, as fixed by the Act, until such compensation is paid, or until it is determined that no compensation is due, and if the District is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid, or otherwise recover this sum from the Contractor or its Surety.

4) The policies represented by the certificates shall be endorsed with a Waiver of Subrogation and must contain the provision (and the certificates must so state) that the insurance cannot be canceled until thirty (30) days after written notice of intended cancellation has been given to the District by certified mail.

i. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Contract, and District may, at its option, terminate the Contract for any such default by Contractor.

j. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

k. District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

l. All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

Article 32. <u>PROOF OF CARRIAGE OF INSURANCE</u>

a. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the District Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District, the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

b. Contractor shall cause its insurance carrier(s) to furnish the District with either 1) a properly executed original Certificates(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the District Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. The District, its directors and officers, employees, agents or representatives shall be named

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

c. It is understood and agreed to by the Parties hereto and the insurance company(ies), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

d. The District reserves the right to adjust the monetary limits of insurance coverage during the term of this Contract, including any extension thereof, if in the District's reasonable judgment the amount or type of insurance carried by the Contractor becomes inadequate.

e. Contractor shall pass down the insurance obligations contained herein to all tiers of sub-contractors working under this Contract.

Article 33. <u>INDEMNIFICATION</u>

Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any act, omission, breach, or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of District's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the District, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782. Such indemnification shall extend to all claims, demands, or liabilities occurring after completion of the project as well as during the progress of the work. Pursuant to Public Contract Code § 9201, District shall timely notify Contractor of receipt of any third-party claim relating to this Project.

Article 34. <u>LAWS AND REGULATIONS</u>

a. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of the Work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the District in writing and any necessary changes shall be adjusted as provided in contract for changes in the Work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to District, he shall

bear all costs arising therefrom.

b. The Contractor shall be knowledgeable regarding and shall comply with applicable portions of California Code of Regulations Title 24, the applicable Building Code, and all other codes, ordinances, regulations or orders of properly constituted authority having jurisdiction over the work of this Project. The Contractor shall examine the Contract Documents for compliance with these codes and regulations and shall promptly notify the Architect of any discrepancies.

c. All work and materials shall be in full accordance with the latest rules and regulations of the Safety Orders of the Division of Industrial Safety and the applicable State laws and/or regulations. Nothing in the Project plans or Specifications is to be construed to permit work not conforming to the applicable Codes. Buildings and/or all other construction covered by this Contract shall meet all the regulations for access by the physically handicapped as administered by the Division of the State Architect and as may be required by federal or state law. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

d. If the work under this Contract is for the construction of a school building as defined by the Education Code, then the following provisions shall apply to the Contract:

1) All work shall be executed in accordance with the current requirements of the Education Code and California Code of Regulations: Title 24 and Title 19. No deviations from the DSA approved plans and Specifications will be permitted except upon a Change Order or Addenda, signed by the District and Architect and approved by the Division of the State Architect and the State Fire Marshal, if applicable.

2) The Division of the State Architect shall be notified 48 hours in advance of the first pour of concrete.

Article 35. PERMITS AND LICENSES

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

a. Contractor shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under the jurisdiction of public agencies other than the District.

b. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the District's responsibility pursuant to the Contract Documents.

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

Article 36. INSPECTION FEES FOR PERMANENT UTILITIES AND EASEMENTS

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the District, unless otherwise specified.

Article 37. SURVEYS

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

Article 38. EXCISE TAXES

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

Article 39. 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 40. MATERIALS

a. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendency, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

b. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.

c. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.

d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. Contractor further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to a lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due to Contractor in the hands of the District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

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

Article 41. **SUBSTITUTIONS**

a. Wherever in the drawings or Specifications a material or product is called for by trade or brand names or manufacturer and model number, alternative items of equal quality and purpose may be proposed for use by the Contractor, as specified in the Instructions to Bidders. The burden of proof of equality is on the Contractor, and Contractor shall furnish all information and supplies necessary for the Architect and District to make a thorough evaluation of the proposed substitution. The decision about the equality of the proposed substitution is final, and if the proposed substitution is not approved, the Contractor shall install the item called for. Proposed substitutions and any changes in adjacent work caused by them shall be made by the Contractor at no additional cost to the District.

b. Proposed substitutions shall be submitted sufficiently before actual need to allow time for thorough evaluation. Substitutions shall not be proposed for the reason that submittals were not made early enough to avoid delay. The review of substitutions shall not relieve the Contractor from complying with the requirements of the drawings and Specifications.

c. In the event Contractor makes substitutions in materials, equipment, or designs, with or without the District's approval, other than those authorized herein, the Contractor shall then assume full responsibility for the effects of such substitutions on the entire Project, including the design, and shall reimburse the District for any charges resulting from such substitutions, including any charges for modifications in the work of other trades, and including any charges for additional design and review, plus reasonable and customary mark-ups.

Article 42. **SUBMITTALS, SHOP DRAWINGS, CUTS AND SAMPLES**

a. Five (5) copies of shop drawings, brochures and cuts and samples in quantities specified by the Architect shall be submitted to the Architect for all items for which they are required by the plans and Specifications. Prior to transmittal, the Contractor shall examine all submittals for accuracy and completeness in order to verify their suitability for the work and compliance with the Contract Documents and shall sign and date each submittal. Submittals shall be made sufficiently before the items are required for the work so as to cause no delay and shall be in accordance with the Project construction schedule.

b. In addition to information furnished as common practice, submittals shall contain the Project name and location, Contractor's name and address, Subcontractor's or supplier's name and address, date of submittal and any revisions, and reference to appropriate specification section, and/or drawing and detail numbers. The Contractor and/or the Subcontractors shall verify in the field all dimensions and relationships to adjacent work necessary to ensure the proper fit of the items submitted. If necessary, the Contractor shall make any corrections required and resubmit with all due haste in the same number as initially required.

c. Review of submittals, shop drawings, cuts or samples by the District or Architect shall not relieve the Contractor from complying with the requirements of the Contract Documents.

d. Any materials or equipment installed without approval shall be at the Contractor's own risk, and Contractor may be required to remove any such materials or equipment and install the specified items at Contractor's own cost, including repairs to adjacent work.

Article 43. **INSTRUCTIONS AND MANUALS**

Three (3) copies of the maintenance instructions, application/installation instructions and service manuals called for in the Specifications shall be provided by the Contractor. These shall be complete as to drawings, details, parts lists, performance data and other information that may be required for the District to easily maintain and service the materials and equipment installed under this Contract. All manufacturer's application/installation instructions shall be given to the Architect at least

ten (10) days prior to first material application or installation of the item. The maintenance instructions and manuals, along with any specified guarantees, shall be delivered to the Architect for review prior to submitting to District, and the Contractor or appropriate Subcontractors shall instruct District's personnel in the operation and maintenance of the equipment prior to final acceptance of the Project.

Article 44. CLOSEOUT SUBMITTALS

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

Article 45. PROGRESS PAYMENTS AND RETENTION

a. Cost Breakdown:

Prior to submitting Contractor's first request for payment, the Contractor shall prepare and submit to the Architect and District a cost breakdown (schedule of values) showing the major work items for each trade or operation required in construction of the Project. The work items shall be sufficiently detailed to enable the Architect to accurately evaluate the completion percentages requested by the Contractor. The cost for each work item shall include overhead and profit. The total of all work item costs shall equal the amount of the Contract.

b. Scope of Payment:

Payment to the Contractor at the unit price or other price fixed in the Contract for performing the work required under any item or at the lump sum price fixed in the Contract for performing all the work required under the Contract shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the work, and for performing and completing, in accordance with the Specifications, all work required under the item or under the Contract, and for all expense incurred by the Contractor for any purpose in connection with the performance and completion of the work.

c. Progress Payments:

The Contractor will, on or about the last day of each month, make an estimate of the value of the work completed by Contractor in the performance of the Contract. These estimates shall be subject to the review and approval of the Architect. The first such estimate will be of the value of the work completed after the Contractor commenced the performance of the Contract, and every subsequent estimate, except the final estimate, will be of the value of the work completed since the immediately preceding estimate. Such estimates will be based on labor, materials and equipment incorporated into the work, and items of materials and equipment delivered to the Project. The Contractor shall be responsible for the security and protection of such materials and equipment delivered to the Project and not incorporated in the work. Within thirty (30) calendar days after the approval of each estimate for progress payment, the District will pay to the Contractor an amount equal to ninety five (95) percent of the approved estimate, unless a different retention percentage is stated in the Notice to Bidders, in which case that percentage applies. Payments may at any time be withheld if in the judgment of the District the work is not proceeding in accordance with the Contract Documents, the Contractor is not complying with the requirements of the Contract, stop notices have been timely filed, the estimate contains an error, or the District has incurred costs or requests reasonable financial assurances regarding defective work by the Contractor.

