



# ALHAMBRA

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## UNIFIED SCHOOL DISTRICT

### INVITATION FOR INFORMAL BIDS

**# 1207-18/19**

**PARK ELEMENTARY SCHOOL PLAYFIELD RENOVATION**

Issue Date:	June 18, 2018
Mandatory Bidders Job Walk:	June 27, 2018 8:00 A.M. Park Elementary School 301 N. Marengo Ave, Alhambra, CA 91803"
Submit by:	July 9, 2018 10:00 A.M. Purchasing Department – Mission Building 1515 West Mission Road Alhambra, CA 91803
Contact:	Vivien Watts, M.S., SNS Director of Business Services Watts_vivien@ausd.us

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## **NOTICE INVITING INFORMAL BIDS**

Notice is hereby given that the governing board ("Board") of the Alhambra Unified School District ("District") will receive sealed bids for the following project

### **Bid #1207-18/19 Park Elementary School Playfield Renovation ("Project" or "Contract")**

The Project consists of all labor, materials equipment and services necessary to construct new grass playfield at Park Elementary School. The Contract time is **120** calendar days. The project is estimated at **\$150,000.00** with a bid allowance of **10%**.

Contract Documents (as defined in the accompanying form of Agreement included in this Bid Package) are available at the District website at [www.ausd.us](http://www.ausd.us). To bid on this Project, the Bidder is required to be registered as a public works contractor with the Department of Industrial Relations and to possess one or more of the following State of California Contractor Licenses: **A, B or C-27**. The Bidder's registration and license(s) must remain active and in good standing throughout the term of the Contract.

**Bid Deadline and Place of Receipt:** Sealed Bids will be received until **10:00 A.M. on July 9, 2018**. Interested firms should mail or deliver one (1) original proposal and two (2) copies in hard copy and one (1) in electronic format on a CD or flash drive in a sealed box/package listing the bid number and project name on the box/package, as further described herein, to:

Purchasing Department  
Alhambra Unified School District  
1515 W. Mission Road  
Alhambra, CA 91803  
Attn: Vivien Watts, Director of Business Services

**Bid Opening:** The bids will be opened and publicly read aloud at the above time and place. All bids shall be on the form provided by the District and must be responsive.

**Mandatory Job Walk:** A mandatory site visit will be held on June 27, 2018, at 8:00 a.m. at the front entrance of Park Elementary at 301 N. Marengo Ave, Alhambra, CA 91803. All participants are required to sign-in. Failure to attend or tardiness will render bid ineligible.

**Request for Information/Substitutions:** Pre-bid clarifications (RFI's) regarding this bid must be received in writing to Vivien Watts at [watts\\_vivien@ausd.us](mailto:watts_vivien@ausd.us) by 10:00 A.M. on 7/2/2018. Responses will be issued timely with final response by 7/6/2018 via email and/or website posting. Requests for material substitutions must be received in writing to Vivien Watts at [watts\\_vivien@ausd.us](mailto:watts_vivien@ausd.us) by 10:00 A.M. on 7/2/2018. Responses will be issued by 7/6/2018 via email and/or website posting.

**Additional Information:** The successful Bidder shall be required to furnish a 100% Performance Bond and a 100% Payment Bond if it is awarded the Contract for the Work.

The successful Bidder may substitute securities for any monies withheld by the District to ensure performance under the Contract, in accordance with the provisions of section 22300 of the Public Contract Code.

The successful Bidder shall comply with all requirements of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations. For all work performed pursuant to this Contract, the Contractor and all Subcontractors shall pay all workers not less than the general prevailing rate of per diem wages and for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, ("DIR") for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are also available from the District or the DIR website at: <http://www.dir.ca.gov>.

This Project is subject to labor compliance monitoring and enforcement by the DIR pursuant to Labor Code section 1771.4 and subject to the requirements of Title 8 of the California Code of Regulations. The Contractor and all Subcontractors under the Contractor shall furnish electronic certified payroll records directly to the Labor Commissioner weekly or and within ten (10) days of any request by the District or the Labor Commissioner. The successful Bidder shall comply with all requirements of Division 2, Part 7, Chapter 1, Articles 1-5 of the Labor Code.

**The Board reserves the right to reject any and all bids and/or waive any irregularity in any bid received.** Unless otherwise required by law, no bidder may withdraw its bid for ninety (**90**) days after the date of the bid opening.

**There are restrictions on lobbying and contact of this project.** All requests for information of this project should be made in writing to the contact person only from the period beginning with the date of the issuance and ending on the date of the award of the contract. Any other contacts shall be grounds for disqualification of the entity submitting a response.

END OF DOCUMENT

## **INSTRUCTIONS TO BIDDERS**

Bidders shall follow the instructions in this document, and shall submit all documents, forms, and information required for consideration of a Bid.

Alhambra Unified School District ("District") will evaluate information submitted by the apparent low Bidder and, if incomplete or unsatisfactory to District, Bidder's bid may be rejected at the sole discretion of District.

1. Bids are requested for a general construction contract, or work described in general, ("Work") for the following project:  
  
Park Elementary School Playfield Renovation ("Project").
2. A Bidder and its subcontractors must possess the appropriate State of California contractors' license and must maintain the license throughout the duration of the project. Bidders must also be registered as a public works contractor with the Department of Industrial Relations pursuant to the Labor Code. Bids submitted by a contractor who is not properly licensed or registered shall be deemed nonresponsive and will not be considered.
3. District will receive sealed bids from bidders as stipulated in the Notice Inviting Informal Bids.
  - a. All bids must be sealed in an envelope, marked with the name and address of the Bidder, name of the Project, the Project Number and/or bid number, and time of bid opening.
  - b. Bids must be submitted to the Purchasing Office by date and time shown in the Notice Inviting Informal Bids.
  - c. Bids must contain all documents as required herein.
4. Bidders are advised that on the date that bids are opened, telephones will not be available at the District Offices for use by bidders or their representatives.
5. Bids will be opened at or after the time indicated for receipt of bids.
6. Bidders must submit Bids on the documents titled Bid Form and Proposal and must submit all other required District forms. Bids not submitted on the District's required forms shall be deemed nonresponsive and shall not be considered. Additional sheets required to fully respond to requested information are permissible.
7. Bidders shall not modify the Bid Form and Proposal or qualify their bids. Bidders shall not submit to the District a re-formatted, re-typed, altered, modified, or otherwise recreated version of the Bid Form and Proposal or other District-provided document.
8. Bids shall be clearly written and without erasure or deletions. District reserves the right to reject any bid containing erasures, deletions, or illegible contents.