d. Final Payment:

Within thirty (30) days after all required work is fully completed in accordance with the Contract Documents, the Contractor shall submit a final invoice for the total value of the work completed in

accordance with the Contract, which shall be subject to review and approval by the District. As required by law, District shall pay Contractor the unpaid balance of the Contract price of the work, or the whole Contract price of the work if no progress payment has been made, determined in accordance with the terms of the Contract, less such sums as may be lawfully retained under any provision of the Contract, including, but not limited to, amounts retained as liquidated damages, for stop notices, for third-party claims for which the Contractor is required to indemnify the District, for defective work and costs incurred by the District in connection therewith, or for other such claims and damages attributable to the Contractor ("Final Payment"). Prior progress estimates and payments are subject to correction in the Final Payment. Tender of the Final Payment shall constitute denial by the District of any unresolved claim. Contractor's acceptance of the Final Payment shall operate as a full and final release to the District and its agents from any and all unasserted claims Contractor has, or may have, related to this Contract. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

e. Payments Do Not Imply Acceptance of Work:

The granting of any progress payment or payments by the District or the receipt thereof by the Contractor shall not constitute acceptance of the work or of any portion thereof, and shall in no way lessen the liability of the Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.

f. Retention of Sums Charged Against Contractor:

It is mutually understood and agreed that when under any provision of this Contract, the District shall charge any sums of money against the Contractor, the amount of such charge shall be deducted and retained by the District from the amount of the next succeeding progress estimate, or from any other monies due or that may become due the Contractor on account of the Contract. If on completion or termination of the Contract such monies due the Contractor are found insufficient to cover the District's charges against the Contractor, the District shall have the right to recover the balance from the Contractor or the Contractor's Sureties.

g. Release:

The Contractor and each assignee under an assignment in effect at the time of Final Payment shall, if required by the District, execute and deliver at the time of Final Payment and as a condition precedent to Final Payment, a release in form and substance satisfactory to and containing such exemptions as may be found appropriate by the District, discharging the District, its officers, agents and employees of and from liabilities, obligations and claims arising under this Contract.

h. Payment to Subcontractors and Suppliers:

The Contractor shall pay each Subcontractor and supplier promptly on receipt of each progress payment from the District for the materials, labor and equipment delivered to the site or incorporated in the work by each Subcontractor during the period for which the progress payment is made, less any retention as provided above.

i. Stop Notice Costs:

The District reserves the right to charge the Contractor or Surety, or to withhold from release of retention, all costs incurred by the District, including attorney's fees, for processing and defending stop notice claims.

j. Whenever any part of the Work is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or use a part thereof. When

so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this section shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, on the Project.

Article 46. PAYMENTS WITHHELD

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

a. Stop Payment Notice Claims.

b. Defective work not remedied.

c. Failure of Contractor to make proper payments to its subcontractors or suppliers.

d. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for balance then unpaid.

e. Damage to another contractor or third party.

f. Amounts which may be due the District for claims against Contractor.

g. Failure of Contractor to keep the record ("as-built") drawings up to date.

h. Failure to provide updates on the construction schedule.

i. Site clean-up.

j. Failure of the Contractor to comply with requirements of the Contract Documents.

k. Liquated damages.

l. Legally permitted penalties.

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

District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under the Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

Article 47. CHANGES AND EXTRA WORK

a. Changes in the Work:

1) The District, before the date of acceptance of the work, may, without notice to the Sureties, order changes in the work ("Modifications"), may order extra materials and extra work in connection with the performance of the Contract, and the Contractor shall promptly comply with such orders. All Modifications must be approved by DSA and the State Fire Marshall, if applicable, as required by law.

2) If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the Contract shall be increased or decreased by such amount as represents the reasonable and proper allowance for the increase or decrease in the cost of the work in accordance with the provisions of this Article, and any other applicable terms of the Contract, including, but not limited to, the Contractor's schedule of values and the price for allowances, if any. Except as provided by law, the total cost of all Modifications shall not exceed ten (10) percent of the original Contract price.

3) In the case of a disputed work item, the District may direct the Contractor to perform the disputed work at no additional cost to the District on the grounds that the work is adequately indicated in the Contract Documents, and therefore already included in the Contract price. If the Contractor maintains that the disputed work represents a modification to the Contract, Contractor may submit a claim in accordance with Article 78, Dispute Resolution. Notwithstanding any dispute regarding the requirements of the Contract Documents, Contractor shall promptly and fully comply with the District's directive. Contractor's failure to do so shall be deemed a material breach of this Contract, and in addition to all other remedies, District may, at its sole discretion, hire another contractor and/or use its own forces to complete the disputed work at Contractor's sole expense, and may deduct the cost of such work from the Contract price.

b. Cost Breakdown:

When the Modification is proposed, the Contractor shall furnish a complete breakdown of actual costs of both credits and extras, itemizing materials, labor, taxes, overhead and profit. Subcontract work shall be so indicated. All costs must be fully documented. The following limitations shall apply:

1) Limitations Where Contract Price Changes are Involved:

(a) Overhead and Profit for the Contractor. The Contractor's overhead and profit on the cost of subcontracts shall be a sum not exceeding ten percent (10%) of such costs. The Contractor's overhead and profit on the costs of work performed by the Contractor shall be a sum not exceeding fifteen percent (15%) of such costs. Overhead and profit shall not be applied to the cost of taxes and insurance by Contractor or Subcontractors or to credits. No processing or similar fees may be charged by the Contractor in connection with the Modification. "Overhead and profit" shall include all plant, equipment rental and repair, project management, field coordination, job site project supervision and indirect labor and materials.

(b) Bond Premiums. The actual rate of bond premiums as paid on the total cost (including taxes) will be allowed, but with no markup for profit and overhead.

(c) Taxes. State and city sales taxes should be indicated. Federal excise tax shall not be included. (District will issue an exemption on request.)

2) Change Order Certification:

All change orders and requests for proposed change orders shall be deemed to include the following certification by the Contractor:

"The undersigned Contractor approves the foregoing as to the changes in work, if any, and as to the Contract price specified for each item and as to the extension of time allowed, if any, for completion of the Project as stated herein, and agrees to furnish all labor, materials, and service and to perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of claims which have no basis in fact or which Contractor knows are false are

made at the sole risk of the Contractor and may be a violation of the False Claims Act, as set forth in Government Code §§12650 et seq. It is understood that the changes to the Contract Documents set forth herein shall only be effective upon approval by the Board of Education of the District.

"It is expressly understood that the value of the extra work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included herein are deemed waived."

c. Unit Prices, Schedule of Values, or Allowances:

Where Unit Prices, a Schedule of Values, and/or Allowances are required by the Contract Documents, that pricing shall govern in computing any additions to or deductions from the Contract price on account of any added or omitted work. Unit Prices listed in the original bid include all costs and no addition of any description will be allowed.

d. Time and Materials:

If it is impractical, because of the nature of the work, or for any other reason, to fix an increase in price in advance, the Change Order may fix a maximum price which shall not under any circumstances be exceeded, and subject to such limitation, such alteration, modification or extra shall be paid for at the actual necessary cost as determined by the sum of the following items (1) to (5) inclusive:

1) Labor, including premium on compensation insurance and charge for Social Security taxes, and other taxes pertaining to labor.

2) Material, including sales taxes and other taxes pertaining to materials.

3) Plant and equipment rental, to be agreed upon in writing before the work is begun. No charge for the cost of repairs to plant or equipment will be allowed.

4) Overhead and profit computed at fifteen percent (15%) of the total of Items (1) to (3) inclusive.

5) The proportionate cost of premiums on bonds computed at one and one-half percent (1-1/2%) of the total of items (1) to (4) inclusive.

If the Time and Materials work is done by a Subcontractor, the amount shall be determined as set forth above under items (1) to (5) inclusive. The Contractor's overhead and profit on the costs of subcontracts (exclusive of taxes and insurance) shall not exceed ten percent (10%) of such costs.

The District reserves the right to furnish such materials as it may deem expedient, and no allowance will be made for profit thereon. The above-described methods of determining the payment for work and materials shall not apply to the performance of any work or the furnishing of any material which, in the judgment of the District, may properly be classified under items for which prices are established in the Contract.

e. Oral Modifications:

No oral statements of any person shall in any manner or degree modify or otherwise affect the terms of the Contract.

f. No dispute, disagreement or failure of the Parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of the Work, including extra work, promptly and expeditiously.

g. Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Contractor's surety or sureties.

Article 48. DEDUCTIONS FOR UNCORRECTED WORK

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

Article 49. WARRANTY OF TITLE

Contractor warrants that title to all work, materials or equipment included in a request for payment shall pass and transfer to the District whether or not they are installed or incorporated in the Project, free from any claims, liens or encumbrances, when such payment is made to the Contractor. Contractor further warrants that no such work, materials or equipment have been purchased for work under the Contract subject to an agreement by which an interest therein or an encumbrance thereon is retained by the seller or supplier.

Article 50. CONTRACTOR'S SUPERVISION

a. Unless personally present on the premises where the Work is being done, Contractor shall keep on the Work, during its progress, a competent full-time job (project) superintendent satisfactory to District. The job superintendent shall not be changed except with the written consent of the District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.

b. Contractor shall give efficient supervision to the Work, using his best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to District any error, inconsistency or omission which he may discover.

Article 51. DOCUMENTS ON WORK

a. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the Contract, which are a part of Contract Documents, on the job at all times. Said documents shall be kept in good order and shall be available to the District and District representative. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this project, particularly Titles 17, 19, 21 and 24.

b. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request by the District.

Article 52. RECORD ("AS BUILT") DRAWINGS

a. Contractor shall maintain a clean, undamaged set of Contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or the District. Contractor shall mark the set to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are

most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the Contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.

b. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.

c. At the end of the Project, the Contractor shall provide the District representative with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or District. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

Article 53. UTILITY USAGE

a. All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the Work. Upon completion of the Work, Contractor shall remove all temporary distribution systems.

b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.

c. All permanent meters installed shall be listed in the Contractor's name until completion occurs, as defined in Article 1 hereof, at which time further pro-rating will be determined if necessary. When the District begins using the Project, charges over and above power actually used for construction will be the responsibility of the District.

d. If the Contract is for construction in existing facilities, Contractor may, with written permission of the District, use the District's existing utilities at no charge.

Article 54. TRENCHING OR OTHER EXCAVATIONS

a. Excavations or Trenches Deeper than Four Feet:

If the Project involves digging trenches or other excavations that extend deeper than four feet, the following provisions shall be a part of this Contract:

1) The Contractor shall promptly, and before the following conditions are disturbed, provide written notice to the District if the Contractor finds any of the following conditions:

(a) Material that the Contractor believes may be a hazardous waste, as defined in §25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(b) Subsurface or latent physical conditions at the site which are different from those indicated or expected.

(c) Unknown physical conditions at the site of any unusual nature or which are materially

different from those ordinarily encountered and generally recognized as inherent in work which the Contractor generally performs.

2) In the event that the Contractor notifies the District that Contractor has found any of the conditions specified in subparagraphs (a), (b) or (c), above, the District shall promptly investigate the condition(s). If the District finds that the conditions are materially different or that a hazardous waste is present at the site which will affect the Contractor's cost of, or the time required for, performance of the Contract, the District shall issue a change order in accordance with the procedures set forth in this Contract.

3) In the event that a dispute arises between the District and the Contractor regarding any of the matters specified in Paragraph (2), above, the Contractor shall proceed with all work to be performed under the Contract and the Contractor shall not be excused from completing the Project as provided in the Contract. In performing the work pursuant to this Paragraph, the Contractor retains all rights provided by Article 78 which pertains to the resolution of disputes between the contracting Parties.

b. Regional Notification Center:

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages or delays arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor and shall not be considered for an extension of the Contract time.

c. Existing Utility Lines:

1) Pursuant to Government Code §4215, the District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the plans and Specifications. Contractor shall not be assessed liquidated damages for delay in completion of the Project caused by the failure of the District or the owner of a utility to provide for removal or relocation of such utility facilities.

2) Locations of existing utilities provided by the District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. The District shall compensate Contractor for the costs of locating and repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and Specifications with reasonable accuracy.

3) No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the Project. Nothing in this section shall be deemed to require the District to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunk lines, whenever the presence of such utilities on the site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

4) If Contractor, while performing work under this Contract, discovers utility facilities not identified

by the District in the Project plans and Specifications, Contractor shall immediately notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

d. Prompt Notification:

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the conditions. Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages incurred as a result of the conditions.

e. Trenches Five Feet and Deeper:

Pursuant to Labor Code §6705, if the Contract price exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

Article 55. PROTECTION OF WORK AND PROPERTY

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

b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by the District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:

1. Enclose the working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform

work which so as to not interfere with school routine before or after school hours. (This subsection applies to new construction on existing sites.)

2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the building area over a route designated by the District.

4. When directed by the District, take preventive measures to eliminate objectionable dust.

5. Confine Contractor's apparatus, the storage of materials, and the operations of his workers to limits indicated by law, ordinances, permits, or directions of District. Contractor shall not unreasonably encumber the premises with his materials. Contractor shall enforce all instructions of the District regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on the construction site.

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

Article 56. LAYOUT AND FIELD ENGINEERING

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

Article 57. HAZARDOUS MATERIALS

Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any hazardous substances or materials encountered in the new construction or on the Project grounds. If such substances or materials are encountered, work shall cease in that area and the District shall be promptly notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to the District.

a. General:

1) No asbestos, asbestos-containing products or other hazardous materials shall be used in this construction or in any tools, devices, clothing or equipment used to further this construction.

2) Asbestos and/or asbestos containing products shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremo-lite or actinolite.

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

4) Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy; the cost of any such tests shall be paid by the Contractor.

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

b. Decontamination and Removal of Hazardous Material from Prior Work:

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

2) The asbestos removal contractor shall be an EPA-accredited contractor qualified in the removal of asbestos subject to the approval of the District.

3) The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.

4) The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

c. Hold Harmless:

1) Interface of work under this Contract with work containing asbestos shall be executed by the Contractor at Contractor's risk and at Contractor's discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of this Contract the Contractor acknowledges the above and agrees to hold harmless, as set forth in the indemnity provisions of this Contract, the Owner, its employees, agents and assigns for all asbestos liability which may be associated with this work and agrees to instruct Contractor's employees and agents with respect to the above-mentioned standards, hazards, risks and liabilities.

2) The Contractor shall, prior to commencement of this work, provide a duly signed and notarized affidavit that Contractor has instructed Contractor's employees and agents with respect to the above mentioned standards, hazards, risks and liabilities and the contents and requirements of this portion of the Contract Documents.

d. Certification:

The Contractor agrees that materials containing asbestos or other hazardous materials as defined in Federal and State law shall not be used in construction.

Article 58. TEMPORARY FACILITIES

a. The Contractor shall obtain permits for, install and maintain in safe condition all scaffolds, hoisting equipment, barricades, walkways, or other temporary structures that may be required to accomplish the work. Such structures shall be adequate for the intended use and capable of safely accepting all loads that may be imposed upon them. They shall be installed and maintained in accordance with all applicable codes and regulations.

b. The Contractor shall provide and maintain temporary heat from an approved source whenever in the course of the work it may become necessary for curing, drying or warming spaces as may be required for the proper installation of materials or finishes. The Contractor shall provide and maintain any and all facilities that may be required for dewatering in order that work may proceed on the Project. If it is necessary for dewatering to occur continually, the Contractor shall have on hand whatever spare parts or equipment that may be required to avoid interruption of service or work.

c. The Contractor shall promptly remove all such temporary facilities when they are no longer needed for the work or on completion of the Project. The Contractor shall repair any damage to premises or property which resulted from the construction, use, or removal of temporary facilities

Article 59. SANITARY FACILITIES

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

Article 60. USE OF ROADWAYS AND WALKWAYS

The Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic by any party entitled to use it. Wherever such interference becomes necessary for the proper and convenient performance of the work and no satisfactory detour route exists, the Contractor shall, before beginning the interference, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference and shall maintain it in satisfactory condition as long as the interference continues, all without extra payment unless otherwise expressly stipulated in the Contract Documents.

Article 61. SIGNS

No signs may be displayed on or about the District's property (except those which may be required by law) without the District's prior written approval of size, content and location. Any signs required by the District will be designated in the Special Conditions.

Article 62. CUTTING AND PATCHING

a. Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as District may direct.

b. All cost caused by defective or ill-timed work shall be borne by Party responsible therefore.

c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of the District.

Article 63. CLEANING UP

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

b. Final cleaning, such as sweeping, dusting, vacuuming, dry and wet mopping, polishing, sealing, waxing and other finish operations normally required on newly installed work shall be taken to indicate the finished conditions of the various new and existing surfaces at the time of acceptance. Prior to the time of acceptance, all marks, stains, fingerprints, dust, dirt, splattered paint and blemishes resulting from the various operations shall be removed throughout the Project. Stair treads and risers shall be wet-mopped. Glass shall be left clean and polished both inside and outside. Plumbing fixtures and light fixtures shall be

washed clean. Hardware and other unpainted metals shall be cleaned and all building papers and other temporary protections shall be removed throughout the building, or portion of the building where Contractor was involved, all to the satisfaction of the Architect and District. The exterior of the buildings, playfields, exterior improvements, and planting spaces and other work areas shall be similarly clean and in good order. See Special Conditions for additional requirements and instructions.