9. Bidders must supply all information required by each Bid Document. Bids must be full and complete. District reserves the right in its sole discretion to reject any Bid as non-responsive as a result of any error or omission in the Bid. Bidders must complete and submit all of the following documents:
  - a. Bid Form and Proposal
  - b. Bid Bond on the District's form, or other security.
  - c. Designated Subcontractors List.
  - d. Non-Collusion Declaration.
  - e. Criminal Background Investigation/Fingerprinting Certification
  - f. Workers' Compensation Certification
  - g. Prevailing Wage Certification
  - h. Drug-Free Workplace Certification
  - i. Tobacco-Free Environment Certification
  
10. Bidders must submit with their Bids, cash, a cashier's check, or a certified check payable to District, or a bid bond by an admitted surety insurer of not less than ten percent (10%) of the amount of the base Bid, plus all additive alternates ("Bid Bond"). If Bidder chooses to provide a Bid Bond as security, Bidder must use the required form of corporate surety provided by District. The Surety on Bidder's Bid Bond must be an insurer admitted in the State of California and authorized to issue surety bonds in the State of California. Bids submitted without necessary bid security will be deemed non-responsive and will not be considered.
  
11. If Bidder to whom a contract is awarded ("Contract" or "Agreement") fails or neglects to enter into Contract and submit the required bonds, insurance certificates, and all other required documents, within **SEVEN (7)** calendar days after the date of the Notice of Award, District, in its sole discretion, may deposit Bid Bond, cash, cashier's check, or certified check for collection, and proceeds thereof may be retained by District as liquidated damages for failure of Bidder to enter into Contract. It is agreed that calculation of damages District may suffer as a result of Bidder's failure to enter into the Contract would be extremely difficult and impractical to determine and that the amount of the Bidder's required bid security shall be the agreed and conclusively presumed amount of damages.
  
12. The Designated Subcontractors List must be submitted by Bidders with the Bid for those subcontractors who will perform any portion of the Project ("Subcontractor"), including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of the total Bid. Failure to submit this list when required by law will result in bid being deemed nonresponsive and the bid will not be considered.
  
13. All of the listed Subcontractors are required to be registered as a public works contractor with the Department of Industrial Relations pursuant to the Labor Code.
  - a. An inadvertent error in listing the California contractor license number on the Designated Subcontractors List shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the correct contractor's license number is submitted to the District within 24 hours after the bid

opening and the corrected number corresponds with the submitted name and location for that Subcontractor.

- b. An inadvertent error listing an unregistered Subcontractor shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive provided that any of the following apply:
  - (1) The Subcontractor is registered prior to the bid opening.
  - (2) The Subcontractor is registered and has paid the penalty registration fee within 24 hours after the bid opening.
  - (3) The Subcontractor is replaced by another registered Subcontractor pursuant to Public Contract Code section 4107.
14. If a mandatory pre-bid conference, job walk, and/or site visit ("Site Visit") is required as referenced in the Notice Inviting Informal Bids, then Bidders must sign in and sign out. District will transmit to all prospective Bidders of record such Addenda as District in its discretion considers necessary in response to questions arising at the Site Visit. **Oral statements shall not be relied upon and will not be binding or legally effective.** Addenda issued by the District as a result of the Site Visit, if any, shall constitute the sole and exclusive record and statement of the results of the Site Visit.
15. Bidders shall submit the **Non-Collusion Declaration** with their Bids. Bids submitted without the Non-Collusion Declaration shall be deemed non-responsive and will not be considered.
16. The Contractor and all Subcontractors under the Contractor shall pay all workers on all work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the Department of Industrial Relations, are available upon request at the District's principal office. Prevailing wage rates are also available on the internet at <http://www.dir.ca.gov>.
17. Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction and/or modernization of school building(s) to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%) per year of the overall dollar amount expended on projects that receive state funding or demonstrate its good faith effort to solicit DVBE participation in this Contract. In order to meet this requirement by demonstrating a good faith effort, Bidder must advertise for DVBE-certified Subcontractors and suppliers before submitting its Bid. For any project that is at least partially state-funded, the lowest responsive responsible Bidder awarded the Contract must submit certification of compliance with the procedures for implementation of DVBE contracting goals with its signed



Agreement. DVBE Certification Participation Form is attached. Do not submit this form with your Bid.

18. Submission of Bid signifies careful examination of the District's proposed Contract Documents for the Project and complete understanding of the nature, extent, and location of Work to be performed. Bidders must complete the tasks listed below as a condition to bidding, and submission of a Bid shall constitute the Bidder's express representation to District that Bidder has fully completed the following:
- a. Bidder has visited the site, if required, and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Project and Work sites, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto;
  - b. Bidder has conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Work site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as Bidder considers necessary for the performance or furnishing of Work at the Contract sum, within the Contract Time, and in accordance with the other terms and conditions of Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by Bidder for such purposes;
  - c. Bidder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;
  - d. Bidder has given the District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution(s) thereof by the District is/are acceptable to Bidder;
  - e. Bidder has made a complete disclosure in writing to the District of all facts bearing upon any possible interest, direct or indirect, that Bidder believes any representative of the District or other officer or employee of the District presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;
  - f. Bidder must, prior to bidding, perform the work, investigations, research, and analysis required by this document and that Bidder represented in its Bid Form and Proposal and the Contract that it performed prior to bidding. Contractor under this Contract is charged with all information and knowledge that a reasonable bidder would ascertain from having performed this required work, investigation, research, and analysis. Bid prices must include entire cost of all work "incidental" to completion of the Work.

- g. Conditions Shown on the Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Contractor may only rely, on the accuracy of limited types of information.
- (1) As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Contractor is required to make such verification as a condition to bidding. In submitting its Bid, Contractor shall rely on the results of its own independent investigation. In submitting its Bid, Contractor shall not rely on District-supplied information regarding above-ground conditions or as-built conditions.
  - (2) As to any subsurface condition shown or indicated in the Contract Documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. District is not responsible for the completeness of such information for bidding or construction; nor is District responsible in any way for any conclusions or opinions that the Contractor has drawn from such information; nor is the District responsible for subsurface conditions that are not specifically shown (for example, District is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).
- h. Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to the document entitled Geotechnical Data, and the document entitled Existing Conditions, for identification of:
- (1) Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by Architect in preparing the Contract Documents; and
  - (2) Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that has been utilized by Architect in preparing the Contract Documents.
  - (3) These reports and drawings are **not** Contract Documents and, except for any "technical" data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Contractor may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Contractor must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by District.

19. Bids shall be based on products and systems specified in Contract Documents or listed by name in Addenda. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Bidder may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified. The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its bid on any requested substitution that the District has not approved in advance and in writing. Contractors and materials suppliers who submit requests for substitutions prior to the award of the Contract must do so in writing and in compliance with Public Contract Code section 3400. All requests must comply with the following:
- a. District must receive any notice of request for substitution of a specified item by the deadline (7/2/18 by 10:00 A.M.) prior to bid opening. The Successful Bidder will not be allowed to substitute specified items unless properly noticed.
  - b. Within 35 days after the date of the Notice of Award, the Successful Bidder shall submit data substantiating the request(s) for all substitution(s) containing sufficient information to assess acceptability of product or system and impact on Project, including, without limitation, the requirements specified in the Special Conditions and the Specifications. Insufficient information shall be grounds for rejection of substitution.
  - c. Approved substitutions, if any, shall be listed in Addenda. District reserves the right not to act upon submittals of substitutions until after bid opening.
  - d. Substitutions may be requested after Contract has been awarded only if indicated in and in accordance with requirements specified in the Special Conditions and the Specifications.
20. Bidders may examine any available "as-built" drawings of previous work by giving District reasonable advance notice. District will not be responsible for accuracy of "as-built" drawings. The document entitled Existing Conditions applies to all supplied "as-built" drawings.
21. All questions about the meaning or intent of the Contract Documents are to be directed via email to the District to Vivien Watts at [watts.vivien@ausd.us](mailto:watts.vivien@ausd.us). Interpretations or clarifications considered necessary by the District in response to such questions will be issued in writing by Addenda and posted on the District's website at [www.ausd.us](http://www.ausd.us). Questions received after 10:00 a.m. on July 2, 2018 may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
22. Addenda may also be issued to modify other parts of the Contract Documents, as deemed advisable by the District.
23. Each Bidder must acknowledge each Addendum in its Bid Form and Proposal by number or its Bid shall be considered non-responsive. Each Addendum shall be part of the Contract Documents. A complete listing of Addenda may be obtained from the District.

24. The Contract may include alternates. Alternates are defined as alternate products, materials, equipment, systems, methods, or major elements of the construction that may, at the District's option and under terms established in the Contract and pursuant to section 20103.8 of the Public Contract Code, be selected for the Work.
25. The District shall award the Contract, if it awards it at all, to the lowest responsive responsible bidder based on the criteria as indicated in the Notice Inviting Informal Bids. In the event two or more responsible bidders submit identical bids, the District shall select the Bidder to whom to award the Contract by lot. In the event all Bids exceed the informal bid threshold of \$175,000, the District's Governing Board may elect to pass a resolution to award the Contract at \$187,500 or less to the lowest responsible Bidder, in accordance with Public Contract Code section 22034(d).
26. Time for Completion: District may issue a Notice to Proceed within **NINETY (90) days** from the date of the Notice of Award. Once Contractor has received the Notice to Proceed, Contractor shall complete the Work within the period of time indicated in the Contract Documents.
  - a. In the event that the District desires to postpone issuing the Notice to Proceed beyond this 90-day period, it is expressly understood that with reasonable notice to the Contractor, the District may postpone issuing the Notice to Proceed.
  - b. It is further expressly understood by Contractor that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the issuance of the Notice to Proceed beyond a 90-day period. If the Contractor believes that a postponement of issuance of the Notice to Proceed will cause a hardship to the Contractor, the Contractor may terminate the Contract. Contractor's termination due to a postponement beyond this 90-day period shall be by written notice to District within **TEN (10)** calendar days after receipt by Contractor of District's notice of postponement.
  - c. It is further understood by the Contractor that in the event that Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement and which the District had in writing authorized Contractor to perform prior to issuing a Notice to Proceed.
  - d. Should the Contractor terminate the Contract as a result of a notice of postponement, District shall have the authority to award the Contract to the next lowest responsive responsible Bidder.
27. The Bidder to whom a Contract is awarded shall execute and submit the following documents by 5:00 p.m. of the **SEVENTH (7th)** calendar day following the date of the Notice of Award. Failure to properly and timely submit these documents entitles District to reject the bid as non-responsive.
  - a. Agreement: To be executed by successful Bidder. Submit two (2) copies, each bearing an original signature. **Note: District may require an earlier deadline pending dates of Board meetings.**

- b. Performance Bond (100% of Contract Price): On the form provided in the Contract Documents and fully executed as indicated on the form.
  - c. Payment Bond (100%) (Contractor's Labor and Material Bond): On the form provided in the Contract Documents and fully executed as indicated on the form.
  - d. Insurance Certificates and Endorsements, as required.
  - e. Workers' Compensation Certification.
  - f. Prevailing Wage and Related Labor Requirements Certification.
  - g. Disabled Veterans' Business Enterprise Participation Certification.
  - h. Drug-Free Workplace Certification.
  - i. Tobacco-Free Environment Certification.
  - j. Criminal Background Investigation/Fingerprinting Certification.
28. Any Bid protest by any Bidder regarding any other Bid must be submitted in writing to the District, before 5:00 p.m. of the **FIFTH (5TH)** business day following Bid opening.
- a. Only a Bidder who has actually submitted a Bid, and who could be awarded the Contract if the bid protest is upheld, is eligible to submit a Bid protest. Subcontractors are not eligible to submit Bid protests. A Bidder may not rely on the bid protest submitted by another Bidder.
  - b. A Bid protest must contain a complete statement of any and all bases for the protest and all supporting documentation. Materials submitted after the Bid protest deadline will not be considered.
  - c. The protest must refer to the specific portions of all documents that form the basis for the protest.
    - (1) Without limitation to any other basis for protest, an inadvertent error in listing the California contractor's license number on the Designated Subcontractors List shall not be grounds for filing a Bid protest or grounds for considering the Bid nonresponsive if the correct contractor's license number is submitted to the District within 24 hours after the bid opening and the corrected number corresponds with the submitted name and location for that Subcontractor.
    - (2) Without limitation to any other basis for protest, an inadvertent error listing an unregistered Subcontractor shall not be grounds for filing a Bid protest or grounds for considering the bid nonresponsive provided that any of the following apply:
      - (i) The Subcontractor is registered prior to the Bid opening.

- (ii) The Subcontractor is registered and has paid the penalty registration fee within 24 hours after the Bid opening.
    - (iii) The Subcontractor is replaced by another registered Subcontractor pursuant to Public Contract Code section 4107.
  - d. The protest must include the name, address and telephone number of the person representing the protesting party.
  - e. The party filing the protest must concurrently transmit a copy of the protest and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
  - f. The procedure and time limits set forth in this paragraph are mandatory and are each Bidder's sole and exclusive remedy in the event of Bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings.
- 29. District reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids, to re-bid, and to reject the Bid of any Bidder if District believes that it would not be in the best interest of the District to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by District. District also reserves the right to waive any inconsequential deviations or irregularities in any bid. For purposes of this paragraph, an "unbalanced bid" is one having nominal prices for some work items and/or enhanced prices for other work items.
- 30. Discrepancies between written words and figures, or words and numerals, will be resolved in favor of figures or numerals.
- 31. It is the policy of the District that no qualified person shall be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award of contract, based on race, color, gender, sexual orientation, political affiliation, age, ancestry, religion, marital status, national origin, medical condition or disability. The Successful Bidder and its Subcontractors shall comply with applicable federal and state laws, including, but not limited to the California Fair Employment and Housing Act, beginning with Government Code section 12900, and Labor Code section 1735.
- 32. Prior to the award of Contract, District reserves the right to consider the responsibility of the Bidder. District may conduct investigations as District deems necessary to assist in the evaluation of any bid and to establish the responsibility, including, without limitation, qualifications and financial ability of Bidders, proposed Subcontractors, suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to District's satisfaction within the prescribed time.

END OF DOCUMENT

**BID FORM AND PROPOSAL**

To: Governing Board of Alhambra Unified School District ("District" or "Owner")

From: \_\_\_\_\_  
 (Proper Name of Bidder)

The undersigned declares that Bidder has read and understands the Contract Documents, including, without limitation, the Notice Inviting Informal Bids and the Instructions to Bidders, 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

Bid No. **1207-18/19** ("Work").