Article 64. CORRECTION OF WORK BEFORE FINAL PAYMENT

a. Contractor shall promptly remove from the premises all Work condemned by District as failing to conform to the Contract Documents, whether incorporated or not. Contractor shall promptly replace and re-execute his own Work to comply with contract documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

b. If Contractor does not remove such condemned Work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

Article 65. ACCESS TO WORK

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

Article 66. OCCUPANCY

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

Article 67. DISTRICT'S INSPECTOR

a. If applicable, an inspector will be employed by District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the work. The inspector’s duties are specifically defined in Part 1, Title 24, Section 4-342 of the California Code of Regulations.

b. All work shall be under the observation of said inspector. The inspector shall have free access to any or all parts of work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep the inspector fully informed respecting progress and manner of Work and character of materials, including assisting with Inspector’s monthly reports. Inspection of Work shall not relieve Contractor from any obligation to fulfill this contract. Inspector or District shall have authority to stop Work whenever the provisions of the Contract Documents are not being complied with and Contractor shall instruct the Contractor’s employees accordingly.

Article 68. TESTS AND INSPECTIONS

a. If the Contract Documents, the District Representative, or any instructions, laws, ordinances, or public authority require any part of the Work to be tested or approved, Contractor shall provide the District Representative at least two (2) working days’ notice of its readiness for observation or inspection. If inspection is by a public authority other than the District, Contractor shall promptly inform the District of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by

Contractor. Costs for District testing and District inspection shall be paid by the District. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

b. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

c. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the District, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

d. In advance of the manufacturing of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the District so that the District may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

e. If the manufacturing of materials to be inspected or tested will occur in a plant or location outside the geographic limits of District, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

f. Reexamination of the Work may be ordered by the District. If so ordered, the Work must be uncovered or deconstructed by Contractor. If the Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

g. Inspection and testing by the District or its representatives shall not relieve the Contractor from complying with the requirements of the Contract Documents. The Contractor is responsible for its own quality control.

Article 69. <u>SOILS INVESTIGATION REPORT</u>

a. <u>Soil Report</u>: Unless otherwise specifically provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this Contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract, unless otherwise specifically provided.

b. <u>Underground Investigation</u>: Contractor is required to make a visual examination of site and must make whatever tests he deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by the District or its representatives that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Work, such reference shall be to establish minimum requirements only.

c. <u>No Representations</u>: No representation is made by the District or its representatives that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values,

rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine the means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Work shall be governed by provisions of the General Conditions of the Contract for unforeseen conditions.

Article 70. DISTRICT'S STATUS

a. In general and where appropriate and applicable**,** the District's Director of Maintenance shall be the District's representative during the construction period and shall observe the progress and quality of the Work on behalf of the District. He or she shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Inspector and after using his best efforts to consult with the District, the District shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Contract Documents.

b. Contractor further acknowledges that the District shall be, in the first instance, the judge of the performance of this Contract.

Article 71. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

Article 72. LABOR/EMPLOYMENT SAFETY

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

Article 73. ASSIGNMENT OF ANTITRUST ACTIONS

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

Article 74. SUBSTITUTION OF SECURITY

a. Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the Contract pursuant to the requirements of Public Contract Code section 22300 if the Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject to the following conditions:

1. The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.

2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this section.

3. The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:

   (a) The amount of securities to be deposited,

   (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,

   (c) Conversion to cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop payment notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract,

   (d) Decrease in value of securities on deposit,

   (e) The termination of the escrow upon completion of the contract.

4. The Contractor shall obtain the written consent of the surety to such agreement.

5. As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

Article 75. <u>COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION</u>

a. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Contract. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.

b. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District.

c. Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

d. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which

District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the negligence or willful misconduct of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract caused by Contractor's failure to comply with the Permit.

Article 76. RECORD KEEPING

a. The Contractor agrees to comply with Labor Code §§ 1776 and 1812. The Contractor and each Subcontractor shall keep or cause to be kept an accurate record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week of all workers employed by Contractor in connection with the execution of this Contract or any subcontract thereunder and showing the actual per diem wages paid to each of such workers. These records shall be certified; shall be submitted electronically at least monthly to the Chief of the Division of Labor Standards Enforcement of the Department of Industrial Relations; and shall be open at all reasonable hours to the inspection of the District awarding the Contract, its officers and agents, and to the Chief of the Division of Labor Standards Enforcement of the Department of Industrial Relations, and his or her other deputies and agents.

b. In addition, copies of the above records shall be available as follows:

1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request;

2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations;

3) A certified copy of all payroll records shall be made available upon request by 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. If the requested payroll records have not been previously provided, the requesting party shall, prior to being provided the records, reimburse the costs of the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

c. The Contractor shall file a certified copy of the records with the entity requesting the records within ten days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, 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 awarded the Contract or performing the Contract shall not be marked or obliterated.

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

e. In the event of noncompliance with the requirements of this section, 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 section. Should noncompliance still be evident after the ten day period, the Contractor shall, as a penalty to the District, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

f. Responsibility for compliance with this provision shall be with the Contractor.

Article 77. PROJECT COMPLETION

a. When all of the work to be performed under this Contract has been fully completed, the Contractor shall notify the Architect and District, in writing, setting a date for inspection. The Contractor and Subcontractor representatives shall attend the inspection. As a result of this inspection, the Architect will prepare a list of items ("punch list") that are incomplete or not installed according to the Contract Documents. Failure to include items on this list does not relieve the Contractor from fulfilling all requirements of the Contract Documents.

b. The Architect will promptly deliver the punch list to the Contractor and it will include a period of time by which the Contractor shall complete all items listed thereon. On completion of all items on the punch list, verified by a final inspection, and all other Contract requirements, so that Final Completion has been achieved to the District's satisfaction, the District will file a Notice of Completion with the County Recorder. Payment of retention from the Contract, less any sums withheld pursuant to the terms of this Contract or applicable law, shall not be made sooner than thirty-five (35) calendar days after the date of filing of Notice of Completion. Contractor shall perform all tasks necessary to obtain Project certification from the authority having jurisdiction over the Project. Final Completion shall not occur until Contractor has delivered evidence of final Project certification to the District.

c. District reserves the right to occupy buildings and/or portions of the site at any time before Final Completion, and occupancy shall not constitute final acceptance of any part of the Work covered by the Contract Documents, nor shall such occupancy extend the date specified for completion of the Work. Beneficial occupancy of building(s) does not commence any warranty period or entitle Contractor to any additional compensation due to such occupancy, or affect in any way or amount Contractor's obligation to pay liquidated damages for failure to complete the Project on time.

Article 78. DISPUTE RESOLUTION

a. Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

b. Dispute/Claims Resolution.

1. Contractor Continuation of Work. Notwithstanding any claim, dispute, disagreement or other matter in controversy between the District and the Contractor relating to the Contract Documents and/or the Work, the Contractor shall continue to diligently prosecute and perform the Work in accordance with requirements of the Contract Documents, pending any final determination or decision regarding any such claim, dispute, disagreement or matter in controversy.

2. Public Contract Code § 9204 Claims Resolution Procedures. Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code § 9204 ("Section 9204") provided, however, that the Contractor's initiation of Section 9204 procedures is expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.

3. Claim Defined. The term "Claim" shall be as defined in Section 9204.

4. Claim Documentation. The Contractor shall furnish reasonable documentation to support each Claim. "Reasonable documentation" includes, without limitation: (i) contractual and legal

basis establishing Claim entitlement or merit; (ii) factual basis establishing District liability for the Claim; (iii) detailed breakdown of labor, materials, equipment and other costs included in the Claim; and (iv) detailed basis, including Construction Schedule analysis and fragnets supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.

5. District Claim Review Statement. Within forty-five (45) days (or such other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the District will conduct a reasonable review of the Claim and provide the Contractor with a written statement identifying the disputed and undisputed portions of the Claim ("Claim Review Statement"). If the District does not provide the Contractor with the Claim Review Statement for any Claim within forty-five (45) days (or other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the Claim is deemed rejected in its entirety and thereupon, the Contractor may initiate the Meet and Confer process described below. A Claim deemed rejected pursuant to the foregoing does not constitute an adverse finding of Claim merit or the Contractor's responsibility or qualifications. If the Claim Review Statement identifies any undisputed portion of a Claim ("Undisputed Claim") and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after the issuance date of the Claim Review Statement.