PROJECT: **Park Elementary School Playfield Renovation** ("Project") and will accept in full payment for that Work the following total lump sum amount, all taxes included:

_____ dollars \$ _____
<b>TOTAL PROPOSED PRICE INCLUDING 10% ALLOWANCE</b>
<b><i>Bidder acknowledges and agrees that the Total Proposed Price accounts for any and all Allowance</i></b>

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

No. _____, Dated _____	No. _____, Dated _____
No. _____, Dated _____	No. _____, Dated _____
No. _____, Dated _____	No. _____, Dated _____

2. **Allowance.** The Bidder's Total Proposed Price shall **include** a ten percent (10%) allowance for unforeseen items.

The above allowance shall only be allocated for unforeseen items relating to the Work. 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 prepared a change order incorporating that work. 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.



3. The undersigned has reviewed the Work outlined in the Contract Documents and fully understands the scope of Work required in this Proposal, understands the construction and project management function(s) is described in the Contract Documents, and that each Bidder who is awarded a contract shall be in fact a prime contractor, not a Subcontractor, to the District, and agrees that its Proposal, if accepted by the District, will be the basis for the Bidder to enter into a contract with the District in accordance with the intent of the Contract Documents.
4. The undersigned has notified the District in writing of any discrepancies or omissions or of any doubt, questions, or ambiguities about the meaning of any of the Contract Documents, and has contacted the Construction Manager or other official point of contact for the District before Bid date to verify the issuance of any clarifying Addenda.
5. The undersigned agrees to commence work under this Contract on the date established in the Contract Documents and to complete all Work within the time specified in the Contract Documents.
6. **The liquidated damages clause of the Agreement is hereby acknowledged.**
7. It is understood that the District reserves the right to reject this Bid and that the Bid shall remain open to acceptance and is irrevocable for a period of ninety (90) days.
8. The following documents are attached with this Bid Form and Proposal:
  - Bid Bond on the District's form, or other security.
  - Designated Subcontractors List.
  - Non-Collusion Declaration.
  - Criminal Background Investigation/Fingerprinting Certification
  - Workers' Compensation Certification
  - Prevailing Wage Certification
  - Drug-Free Workplace Certification
  - Tobacco-Free Environment Certification
9. **Bidder acknowledges that the license required for performance of the Work is a \_\_\_\_\_ license.**
10. The undersigned hereby certifies that Bidder is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the Work.
11. Bidder specifically acknowledges and understands that if it is awarded the Contract, that it shall perform the Work of the Project while complying with all requirements of the Department of Industrial Relations.
12. The Bidder represents that it is competent, knowledgeable, and has special skills with respect to the nature, extent, and inherent conditions of the Work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the Work that may create, during the Work, unusual or peculiar unsafe conditions hazardous to persons and property.

13. Bidder expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the Work with respect to such hazards.
14. 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, 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.
15. 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 and registered as a public works contractor with the Department of Industrial Relations. 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 \_\_\_\_\_ 20 \_\_\_\_

Name of Bidder \_\_\_\_\_

Type of Organization \_\_\_\_\_

Signed by \_\_\_\_\_

Title of Signer \_\_\_\_\_

Address of Bidder \_\_\_\_\_

Taxpayer's Identification No. of Bidder \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

E-mail \_\_\_\_\_ Web page \_\_\_\_\_

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

No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Public Works Contractor Registration No.: \_\_\_\_\_

END OF DOCUMENT

**BID BOND**

**(Note: If Bidder is providing a bid bond as its bid security, Bidder must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, \_\_\_\_\_, as Principal ("Principal"),

and \_\_\_\_\_, as Surety ("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 Alhambra Unified School District ("District") of Santa Clara County, State of California, as Obligee, in an amount equal to ten percent (10%) of the Base Bid plus alternates, in the sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

lawful money of the United States of America, for the payment of which sum well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted a bid to the District for all Work specifically described in the accompanying bid for the following project: \_\_\_\_\_ ("Project" or "Contract").

NOW, THEREFORE, if the Principal is awarded the Contract and, within the time and manner required under the Contract Documents, after the prescribed forms are presented to Principal for signature, enters into a written contract, in the prescribed form in accordance with the bid, and files two bonds, one guaranteeing faithful performance and the other guaranteeing payment for labor and materials as required by law, and meets all other conditions to the Contract between the Principal and the Obligee becoming effective, or if the Principal shall fully reimburse and save harmless the Obligee from any damage sustained by the Obligee through failure of the Principal to enter into the written contract and to file the required performance and labor and material bonds, and to meet all other conditions to the Contract between the Principal and the Obligee becoming effective, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect. The full payment of the sum stated above shall be due immediately if Principal fails to execute the Contract within seven (7) days of the date of the District's Notice of Award to Principal.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the call for bids, or 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 or the call for bids, or to the work, or to the specifications.

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

If the District awards the bid, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.

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

\_\_\_\_\_  
Principal

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Bidder must attach Power of Attorney and Certificate of Authority for Surety and a Notarial Acknowledgment for all Surety's signatures. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.**

END OF DOCUMENT



**CRIMINAL BACKGROUND**  
**INVESTIGATION/ FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Alhambra Unified School District ("District") and \_\_\_\_\_ ("Contractor"); Agreement dated, \_\_\_\_\_, 20\_\_ ("Agreement").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Contractor currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Contractor. Contractor certifies that it has taken at least one of the following actions with respect to the work that is the subject of the Agreement ("Work") (check all that apply):

\_\_\_\_\_ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its Subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work site, that will limit contact between Contractor's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its Subcontractors' employees is:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ The Work under the Agreement is at an unoccupied school site and no employee and/or Subcontractor or supplier of any tier shall come in contact with the District pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DESIGNATED SUBCONTRACTORS LIST**  
**(Public Contract Code Section 4100-4114)**

PROJECT: \_\_\_\_\_

Bidder acknowledges and agrees that it must clearly set forth below the name, location and California contractor license number of each Subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work or who will specially fabricate and install a portion of the Work according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent (0.5%) of Bidder's total Base Bid and the kind of Work that each will perform. Vendors or suppliers of materials only do not need to be listed.

Bidder acknowledges and agrees that if Bidder fails to list as to any portion of Work, or if Bidder lists more than one Subcontractor to perform the same portion of Work, Bidder must perform that portion itself or be subjected to penalty under applicable law. In case more than one Subcontractor is named for the same kind of Work, state the portion of the kind of Work that each Subcontractor will perform.

If alternate bid(s) is/are called for and Bidder intends to use Subcontractors different from or in addition to those Subcontractors listed for work under the base Bid, Bidder must list Subcontractors that will perform Work in an amount in excess of one half of one percent (0.5%) of Bidder's total Base Bid, plus alternate(s).

If further space is required for the list of proposed Subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_



**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

Date: \_\_\_\_\_

Proper Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**WORKERS' COMPENSATION CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Alhambra Unified School District ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

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 by one or more insurers duly authorized to write compensation insurance in this state; and/or
- 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.

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(In accordance with Labor Code sections 1860 and 1861, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Alhambra Unified School District ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**DISABLED VETERAN BUSINESS  
ENTERPRISE PARTICIPATION CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Alhambra Unified School District (“District”) and \_\_\_\_\_ (“Contractor” or “Bidder”) (“Contract” or “Project”).

**GENERAL INSTRUCTIONS**

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program (“Program”) for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises (“DVBE”) of at least three percent (3%) per year of the overall dollar amount expended each year by the school district on projects that receive state funding. Therefore, the lowest responsive responsible bidder awarded the Contract must submit this document to the District with its executed Agreement, identifying the steps contractor took to solicit DVBE participation in conjunction with this Contract. **Do not submit this form with your bids.**

**Part I – Method Of Compliance With DVBE Participation Goals.** Check the appropriate box to indicate your method of committing the contract dollar amount.

<b>YOUR BUSINESS ENTERPRISE IS:</b>	<b>AND YOU WILL</b>	<b>AND YOU WILL</b>
<b>A.</b> <input type="checkbox"/> Disabled veteran owned and your forces will perform at least 3% of this Contract	Include a copy of your DVBE letter from Office of Small Business and Disabled Veterans Business Enterprise Services (“OSDS”)*	Complete Part 1 of this form and the Certification
<b>B.</b> <input type="checkbox"/> Disabled veteran owned but is unable to perform 3% of this Contract with your forces	Use DVBE Subcontractors /suppliers to bring the Contract participation to at least 3%	Include a copy of each DVBE’s letter from OSDS (including yours, if applicable), and complete Part 1 of this form and the Certification
<b>C.</b> <input type="checkbox"/> <b>NOT</b> disabled veteran owned	Use DVBE Subcontractors /suppliers for at least 3% of this Contract	
<b>D.</b> <input type="checkbox"/> Unable to meet the required participation goals	Complete all of this form and the Certification	

\* A DVBE letter from OSDS is obtained from the participating DVBE.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

You must complete the following table to show the dollar amount of DVBE participation:

	TOTAL CONTRACT PRICE
A. Prime Bidder, if DVBE (own participation)	\$
B. DVBE Subcontractor or Supplier	
1.	
2.	
3.	
4.	
C. Subtotal (A & B)	
D. Non-DVBE	
E. Total Bid	

**Part II – Contacts.** To identify DVBE Subcontractors/suppliers for participation in your contract, you must contact each of the following categories. You should contact several DVBE organizations.

CATEGORY	TELEPHONE NUMBER	DATE CONTACTED	PERSON CONTACTED
1. The District			*
2. OSDS, provides assistance locating DVBEs at <a href="https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx">https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx</a>	(916) 375-4940		*
3. DVBE Organization (List)			*

\*Write "recorded message" in this column, if applicable.

**Part III – Advertisement.** You must advertise for DVBE participation in both a trade and focus paper. List the advertisement you place to solicit DVBE participation. Advertisements should be published at least fourteen (14) days prior to bid/proposal opening; if you cannot advertise fourteen (14) days prior, advertisements should be published as soon as possible. Advertisements must include that your firm is seeking DVBE participation, the project name and location, and your firm's name, your contact person, and telephone number. Attach copies of advertisements to this form.

FOCUS/TRADE PAPER NAME	CHECK ONE		DATE OF ADVERTISEMENT
	TRADE	FOCUS	

**Part IV. – DVBE Solicitations.** List DVBE Subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.

IF THE DVBE.....	THEN.....	AND.....		
was selected to participate	Check "YES" in the "SELECTED" column	include a copy of their DVBE letter(s) from OSDS		
was <b>NOT</b> selected to participate	Check "NO" in the "SELECTED" column	state why in the "REASON NOT SELECTED" column		
did not respond to your solicitation	Check the "NO RESPONSE" column.			
DVBE CONTACTED	SELECTED		REASON NOT SELECTED	NO RESPONSE
	YES	NO		

A copy of this form must be retained by you and may be subject to a future audit.

**CERTIFICATION**

I, \_\_\_\_\_, certify that I am the Bidder's \_\_\_\_\_ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein. In making this certification, I am aware of section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

## **DRUG-FREE WORKPLACE CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Alhambra Unified School District ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, 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 and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of the Drug-Free Workplace Act of 1990.

Contractor 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 the person's or organization's 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.
  - (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 above, 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 Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the 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 requiring that the employee 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, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT



**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Alhambra Unified School District ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

This Tobacco-Free Environment Certification form is required from the successful Bidder.

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq., and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, Subcontractors, or my firm's Subcontractors' employees or agents to use tobacco and/or smoke on the Project site.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

## **SPECIAL CONDITIONS**

### **1. Modernization Projects**

**1.1. Access.** Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Contractor's Work, the overtime wages for the custodian will be paid by the Contractor, unless at the discretion of the District, other arrangements are made in advance.

**1.2. Keys.** Upon request, the District may, at its own discretion, provide keys to the school Site for the convenience of the Contractor. The Contractor agrees to pay all expenses to re-key the entire school Site and all other affected District buildings if the keys are lost or stolen, or if any unauthorized party obtains a copy of the key or access to the school.

**1.3. Maintaining Services.** The Contractor is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Contractor shall provide temporary services to all facilities interrupted by Contractor's Work.

**1.4. Maintaining Utilities.** The Contractor shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.

**1.5. Confidentiality.** Contractor shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Contractor encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Agreement and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

**1.6. Work During Instructional Time.** By submitting its bid, Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District.

**1.7. No Work During Student Testing.** Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests.

## **2. Badge Policy For Contractors**

**2.1.** All Contractors doing work for the District will provide their workers with identification badges. These badges will be worn by all members of the Contractor's staff who are working in a District facility. Badges must be filled out in full and contain the following information:

- Name of Contractor
- Name of Employee
- Contractor's address and phone number

**2.2.** Badges are to be worn when the Contractor or his/her employees are on Site and must be visible at all times. Contractors must inform their employees that they are required to allow District employees, the Architect, the Construction Manager, the Program Manager, or the Project Inspector to review the information on the badges upon request.

**2.3.** Continued failure to display identification badges as required by this policy may result in the individual being removed from the Project or assessment of fines against the Contractor.

## **3. Substitution for Specified Items**

**3.1.** Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

**3.1.1.** If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.

**3.1.2.** This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.

**3.2.** A request for a substitution shall be submitted as follows:

**3.2.1.** Bidder shall notify the District in writing of any request for a substitution at least ten (10) days prior to bid opening as indicated in the Instructions to Bidders.

**3.3.** Within 35 days after the date of the Notice of Award, Contractor shall provide data substantiating a request for substitution of "an equal" item, including but not limited to the following:

**3.3.1.** All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

**3.3.2.** Available maintenance, repair or replacement services;

**3.3.3.** Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

**3.3.4.** Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and

**3.3.5.** The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

**3.4.** No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:

**3.4.1.** The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

**3.4.2.** The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;

**3.4.3.** The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;

**3.4.4.** The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

**3.4.5.** The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this

event, the Contractor agrees to execute a deductive Change Order to reflect that credit

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

**3.6.** In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

**3.7.** Contractor shall be responsible for any costs the District incurs for professional services, DSA fees, or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Contractor and/or to accommodate Contractor's means and methods. District may deduct those costs from any amounts owing to the Contractor for the review of the request for substitution, even if the request for substitution is not approved. District, at its sole discretion, shall deduct from the payments due to and/or invoice Contractor for all the professional services and/or DSA fees or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Contractor and/or to accommodate Contractor's means and methods arising herein.