6. Meet and Confer.

(a) Meet and Confer Demand. If the Contractor disputes any portion of the Claim Review Statement, or if a Claim is deemed rejected by the District not providing the Contractor with the Claim Review Statement within the time permitted under Section 9204, the Contractor may demand an informal conference to meet and confer with the District for settlement of the issues in dispute ("Meet and Confer"). The Contractor's Meet and Confer request must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; and (iii) within ten (10) days after the Claim Review Statement is submitted to the Contractor or within ten (10) days after the date the Claim is deemed rejected, as applicable. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor's right to request the Meet and Confer and the Non-Binding Mediation procedures under Section 9204. If the Contractor strictly complies with the foregoing, the District will schedule the Meet and Confer conference within thirty (30) days of the Contractor's Meet and Confer request for settlement of disputed portions of the Claim Review Statement.

(b) Meet and Confer Statement. Within ten (10) business days after conclusion of the Meet and Confer conference, if any portion of a Claim remains disputed, the District shall provide the Contractor a written statement identifying the disputed and undisputed portions of the Claim ("Meet and Confer Statement"). If the Meet and Confer Statement identifies any Undisputed Claim and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after date the Meet and Confer Statement is issued.

7. Non-Binding Mediation.

(a) Contractor Initiation. The Contractor may request nonbinding mediation ("Mediation") of disputed portions of a Claim identified in the Meet and Confer Statement. The Contractor's Mediation demand must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; (iii) within ten (10) days after the Meet and Confer Statement is submitted to the Contractor; and (iv) with specific identification of the disputed Claims issues subject to Mediation. Failure of the Contractor to strictly comply with the

foregoing is deemed a waiver of the Contractor's right to demand Mediation procedures under Section 9204.

(b) Mediator Selection. The District and Contractor shall mutually agree to a mediator within ten (10) business days after the date of the Contractor's demand for Mediation. If the District and Contractor do not mutually agree to a mediator, the District and Contractor shall each select a mediator and the District/Contractor selected mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim.

(c) Mediation Procedures. Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the District and Contractor in dispute resolution through negotiation or by issuance of an evaluation.

(d) Mediation Costs. All costs, fees and expenses of the mediator(s) and mediation administration shall be shared equally by the District and Contractor. The foregoing notwithstanding, the Contractor and District shall each bear the costs, fees and expenses of their own attorneys, experts and consultants.

(e) Post-Mediation Disputed Claims. Any Claims or issues in dispute after Mediation shall be resolved in accordance with the applicable provisions of the Contract Documents.

(f) Waiver. The District and Contractor may mutually agree to waive, in writing, Mediation under Section 9204 and, subject to the Contractor's compliance with Government Code Claim requirements, proceed directly to commencement of a civil action or binding arbitration.

8) Payments of Undisputed Claims. If a payment due from the District for Undisputed Claims identified in the Claim Review Statement or the Meet and Confer Statement issued for a Claim is not made within the time established under Section 9204 the overdue portion of such payment shall bear interest at the rate of seven percent (7%) per annum from the date due. The District's credit application of any amount due for an Undisputed Claim against amounts due from the Contractor under the Contract Documents shall be deemed payment of the Undisputed Claim.

9) Subcontractor Claims.

(a) Subcontractor Claim Submittal. If a Subcontractor, of any tier (collectively referred to as "Subcontractor" in this Article) lacks legal standing to assert a Claim against the District because privity of contract does not exist, the Contractor may present the District a Claim on behalf of the Subcontractor ("Subcontractor Claim"). Each Subcontractor requesting submittal of a Subcontractor Claim to the District shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor's written request to submit a Subcontractor Claim, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Subcontractor Claim to the District. If the Contractor did not present the Subcontractor Claim, the Contractor shall provide the Subcontractor with a statement of the reasons for not having done so.

(b) Contractor Certification of Subcontractor Claim. The District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor's review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported

by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code § 12650 et seq). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents.

c. District Review of Subcontractor Claim. Subcontractor Claims presented by the Contractor to the District are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for the District to conduct Meet and Confer and/or non-binding mediation procedures must be submitted jointly by the Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and mediation administration fees and costs shall be borne equally by the District, Contractor and Subcontractor.

d. Disputed Subcontractor Claims. Subcontractor Claims which are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Public Contract Code Section 20104.4 Dispute Resolution Procedures or binding arbitration, as applicable. Commencement of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings in connection with any Subcontractor Claim is subject to compliance with Government Code Claims requirements.

10) Government Code Claim Requirements. Pursuant to Government Code § 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Contractor, whether on behalf of itself or a Subcontractor, against the District for money or damages, including without limitation Claims or portions thereof remaining in dispute after completion of the Section 9204 non-binding dispute resolution procedures described above are deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§ 945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to the Contractor's initiation of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings pursuant to the following is the Contractor's compliance with the Government Code Clams Process, including without limitation, presentation of the claim, demand, dispute, disagreement or other matter in controversy between the Contractor and the District seeking money or damages to the District and acted upon or deemed rejected by the District in accordance with Government Code § 900 et seq.

c. Binding Arbitration of Claims.

1) JAMS Arbitration. Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process and any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted before one (1) retired judge in accordance with the Construction Arbitration Rules and Procedures of Judicial Arbitration Mediation Services ("JAMS") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.

2) Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If more than one Demand for Arbitration is filed by either the District or the Contractor relating to the Work or the Contract

Documents, all Demands for Arbitration shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may in the District's sole discretion be joined in and bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor or the District..

District may, in its sole discretion, join other defendants into the same arbitration proceeding (including without limitation, architects or construction managers) where the claims relate to the same project.

3) Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure § 1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.

4) Arbitration Award. The award rendered by the Arbitrator ("Arbitration Award") shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure § 1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§ 1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure § 1285 et seq.

5) Arbitration Fees and Expenses. The expenses and fees of the Arbitrator shall be divided equally among all of the parties to the arbitration. Each Party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator may award arbitration costs, including Arbitrator's fees but excluding attorneys' fees, to the prevailing Party. By this arbitration provision, the District and the Contractor acknowledge and agree that neither shall recover from the other any attorney's fees associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder. The limited exceptions in the Contract Documents that provide attorney's fees for specific issues shall neither be construed as applying to this arbitration provision under California Civil Code § 1717(a) nor be deemed to be "authorized by the Laws."

6) Inapplicability to Bid Bond. The arbitration proceedings described above are not applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond. All claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

Article 79. **FORCE MAJEURE.** Neither Party will be liable to the other for unanticipated delays or failures in performance resulting from causes beyond the reasonable control of that Party, including but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, casualties, pandemics, epidemics, or quarantines; provided that the delayed Party: (i) gives the other Party prompt written notice of such cause, (ii) uses its reasonable efforts to correct such failure or delay in its performance, and (iii) resumes performance as soon as reasonably practicable. Any and all delays resulting from a force majeure event, as specified herein, will only be classified as excusable, non-compensable delays.

Article 80. **COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOILS**

If the project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolutions and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

Article 81. **FINGERPRINTING**

District Determination of Fingerprinting Requirement Application

The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees (which includes Subcontractor employees):

__X___ are subject to the requirements of Education Code § 45125.2 and Paragraph (a) below, is applicable.

_____ are not subject to the requirements of Education Code § 45125.2, and Paragraph (b) below, is applicable.

a. Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students (§ 45125.2)

By execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code § 45125.2 the Contractor shall, at Contractor's own expense, (1) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, and/or (2) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, and/or (3) provide for the surveillance of the Contractor and Contractor's employees by a District employee.

b. Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students (§ 45125.2)

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

Article 82. **LABOR COMPLIANCE MONITORING**

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

accordance with Labor Code § 1771.1, all bidders, contractors and subcontractors working at the site shall be duly registered with the Department of Industrial Relations at time of bid opening and at all relevant times. Proof of registration shall be provided as to all such contractors prior to the commencement of any work. Contractor shall coordinate with the Architect to ensure the Department of Industrial Relations is advised of the award of the construction contract in a timely manner by filing form PWC-100 with the Department of Industrial Relations after award of the contract.

Article 83. DRUGS, TOBACCO, ALCOHOL, ANIMALS

The Contractor shall prohibit and take all steps necessary to ensure that its and its subcontractors' employees do not possess, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the Project site. The Contractor shall take all necessary steps to ensure that its and its subcontractor's employees comply with all applicable District policies and directives relating to appearance and behavior on school sites and/or District property. The Contractor shall prohibit and prevent its employees and subcontractor's employees from bringing any animal onto the Project.

Article 84. NO DISCRIMINATION

It is the policy of the District that, in connection with all work performed under this public works contract, there shall be no discrimination against any prospective or active employee or any other person engaged in the work because of actual or perceived race, color, ancestry, national origin, ethnic group identification, religion, creed, sex, gender, gender identity, gender expression, sexual orientation, age, physical or mental disability, medical condition, genetic information, military or veteran status, or marital status. The Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code § 12900, Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6 and 3077.5. In addition, the Contractor agrees to require like compliance by all Subcontractors and suppliers.