**4. Insurance Policy Limits**

All of Contractor's insurance shall be with insurance companies with an A.M. Best rating of no less than **A: IX**. The limits of insurance shall not be less than:

<b>Commercial General Liability</b>	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	Low Risk: \$1,000,000 per occurrence; \$2,000,000 aggregate
		Intermediate Risk: \$2,000,000 per occurrence; \$4,000,000 aggregate
		High Risk: \$5,000,000 per occurrence; \$10,000,000 aggregate
<b>Automobile Liability – Any Auto</b>	Combined Single Limit	Personal vehicles: \$500,000 Commercial vehicles: \$1,000,000
		Personal vehicles: \$100,000 per person/ \$300,000 per accident
<b>Workers' Compensation</b>		Statutory limits pursuant to State law

**5. Permits, Certificates, Licenses, Fees, Approvals**

**5.1.** Payment for Permits, Certificates, Licenses, Fees, and Approvals. Contractor shall secure and pay for all permits, licenses, approvals, and certificates necessary for the prosecution of the Work.

**5.2. General Permit For Storm Water Discharges Associated With Construction and Land Disturbance Activities**

**5.2.1.** Contractor acknowledges that all California school districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities (storm water requirements), without limitation:

**5.2.1.1.** Municipal Separate Storm Sewer System (“MS4”) is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

**5.2.1.2.** Storm Water Pollution Prevention Plan (“SWPPP”) contains specific best management practices (“BMPs”) and establishes numeric effluent limitations at:

**5.2.1.2.1.** Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) for transportation activities.

**5.2.1.2.2.** Construction Sites where:

**5.2.1.2.2.1.** One (1) or more acres of soil will be disturbed, or

**5.2.1.2.2.2.** The project is part of a larger common plan of development that disturbs more than one (1) acre of soil.

**5.2.2.** Contractor shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

**5.2.3.** At no additional cost to the District, Contractor shall provide a Qualified Storm Water Practitioner who shall be onsite and implement and monitor any and all SWPPP requirements applicable to the Project, including but not limited to:

**5.2.3.1.** At least forty eight (48) hours prior to a forecasted rain event, implementing the Rain Event Action Plan (“REAP”) for any rain event requiring implementation of the REAP, including any erosion and sediment control measures needed to protect all exposed portions of the Site; and

**5.2.3.2.** Monitoring any Numeric Action Levels (“NALs”), if applicable.

**6. As-Builts and Record Drawings**

6.1. When called for by Division 1, Contractor shall submit As-Built Drawings pursuant to the Contract Documents consisting of one set of computer-aided design and drafting ("CADD") files in the following format PDF, plus one set of As-Built Drawings on vellum or mylar.

6.2. Contractor shall submit Record Drawings pursuant to the Contract Documents consisting of one set of "CADD" files in the following format PDF, plus one set of Record Drawings on vellum or mylar.

## 7. Fingerprinting

Contractor shall comply with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its Subcontractor(s), and its Subcontractors' employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District, that such employee has not been convicted of a violent or serious felony, as defined in Education Code section 45122.1. Contractor shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

## 8. Disabled Veterans Business Enterprise

This Project uses or may plan to use funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings. Therefore, Section 17076.11 of the Education Code requires the District to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the District on projects that receive state funding and the Contractor must submit the Disabled Veteran Business Enterprise Participation Certification to the District with its executed Agreement, identifying the steps Contractor took to solicit DVBE participation in conjunction with this Contract.

## 9. Construction Manager

The District will use a Construction Manager on the Project that is the subject of this Contract. Eric Espinosa is the Construction Manager for this Project.

## 10. Preliminary Schedule of Values

The preliminary schedule of values shall include, at a minimum, the following information and the following structure:

10.1.. The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:

10.1.1 Mobilization and layout combined to equal not more than [1]%;

10.1.2 Submittals, samples and shop drawings combined to equal not more than [3]%;

**10.1.3** Bonds and insurance combined to equal not more than **[2]**%.

END OF DOCUMENT



**PUBLIC WORKS AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Alhambra Unified School District (“District”) and \_\_\_\_\_ (“Contractor”) (“Agreement” or “Contract”).

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

**1. The Work:** Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, and material necessary to perform and complete in a good and workmanlike manner, the work of the following project:

**BID 1207-18-19  
Park Elementary Playfield Renovation** (“Project” or “Contract” or “Work”).

It is understood and agreed that the Work shall be performed and completed as required in the Contract Documents (as defined herein) including, without limitation, the Drawings and Specifications and submission of all documents required to secure funding or by the Division of the State Architect (“DSA”) for close-out and certification of the Project, under the direction and supervision of, and subject to the approval of, the District or its authorized representative.

**2. Definitions:** Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

- a. **Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.
- b. **Approval, Approved, and/or Accepted:** Written authorization, unless stated otherwise.
- c. **Architect (or “Design Professional in General Charge”):** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the Design Professional in General Responsible Charge as defined in DSA PR 13-02 on this Project or the Architect’s authorized representative.
- d. **As-Builts:** Reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal. See **Record Drawings**.

- e. **Bidder:** A contractor who intends to provide a proposal to the District to perform the Work of this Contract.
- f. **Construction Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.
- g. **Contract, Contract Documents:** The Contract may also be referred to herein as "Agreement," and consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:
  - i. Notice Inviting Informal Bids
  - ii. Agreement
  - iii. Designation of Subcontractors
  - iv. Contractor's Certificate Regarding Workers' Compensation
  - v. Non-Collusion Declaration
  - vi. Bid Form
  - vii. Bid Guarantee Form
  - viii. Bid Bond
  - ix. Request for Substitution at Time of Bid
  - x. Acknowledgement of Bidding Practices Regarding Indemnity
  - xi. DVBE Participation Statement
  - xii. Contractor's Certificate Regarding Drug-Free Workplace
  - xiii. Contractor's Certificate Regarding Alcoholic Beverage and Tobacco-Free Campus Policy
  - xiv. Criminal Background Investigation/Fingerprinting Certification
  - xv. Performance Bond
  - xvi. Payment Bond (Contractor's Labor & Material Bond)
  - xvii. Attachments A-D
  - xviii. Any and all addenda to any of the above documents
  - xix. Any and all change orders or written modifications to the above documents if approved in writing by the District
- h. **Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- i. **Contract Time:** The time period stated in the Agreement for the completion of the Work.
- j. **Contractor:** The person or persons identified in the Agreement as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.
- k. **Day(s):** Unless otherwise designated, day(s) means calendar day(s).
- l. **Department of Industrial Relations** (or "DIR"): is responsible, among other things, for labor compliance monitoring and enforcement of California prevailing wage laws and regulations for public works contracts.