Article 85. GENERAL PROVISIONS

a. Assignment and Successors:

Neither party may transfer or assign its rights or obligations under the Contract Documents, in part or in whole, without the other party's prior written consent. The Contract Documents are binding on the heirs, successors, and permitted assigns of the Parties hereto.

b. Third Party Beneficiaries:

There are no intended third party beneficiaries to the Contract.

c. Choice of Law and Venue:

The Contract Documents shall be governed by California law, and venue shall be in the Superior Court of the county in which the Project is located, and no other place.

d. Severability:

If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in part of in whole, the remaining provisions, or portions of the Contract Documents shall remain in full force and effect.

e. Entire Agreement

The Contract Documents constitute the final, complete, and exclusive statement of the terms of the agreement between the Parties regarding the subject matter of the Contract Documents and supersedes all prior written or oral understandings or agreements of the Parties.

f. Waiver:

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

g. Headings

The headings in the Contract Documents are included for convenience only and shall neither affect the construction or interpretation of any provision in the Contract Documents nor affect any of the rights or obligations of the Parties to the Contract.

h. Audit

The District and Contractor are subject to the examination and audit of the California State Auditor for a period of three (3) years after the final payment under this Contract, in compliance with Government Code section 8546.7.

[END OF GENERAL CONDITIONS DOCUMENT]

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 8
SPECIAL CONDITIONS

00 73 00
SPECIAL CONDITIONS

A. **Time of Performance**. The Contractor shall mobilize and commence work at the direction of District staff. The Contractor shall complete the Project within the period specified in the Special Conditions and in accordance with the schedule for the Project developed by the District for the Project, if applicable. In entering into this Agreement, Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the Project.

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

1. The anticipated date of the award of the Contract is **Monday, June 30, 2025**

2. Bid submittals are due on **Wednesday, June 18, 2025 at 2:00 p.m.**

3. **Substitutions to Specified Materials, Processes, or Articles Prior to Bid Submittal**: Any proposals for substitutions of equipment, materials, or products other than what is specified in the bid documents must be submitted, in writing, to the District. After reviewing the request, the District will respond with its decision to all parties who have received a bid package. The District has the right to reject any or all requests for substitutions of equipment, materials, or products other than what is specified in the bid documents. The Bidder shall bear all of the District's costs associated with the review of substitution requests.

4. Work shall begin immediately following award of the Contract, or as directed by the District's Project Manager

5. Contractor shall complete work under this agreement as identified in the Scope of Work and Drawings and Specifications, or as arranged by the District's Project Manager.

6. The Contractor acknowledges that it fully understands the Project work to be performed has been scheduled by the District for a specific time period. In addition the Contractor acknowledges that it fully understands that scheduling has been established for this Project in order to promote the best usage of school facilities and to timely provide an appropriate learning environment for students to the fullest extent possible. With these understandings in mind, pursuant to the General Conditions regarding the District's Right to Terminate Contract, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide all submittals in the time specified and identified. Furthermore, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide a full work crew or properly skilled workers with proper and sufficient materials and equipment from the first day of Project work scheduled.

   If the site will not be available after the scheduled start date, Contractor shall utilize this time period for administrative tasks and initial mobilization and shall coordinate such activities with District.

B. **Future Work:** All future work awarded from this bid shall be coordinated with the District's Project Manager or his/her designee and the Contractor. No work shall be started until scheduling has been agreed upon by all Parties.

C. **Liquidated Damages – Contract Submittals**: If the executed Contract and required bonds and certificates of insurance are not received by the District within five (5) day of Contract award, the agreed liquidated damages established in the General Conditions is **five hundred dollars ($500.00) per day** for each calendar date the start date is delayed.

Liquidated Damages – Time of Completion: If work under this Contract is not at Substantial Completion within the specified time period, the agreed liquidated damages established in the General Conditions is **Madison Middle School Fuel Management & Vegetation Removal LD Amount] ($500) per day** for each calendar date Substantial Completion is delayed.

D. **Documents Furnished**. The number of copies of Drawings and Specifications to be furnished to Contractor free of charge, per Article 3 of the General Conditions, is one (1). The cost for additional copies of the drawings shall be borne by the Contractor.

E. **Bonds**. Contractor shall provide (i) a bid bond or cashier's check payable to Vista Unified School District in the amount not less than the total amount of the bid; (ii) a payment bond in the amount of one hundred percent (100%) of the total amount of the Contract Price or as specified in the Information for Bidders; and (iii) a performance bond in the amount of one hundred percent (100%) of the Contract Price or as specified in the Information for Bidders.

F. **Insurance**. As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

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

OR

Commercial General Liability and Property Damage Insurance
(including automobile insurance) which provides limits of not less than:

(a) Per occurrence (combined single limit)	$1,000,000
(b) Project Specific Aggregate (for this project only)	$2,000,000
(c) Products/Completed Operations	$1,000,000
(d) Personal & Advertising Injury limit	$1,000,000

AND

Builder's Risk (or Course of Construction Coverage) Applicable/Fire Insurance
Project Replacement Value at 100% (One Hundred Percent) (see Article 31 of the General Conditions).

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

Automotive and truck where operated in the amount of	$1,000,000
Material hoist where used in the amount of	$1,000,000
Explosion, collapse & Underground (XCU) coverage	$1,000,000
Excess Liability Insurance coverage in the amount of	$1,000,000

Additional Insurance: As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain Worker's Compensation Insurance (Article 31 of the General Conditions) and Automobile Liability Insurance (Article 31 of the General Conditions).

G. **Executed Copies:** The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works required is one (1).

H. **License Classification:** Each bidder shall be a licensed Contractor pursuant to the Business and Professions Code and shall be licensed in the following classification(s), including but not restricted to: **C-27 Landscaping**.

I. **Certification Requirements:** When specified in the bid documents, the Contractor or subcontractor must be certified by the factory or manufacturer to install equipment or other products. Such certifications must be obtained prior to submittal of the bid.

J. **Fingerprinting:**

Pursuant to the provisions of Article 81 of the General Conditions, the District Determination of Fingerprinting Requirement Application is as follows:

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

1. ____X___ are subject to the requirements of Education Code section 45125.2 and Paragraph (a) of Article 81 of the General Conditions. Fingerprinting and criminal background checks are required for this project.

2. _____ are not subject to the requirements of Education Code section 45125.2 and are subject to Paragraph (b) of Article 81 of the General Conditions.

K. **Cleaning Up:** Pursuant to the specific provisions of Article 63 "Cleaning Up" of the General Conditions, the Contractor is responsible at all times to keep the premises free from debris, waste, rubbish and excess materials and dispose of it in disposal site in accordance with provisions of existing law. The Contractor acknowledges and understands that the Project work hereunder is to be performed on existing and functioning school facilities. The Contractor hereby acknowledges and agrees that if and/or when the Contractor fails to fulfill its clean-up responsibility on a daily basis, the District will undertake to authorize additional regular work or overtime work by its own maintenance and/or custodial employees to keep the premises free from debris, waste and rubbish by authorizing regular and/or overtime work for its maintenance and/or custodial employees. This work time shall be charged back to the Contractor and deducted from the Contractor's progress payments and/or final payment at the rate of **$69.68 rate per hour for regular time and $91.035 rate per hour for overtime**. Contractor will not be notified in advance of any such cleanup of the premises to be performed by the District's employees unless the number of hours required in any work week for such cleanup of the premises by District employees is both anticipated and estimated by the District to exceed five (5) total weekly hours of either the regular or overtime rates specified herein or the combined regular and overtime rates specified herein.

L. **Inspector's Field Office**: Not applicable to this project.

M. **Time of Work Restrictions.** The worksites will be available Monday through Friday, from 7 AM to 5 PM. This schedule is subject to change as the needs of the District require, and would be scheduled with the District's Representative or his/her designee.

N. **Project Phases.** N/A

O. **Safety Barriers and Fencing.** Work on this project will occur on an occupied school site. Students and staff will be present in close proximity to construction activities. All construction areas to be protected from student access by chain link fence barriers with fabric wind screens.

SCOPE OF WORK

The Vista Unified School District is seeking bids for Madison Middle School Fuel Management & Vegetation Removal at multiple locations See attached specifications for scope. Please refer to the Drawings and Specifications for further details.

PROJECT SCHEDULE

Anticipated Start Date: **June 30, 2025**

Completion Date: **6-8 Weeks from NTP**

[END OF SPECIAL CONDITIONS]

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 9
SPECIFICATIONS

See Attached Scope of Work

VISTA UNIFIED SCHOOL DISTRICT

Madison Middle School Fuel Management & Vegetation Removal

BID NO. V24251169B

SECTION 10
PROJECT FORMS &
CERTIFICATIONS

00 45 26
WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
>
> (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.
>
> (c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

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

_____
Name

_____
Title

_____
Company

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

00 45 27
DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is part of the Contract made by and between the **VISTA UNIFIED SCHOOL DISTRICT** (hereinafter referred to as the "District" and _____ (hereinafter referred to as the ("Contractor") for the **Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B** Project (hereinafter referred to as the "Project." This form is required from all successful bidders pursuant to the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) The Drug-Free Workplace Act requires that every person or organization awarded a contract or grant for procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. It addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency under California law and requires all contractors on public works projects to comply with the provisions and requirements of the Drug-Free Workplace Act.

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

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

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

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

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

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

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

B. Establishing a drug-free awareness program; and

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

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

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

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

_____
Name of Contractor (Print or Type)

By: _____
Signature

_____
Print Name

_____
Title

00 45 27.01
CONTRACTOR'S CERTIFICATE REGARDING
ALCOHOLIC BEVERAGE AND TOBACCO-FREE CAMPUS POLICY

The Contractor agrees that it will abide by and implement the District's Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on District-owned or leased buildings, on District property and in District vehicles. The Contractor shall procure signs stating "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

DATE:_____ _____
Contractor

By:_____
Signature

00 45 27.02
ASBESTOS-FREE MATERIALS CERTIFICATION

The undersigned declares that he or she is the person who executed the bid for Madison Middle School Fuel Management & Vegetation Removal, Bid No. V24251169B ("Project"), and submitted it to the Vista Unified School District on behalf of _____ ("Contractor").

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

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

All work or materials installed by the Contractor which is found to contain asbestos, or work or material installed with asbestos-containing equipment, will be immediately rejected and this work shall be removed and replaced by the Contractor at no additional cost to the District. Decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

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

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

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

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

Executed on this _____ day of _____, 20__.

_____
Name of Contractor (Print or Type)

_____
Signature

_____ _____
Print Name Title

00 45 27.03
CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

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

_____ _____
Contractor's Representative Date

or

CONTRACTOR EXEMPTION

Pursuant to Education Code Sections 45125.1 and 45125.2, the Vista Unified School District ("District") has determined that _____ ("Contractor") is exempt from the criminal background check certification requirements for the Contract dated _____ 20____ by and between the District and Contractor ("Contract") because:

- The Contractor's employees will have limited contact with District students during the course of the Contract;
- Emergency or exceptional circumstances exist; or
- With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2: _____.

_____ _____
School District Official Date

CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

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

_____ _____
Subcontractor's Representative Date

or

SUBCONTRACTOR'S EXEMPTION

The Vista Unified School District ("District") entered into a Contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract"). Pursuant to Education Code Sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"), is exempt from the criminal background check certification requirements for the Contract because:

- The Subcontractor's employees will have limited contact with District students during the course of the Contract;
- Emergency or exceptional circumstances exist; or
- With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s)specified in Section 45125.2: _____.

_____ _____
School District Official Date

00 45 27.04
BIDDER'S ACKNOWLEDGEMENT OF PROJECT SCHEDULE

Madison Middle School Fuel Management & Vegetation Removal

Bid No. V24251169B

The undersigned acknowledges that he/she has carefully and thoroughly reviewed the Project Schedule, included herein and made a part of the Contract Documents.

The undersigned fully understands the manpower requirements necessary to complete the project in accordance with the Project Schedule and agrees to furnish all labor, materials and equipment necessary, upon District acceptance of bidder's proposal, to fully comply with this schedule. The undersigned agrees to comply with any and all adjustments to the schedule, as may be directed by the District or its representative, and which may be required to ensure project completion as stipulated in the Contract Documents.

The undersigned acknowledges that failure to comply with the above could result in delays to other contractors, whose bona fide and substantiated cost impacts due to said delays may be borne by the undersigned.

ACKNOWLEDGED AND AGREED:

DATE:_____

_____
CONTRACTOR

BY:_____
Signature

00 45 27.05

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

I am aware of and hereby certify that neither _____ nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/ contractor or any lower participant is unable to certify this statement, it shall attach an explanation to this solicitation proposal.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named bidder on the _____day of_____, 20____ for the purposes of submission of this bid.

(Corporate Seal)

By_____
Signature

_____
Typed or Printed Name

_____
Title

_____
Date

As the awardee under this Bid, I hereby certify that the above certification remains valid as of the date of contract award, specifically, as of the ____ day of _____, 20____, for the purposes of award of this contract.

(Corporate Seal)

By_____
Signature

_____
Typed or Printed Name

_____
Title

_____
Date

00 45 27.06
IRAN CONTRACTING ACT CERTIFICATION
[if over $1,000,000 project]

As required by California Public Contract Code Section 2204, the Bidder certifies subject to penalty for perjury that the option checked below relating to the Bidder's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

☐ The Bidder is not:

(i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

(ii) a financial institution that extends, for 45 days or more, credit in the amount of $20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ The District has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, Agency will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐ The amount of the Contract payable to the Contractor for the Project does not exceed $1,000,000.

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

_____
Signature Date

_____
Name Title

_____
Name of Firm

00 45 27.07
ESCROW AGREEMENT FOR SECURITY DEPOSITS
IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the **VISTA UNIFIED SCHOOL DISTRICT**, hereinafter called "OWNER", and _____, hereinafter called "CONTRACTOR", and _____, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the OWNER, CONTRACTOR and Escrow Agent agree as follows:

(1) Pursuant to section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by OWNER in the amount _____ (**$**_____**)** pursuant to the Construction Contract entered into between the OWNER and CONTRACTOR for _____ **Project** in the amount of _____ (**$**_____**)** dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the CONTRACTOR, the OWNER shall make payments of the retention earnings directly to the escrow agent. When CONTRACTOR deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the OWNER within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the OWNER and CONTRACTOR. Securities shall be held in the name of the OWNER, and shall designate _____ as the beneficial owner.

(2) The OWNER shall make progress payments to the CONTRACTOR for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the OWNER makes payments of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the CONTRACTOR until such time as the escrow created under this contract is terminated. The CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the OWNER pays the Escrow Agent directly.

(4) CONTRACTOR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the OWNER. These expenses and payment terms shall be determined by the OWNER, CONTRACTOR, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to the OWNER.

(6) CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the OWNER to the Escrow Agent that OWNER consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

(7) The OWNER shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven (7) days' written notice to the Escrow Agent from the OWNER of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the OWNER.

(8) Upon receipt of written notification from the OWNER certifying that the Contract is final and complete, and that the CONTRACTOR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the OWNER and the CONTRACTOR pursuant to sections (5) to (8), inclusive, of this agreement and the OWNER and CONTRACTOR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the OWNER and on behalf of CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Contractor:

_____
Title

_____
Name

_____
Signature

_____
Address

At the time the Escrow Account is opened, the OWNER and CONTRACTOR shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their proper officers on the date set forth above.

OWNER

_____
Title

_____
Name

_____
Signature

CONTRACTOR

_____
Title

_____
Name

_____
Signature

V24251169B

CALIFORNIA AIR RESOURCES BOARD (CARB) COMPLIANCE CERTIFICATION

Effective January 1, 2024 and pursuant to Section 2449(i) of Title 13 of the California Code of Regulations, all public agencies in the State of California awarding or entering into a contract for the erection, construction, alteration, repair, removal, or improvement of any public structure, building, road, or any other public lands, property, or improvement of any kind will be required to obtain a valid Certificates of Reported Compliance ("CRC") from all contractors and subcontractors before awarding a public works project. Complete the form below and submit the CRC if applicable.

☐ Not applicable as no rented or owned "Off-Road Diesel-Fuel vehicles" will be used under this Agreement.

☐ "Off-Road Diesel-Fuel vehicles" will be used for projects under this Agreement.

CONTRACTOR'S CARB compliance certification is attached.

Completed by: _____

_____

Signature of CONTRACTOR

_____

Name printed or typed

_____

Title

_____

Date

For additional information visit https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements

Scope of Work – Fuel Management at Madison Middle School

Location:

Madison Middle School, 4930 Lake Blvd, Oceanside, CA 92056

Project Area:

Bordering homes on Windsor Rd and below the MMS running track, baseball field, and blacktop areas.

Scope of Work

1. Plant Material Removal & Tree Mitigation

- Cut and remove all plant material approximately **15-20 feet back** from its current position.
- **Total estimated area:** 1,200 linear feet.
- Remove **39 trees** ranging from **6 inches DBH to 30+ inches DBH**.

2. Debris Removal & Disposal

Acacia & Small Shrubbery:

- May be **masticated on-site** using a mastication/mulching head, with material spread evenly over the cleared area as mulch (**not exceeding 3 inches in depth**), rather than being cut and removed.
- If mastication is not feasible, the material shall be **cut and hauled off-site** for proper disposal at an approved facility.