- m. **Design Professional in General Responsible Charge:** See definition of Architect above.
- n. **District:** The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time:
  - i. Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or
  - ii. Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.
- o. **Drawings (or "Plans"):** The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- p. **Plans:** See **Drawings**.
- q. **Product(s):** New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.
- r. **Program Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Project Manager herein shall be read to refer to District.
- s. **Project:** The planned undertaking as provided for in the Contract Documents.
- t. **Project Inspector (or "Inspector"):** The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.
- u. **Record Drawings:** Reproducible drawings (or Plans) prepared pursuant to the requirements of the Contract Documents, that reflect all changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed upon completion of the Project. See also **As-Builts**.
- v. **Request for Substitution for Specified Item:** A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

- w. **Samples:** Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.
- x. **Shop Drawings:** All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.
- y. **Site:** The Project site as shown on the Drawings.
- z. **Specifications:** That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.
- aa. **State:** The State of California.
- bb. **Storm Water Pollution Prevention Plan (or "SWPPP"):** A document which identifies sources and activities at a particular facility that may contribute pollutants to storm water and contains specific control measures and time frames to prevent or treat such pollutants.
- cc. **Subcontractor:** A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.
- dd. **Surety:** The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.
- ee. **Work:** All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

**3. Laws Concerning The Contract:** Contract is subject to all provisions of the Constitution and laws of California and the United States governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

**4. No Oral Agreements:** No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

**5. Notice And Service Thereof:** Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party as follows:

**District**

Alhambra Unified School District  
ATTN: Vivien Watts, M.S. SNS  
Director of Business Services  
1515 West Mission Road  
Alhambra, CA 91803  
FAX: (626) 943-8042  
EMAIL: watts\_vivien@ausd.us

**Contractor**

Name: \_\_\_\_\_  
ATTN: \_\_\_\_\_  
[ADDRESS]  
[FAX]  
[EMAIL]

Any notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

- a. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.
- b. If notice is given by overnight delivery service, it shall be considered delivered one (1) day after date deposited, as indicated by the delivery service.
- c. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.
- d. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.
- e. Electronic mail may be used for convenience but is not a substitute for the notice and service requirements herein.

**6. No Waiver:** The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**7. The Contract Documents:** The complete Contract consists of all Contract Documents as defined herein. Any and all obligations of the District and Contractor are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.

**8. Interpretation of Contract Documents:** Should any question arise concerning the intent or meaning of Contract Documents, including the Drawings or

Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, valid, written modifications, beginning with the most recent, shall control over this Agreement (if any), which shall control over the Special Conditions, which shall control over any Supplemental Conditions, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

**9. Notice To Proceed:** District shall provide a written Notice to Proceed to Contractor pursuant to the Contract at which time Contractor shall proceed with the Work.

**10. Standard Of Care:** Contractor shall perform, diligently prosecute and complete the Work in a good and workmanlike manner within the Contract Time, and in strict conformity with all Contract Documents.

**11. Site Examination:** Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

**12. Permits, Licenses And Registration:** Contractor and all of its employees, agents, and Subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses, registration and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.

**13. Project Inspection Card:** Contractor shall verify that forms DSA 152 Project Inspection Card (or current version) are issued for the Project prior to commencement of construction.

**14. Notification:** Contractor shall notify the Architect and Project Inspector, in writing, of the commencement and completion of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or the most current version) to the Project Inspector. Forms are available on the DSA's website at: <http://www.dgs.ca.gov/dsa/Forms.aspx>.

**15. Labor, Materials And Equipment:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto. Unless otherwise specified, all materials shall be new and previously unused, and of the manufacturer's latest model or the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

**16. Substitutions:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District. Contractor shall be responsible for any re-design costs occasioned by District's

acceptance and/or approval of any substitute, as well as any costs that the District incurs for professional services, including DSA fees. District may deduct those costs from any amounts owing to Contractor for the review of the request for substitution, even if the request for substitution is not approved. Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one-hundred percent (100%) of the net difference between the substitute and the originally specified material.

**17. Independent Contractor Status:** While engaged in carrying out the Work of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**18. Contractor Supervision:** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**19. Workers:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its Subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a Subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.

**20. Subcontractors:** Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every Subcontractor by the terms of the Contract as far as such terms are applicable to Subcontractor's work, including, without limitation, all registration, indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its Subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any Subcontractor and the District.

**21. Safety And Security:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

**22. Clean Up:** Debris shall be removed from the Site. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

**23. Protection Of Work And Property:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from

District, is permitted to act at his discretion to prevent such threatened loss or injury.

**24. Force Majeure:** The Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor.

**25. Correction Of Errors:** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein.

**26. District's Right To Perform Work:** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, the District, after **FORTY-EIGHT (48)** hours written notice to the Contractor, may make good such deficiencies, without prejudice to any other remedy it may have, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

**27. Access To Work:** District representatives, Architect, and Project Inspector shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

**28. Occupancy:** District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.

**29. Time for Completion:** It is hereby understood and agreed that the Work under this contract shall be completed within **One Hundred and Twenty Days (120)** consecutive calendar days ("Contract Time") from the date specified in the District's Notice to Proceed.

**30. Completion-Extension of Time:** Should the Contractor fail to complete this Contract, and the Work provided herein, within the time fixed for completion, due allowance being made for the contingencies provided for herein, the Contractor shall become liable to the District for all loss and damage that the District may suffer on account thereof. The Contractor shall coordinate its work with the Work of all other contractors. The District shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that will allow timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.



**31.Liquidated Damages:** Time is of the essence for all work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of One Thousand dollars (**\$1,000.00**) per day as liquidated damages for each and every day's delay beyond the time herein prescribed in finishing the Work.

- a. It is hereby understood and agreed that this amount is not a penalty.
- b. In the event that any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement, and such deduction does not constitute a withholding or penalty. The District's right to assess liquidated damages is as indicated herein and in the General Conditions.
- c. The time during which the Work or completion of any obligations under the Contract is delayed for cause, as hereinafter specified, may extend the time of completion for a reasonable time as the District may grant, provided that Contractor has complied with the claims procedure of the Contract Documents. This provision does not exclude the recovery of damages by either party under other provisions in the Contract Documents.

**32.Loss Or Damage:** The District and its agents and authorized representatives shall not in any way or manner be answerable or suffer loss, damage, expense, or liability for any loss or damage that may happen to the Work, or any part thereof, or in or about the same during its construction and before acceptance, and the Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatsoever; and shall hold the District and its agents and authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatsoever.

**33. Insurance and Bonds:** Prior to issuance of the Notice to Proceed by the District, Contractor shall provide all required certificates of insurance, insurance endorsements, and payment and performance bonds as evidence thereof.

- a. **Contractor's Insurance:** Contractor shall procure and maintain at all times it performs any portion of the Work the insurance and minimum limits as set forth in the Special Conditions to this Agreement.
- b. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Work until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
  - i. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

- ii. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- iii. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
- iv. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

**34. Indemnification:**

- a. To the furthest extent permitted by California law, Contractor shall indemnify and hold harmless the District, its agents, representatives, officers, consultants, employees, and volunteers (the "Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from, arising out of, connected with, or resulting from the performance of this Contract unless the claims are caused wholly by the sole or active negligence or willful misconduct of the Indemnified Parties.
- b. Contractor shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Contractor's own expense, including attorneys' fees and costs, from any and all claims directly or indirectly arising from, arising out of, connected with, or resulting from the performance of this Contract unless the claims are caused wholly by the sole or active negligence or willful misconduct of the Indemnified Parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District.
- c. Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.
- d. The District may retain so much of the moneys due the Contractor as shall be considered necessary, until disposition of any such suit, claims or actions for damages or until the District has received written agreement from the Contractor that it will unconditionally defend the Indemnified Parties, and pay any damages due by reason of settlement or judgment.