Tree Material & Wood Chips:

- Trees shall be **cut and removed** from the site.
- Wood chips from tree removal may be **spread back onto the slopes**, with a maximum depth of **5 inches**, ensuring they do not obstruct drainage.
- Any remaining tree material, including **large limbs or logs**, must be **removed from the site and properly disposed of**.

3. Contractor Responsibilities

- **Verification:** Contractor shall verify all square/linear footages and the number of trees before commencing work.
- **Site Repairs:** Repair or replace any fencing cut or damaged during this project.
- **Temporary Facilities:** Ensure a **portable toilet and hand wash stations** are on-site during all work.
- **Daily Updates & Weekly Reports:**
    - Provide **daily email updates** on progress.
    - Submit **weekly reports with pictures** documenting the work completed.
- **Site Cleanliness & Safety:**
    - Keep all job sites clean and remove demolished debris daily to prevent hazards to students and staff.
    - Upon project completion, ensure thorough site cleanup.
    - Contractor is responsible for removing all trash and debris and **shall not use school site dumpsters or trash receptacles**.
- **Haul Route & Traffic Management:**
    - Designate a haul route to **minimize disruptions** and prevent soil tracking onto paved surfaces.

4. Regulatory Compliance

- Comply with **Oceanside's noise ordinance** (Chapter 38 of the Municipal Code), which regulates operational noise levels:
    - **Daytime limits:** 7:00 a.m. – 9:59 p.m.
- Any **invasive plant species requiring special handling** shall be disposed of per regulatory guidelines.

5. Allowance for Unforeseen Items

- A **$25,000 allowance** shall be included in the proposal to cover unforeseen conditions.
- Any use of this allowance **must receive prior approval** from a district representative.

Location: Madison Middle School, 4930 Lake Blvd, Oceanside, CA 92056

39 Trees to be removed (Contractor to verify)

Scope of Work – Bid Alternate #1: Brow Ditch Clearing at Madison Middle School

Location:

Madison Middle School, 4930 Lake Blvd, Oceanside, CA 92056

Project Area:

Mid-slope along Windsor Rd, below the running track, baseball field, and blacktop areas.

Scope of Work

1. Brow Ditch Clearing

- **Brush Removal:**
  The contractor shall **remove approximately 8 to 10 feet of brush** from the center of the brow ditch, with an additional **4 to 5 feet cleared** on either side to ensure proper drainage and functionality.

- **Debris Removal:**
  All debris within the brow ditch shall be **removed** to ensure unimpeded water flow.

2. Approximate Total Area:

- The total area spans approximately **1,100 linear feet**.

- The contractor is responsible for **verifying the total linear footage** before commencing work.

3. Contractor Responsibilities

- **Verification:** Contractor shall verify all linear footages before commencing work.

- **Site Cleanliness & Safety:**

  - The contractor shall ensure that all work areas are kept free of excess debris.

- All debris and vegetation removed must be properly disposed of in accordance with applicable regulations.

- **Erosion Control:**
  - If necessary, the contractor shall install **temporary erosion control measures** to prevent soil erosion during the clearing process.

4. Regulatory Compliance

- Comply with all **local, state, and federal environmental regulations** regarding vegetation disposal.
- Ensure all work follows **Oceanside's noise ordinance** (Chapter 38 of the Municipal Code) during operational hours:
  - **Daytime limits:** 7:00 a.m. – 9:59 p.m.
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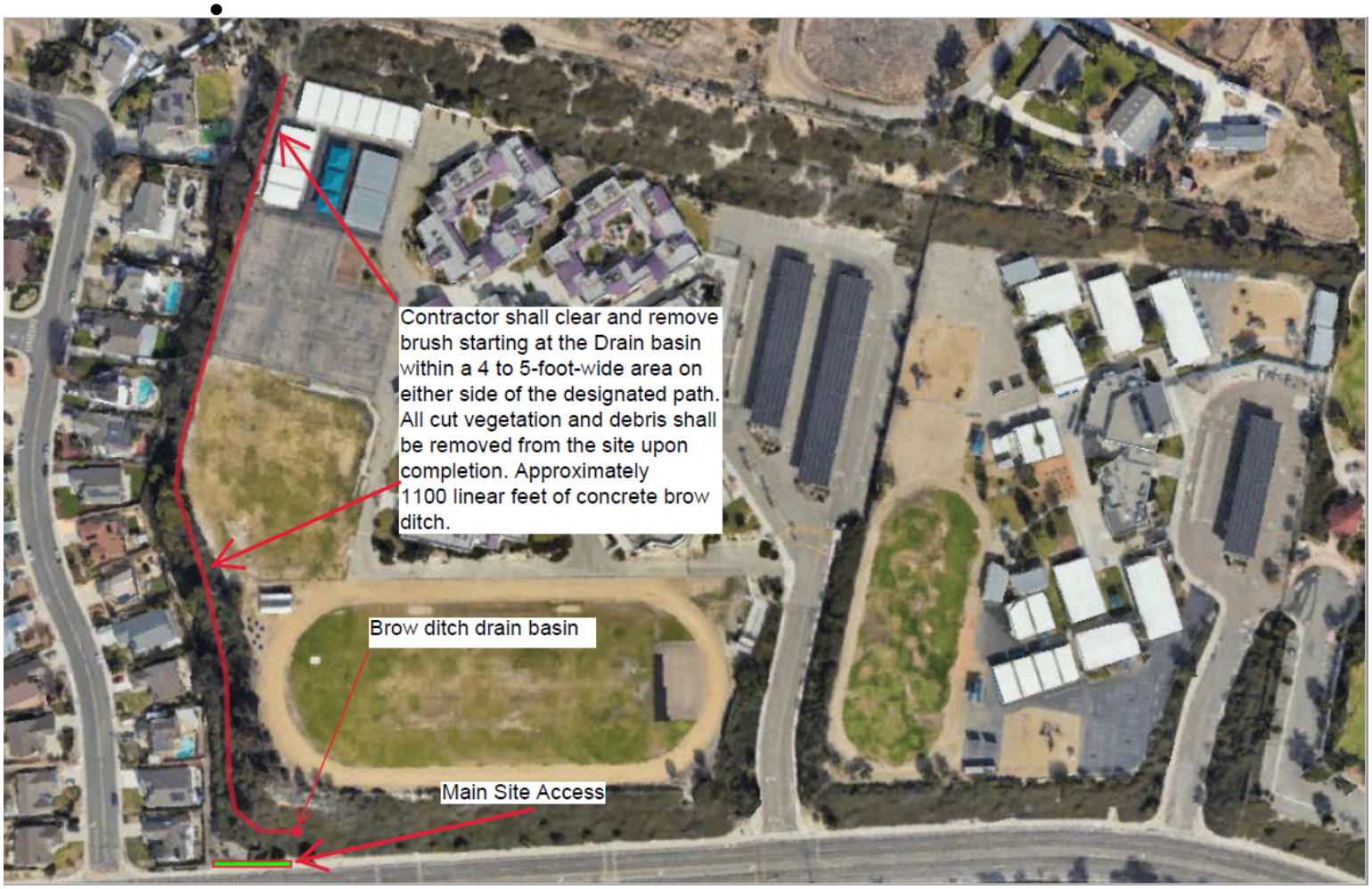

Scope of Work – Bid Alternate #2: Brow Ditch Clearing at Madison Middle School & Lake Elementary

Location:

Madison Middle School, 4930 Lake Blvd, Oceanside, CA 92056

Project Area:

Above Madison Middle School and extending into the upper portion of Lake Elementary.

Scope of Work

1. Brow Ditch Clearing

- **Brush Removal:**
  Contractor shall clear and remove brush within a **4 to 5-foot-wide area** on either side of the designated path above Madison Middle School and extending into the upper portion of Lake Elementary.

- **Debris Removal:**
  All cut vegetation and debris shall be **removed from the site** upon completion of the work to ensure proper drainage and functionality.

2. Approximate Total Area:

- The work area spans approximately **2,300 linear feet**.

- The contractor is responsible for **verifying the total linear footage** before commencing work.

3. Contractor Responsibilities

- **Verification:** Contractor shall verify all linear footages before commencing work.

- **Site Cleanliness & Safety:**
    - Ensure all work areas are kept free of excess debris during the project.
    - All vegetation and debris removed must be **properly disposed of** in accordance with applicable regulations.

4. Regulatory Compliance

- Comply with all **local, state, and federal environmental regulations** regarding vegetation disposal.
- Ensure compliance with **Oceanside's noise ordinance** (Chapter 38 of the Municipal Code), specifically operational noise limits:
    - **Daytime limits:** 7:00 a.m. – 9:59 p.m.