- e. The defense and indemnification obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

**35. Authority of Architect, Project Inspector, and DSA:** Contractor hereby acknowledges that the Architect(s), the Project Inspector(s), and the DSA have authority to approve and/or suspend Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws and regulations. The Contractor shall be liable for any delay caused by its non-compliant Work.

**36. Assignment of Contract:** Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by the Contractor without the prior written approval of the District, nor without the written consent of the Surety on the Contractor's Performance Bond, unless the Surety has waived in writing its right to notice of assignment.

**37. Classification of Contractor's License:** Contractor hereby acknowledges that it currently holds valid Type   A, B or C-27   Contractor's license(s) issued by the State of California, Contractors' State License Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.

**38. Registration as Public Works Contractor:** The Contractor and all Subcontractors currently are registered as public works contractors with the Department of Industrial Relations, State of California, in accordance with Labor Code section 1771.1.

**39. Payment of Prevailing Wages:**

- a. The Contractor and all Subcontractors shall pay all workers on all Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code
- b. This Project is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code section 1771.4 and Title 8 of the California Code of Regulations. Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate electronic certified payroll records as required by the Contract Documents, or the District may not issue payment.

**40. Contract Price:** In consideration of the foregoing covenants, promises, and agreements on the part of the Contractor, and the strict and literal fulfillment of each and every covenant, promise, and agreement, and as compensation agreed upon for the Work and construction, erection, and completion as aforesaid, the District

covenants, promises, and agrees that it will well and truly pay and cause to be paid to the Contractor in full, and as the full Contract Price and compensation for construction, erection, and completion of the Work hereinabove agreed to be performed by the Contractor, the following price:

\_\_\_\_\_ Dollars (\_\_\_\_\_),

in lawful money of the United States, which sum is to be paid according to the schedule provided by the Contractor and accepted by the District and subject to additions and deductions as provided in the Agreement. This amount supersedes any previously stated and/or agreed to amount(s).

**41.Payment:** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Contract as of the date of submission (“Application for Payment”). Within thirty (30) days after District’s approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld.

- a. The District may withhold or deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor’s obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District’s right to such sums. The District shall retain 5% from all amounts owing as retention.
- b. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.

**42.Change In Scope Of Work:** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any

alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Contractor or a Subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

**43. Severability:** If any term, covenant, condition, or provision in any of the Contract Documents is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**44. Warranty/Quality:** Unless a longer warranty is called for elsewhere in the Contract Documents, the Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

**45. Confidentiality:** The Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Work to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

**46. Limitation of District Liability.** District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract for the services performed in connection with this Contract.

**47. Compliance with Laws:** Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first

notifying the District of the violation, Contractor shall bear all costs arising therefrom.

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

**49. Anti-Trust Claim:** Contractor and its Subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 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 purchases of goods, services, or materials pursuant to the Contract or a 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.

**50. Contract Claims:** In the event of any demand by Contractor for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Contract, (B) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to, or (C) an amount of payment disputed by the District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Contractor and its Subcontractors shall continue to perform the Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.

**51. Attorney Fees/Costs:** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**52. Termination:** If Contractor fails to perform the Work and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and

professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. The Contractor and its performance bond surety, if any, shall be liable for all damages caused to the District by reason of the Contractor's failure to perform and complete the Contract. District shall also have the right in its sole discretion to terminate the Contract for its own convenience upon District giving three (3) days written notice thereof to the Contractor. In case of a termination for convenience, Contractor shall be paid for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and five percent (5%) of the total cost of Work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) shall be full compensation for all of Contractor's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

**53. Time is of the Essence:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

**54. Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located.

**55. Binding Contract:** This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

**56. District Waiver:** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

**57. Captions And Interpretations:** Paragraph headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties.

**58. Invalid Term:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

**59. Provisions Required By Law Deemed Inserted:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

**60.No Representations:** No representations have been made other than as set forth in writing in the Contract Documents, including this Agreement. Each of the Parties to this Agreement warrants that it has carefully read and understood the terms and conditions of this Agreement and all Contract Documents, and that it has not relied upon the representations or advice of any other Party or any attorney not its own.

**61.Entire Contract:** This Contract sets forth the entire Contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.

**62.Miscellaneous:**

- a. Each party has the full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authority and empowered to enter into this Contract.
- b. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

IN WITNESS WHEREOF, Contractor and District have accepted and agreed to the terms of this Agreement on the date indicated above:

**CONTRACTOR**

**ALHAMBRA UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

NOTE: If the party executing this Contract is a corporation, a certified copy of the Bylaws, or of the resolution of the Board of Directors, authorizing the officers of said corporation to execute the Contract and the bonds required thereby must be attached hereto.



## Public Contract Code section 9204

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, 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 parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

## Public Contract Code sections 20104 – 20104.6

### **§ 20104.**

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

### **§ 20104.2.**

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**§ 20104.4.**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

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

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

**§ 20104.6.**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

END OF DOCUMENT

**PERFORMANCE BOND**  
(100% OF CONTRACT PRICE)

**(Note: Contractor must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Alhambra Unified School District ("District") and \_\_\_\_\_ ("Principal") have entered into a contract ("Agreement") for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**BID #1207-18/19 Park Elementary School Playfield Renovation** ("Project")  
which Agreement dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Agreement, are hereby referred to and made a part hereof; and

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

NOW, THEREFORE, the Principal and \_\_\_\_\_  
\_\_\_\_\_ ("Surety")  
are held and firmly bound unto the Board of the District in the penal sum of

\_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principal's under the Agreement, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Agreement and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Agreement. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bound Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by,

**ALHAMBRA UNIFIED SCHOOL DISTRICT**

**INFORMAL BID 1207-18/19  
Park Elementary School Playfield Renovation  
PERFORMANCE BOND – 1**

and well and truly keep and perform the covenants, conditions, and agreements in the Agreement and any alteration thereof made as therein provided, on its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Agreement, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Agreement, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Agreement, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond. The Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any overpayment or underpayment by the District that is based upon estimates approved by the Architect. The Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the work or to the specifications.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Principal

\_\_\_\_\_  
Surety

By

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone No. of California Agent of Surety

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

**PAYMENT BOND**

Contractor's Labor & Material Bond  
(100% Of Contract Price)

**(Note: Contractor MUST use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Alhambra Unified School District, (or "District") and \_\_\_\_\_, ("Principal") have entered into a contract ("Agreement") for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**BID #1207-18/19 Park Elementary School Playfield Renovation** ("Project") which Agreement dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Agreement, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Agreement, the Principal is required, before entering upon the performance of the Work, to file a good and sufficient bond with the body by which the Agreement is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, or their heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.



Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal

\_\_\_\_\_  
Surety

By

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone No. of California Agent of Surety

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT