



EL MONTE UNION HIGH SCHOOL DISTRICT
3537 JOHNSON AVENUE
EL MONTE, CA 91731
BID No. 2011-P12(2)
ROSEMEAD HIGH SCHOOL BASKETBALL COURTS
(BID PACKET SECTION 00500)

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between the EL MONTE UNION HIGH SCHOOL DISTRICT, hereinafter called the “DISTRICT”, and _____ hereinafter called the “Bidder”. For purposes of this Agreement, the capitalized term “Parties” shall be a collective reference to both DISTRICT and Bidder. The capitalized term “Party” may refer to DISTRICT or Bidder interchangeably as applicable.

RECITALS

WHEREAS, DISTRICT is a union high school DISTRICT organized and existing under the California Education Code;

WHEREAS, Bidder has received notice of an award pursuant to Bid No. 2011-P12(2) for the work of related under Bid Form (Bid Packet Section 00200) and referenced under the Bid Proposal Exhibit “A”. True and correct copies are attached and incorporated in this Agreement as **Exhibits “A”**;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. SUBJECT MATTER AND SCOPE OF AGREEMENT.
 - A. Bidder agrees to Bid Form which is included among the Contract Documents, as defined below.
 - B. The Bidder (Contractor) shall not proceed with work until the DISTRICT has issued the Bidders a written notice to proceed specifying the date and time.
 - C. Bidder shall also comply with the labor provision set forth under **Exhibit “B”** of this Agreement.

2. COMPENSATION.

- A. In consideration for Bidder DISTRICT agrees to pay lump sum for work comprising of defined scope and identified in the RFP as Lump Sum Amount and unit prices entered by Bidder for each line item of Bidding Sheet of the Bid Form. The foregoing notwithstanding, Bidder's total compensation for the Aggregate sum of Bid Price shall not exceed the sum of _____ DOLLARS (\$ _____) (hereinafter, the "Aggregate Bid Price").
- B. The Aggregate Bid Price shall be paid to Bidder by DISTRICT within THIRTY (30) days from the date Bidder accepts delivery of subject to Section _____, below.
- C. Bidder acknowledges and agrees that the Aggregate Bid Price and the individual unit prices and subtotals set forth in Bidding Sheet. In no event shall Bidder request or be entitled to additional compensation above the unit prices and subtotals set forth in Bidding Proposal or in addition to the Aggregate Bid Price.

3. INSURANCE.

- A. Bidder shall, at Bidder's sole cost and expense, procure and maintain in full force and effect, from the Notice to Proceed, a policy or policies of insurance covering Bidder. Such insurance shall protect Bidder and DISTRICT from claims for damages or personal injury, including death, damage to property and loss of property, and from workers compensation claims, which may arise from Bidder's performance of its duties under this Agreement. Bidder shall procure and maintain the following policies of insurance before commencing its delivery.
 - i. Commercial General Liability Insurance ("CGL Coverage"). The CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage. The general aggregate limit of the CGL Coverage shall either apply separately to the services to be performed by Bidder or the general aggregate limit shall be twice the required occurrence limit;
 - ii. Automobile Liability Insurance: Bidder shall procure and maintain Automobile Liability Insurance covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage; and
 - iii. Workers' Compensation Insurance/ Employer's Liability Insurance: Bidder shall procure and maintain Workers' Compensation Insurance as required by the laws of the State of California.
- B. CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insured's.
- C. All varieties of insurance required under this Agreement shall be procured from insurers authorized to issue policies of insurance in the State of California. The CGL Coverage and the Automobile Liability Insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A: VII.
- D. All policies of insurance procured by Bidder shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-

insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of Bidder's insurance and shall not contribute with it.

- E. No policy of insurance or endorsement there to that is procured by Bidder pursuant to this Agreement shall allow (either expressly or by the omission of any express prohibition) any insurance carrier to seek subrogation from DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers for any sums paid by the insurance carrier on behalf of Bidder or Bidder's contractors and subcontractors or on behalf of DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers.
- F. Bidder shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Section. The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.
- G. All policies of insurance required under this Agreement shall be endorsed to provide for thirty (30) days prior written notice of cancellation to the DISTRICT.

4. INDEMNITY.

Bidder shall indemnify, defend and hold free and harmless DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (collectively, the "DISTRICT Indemnitees") from every claim or demand made, and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of any injury to or death of any person(s) or damage to, loss or theft of any property caused by any act, omission, neglect or default of the Bidder, or any person, firm, or corporation employed by Bidder, either directly or by independent contract, arising out of, or in any way connected with this Agreement, whether said injury or damage occurs either on or away from DISTRICT property, except to the extent that any such liability, loss, damage or expense is attributable to the sole negligence or willful misconduct of DISTRICT. Bidder, at Bidder's, own cost and expense shall defend at DISTRICT's request, any and all actions, suits or other proceedings that may be brought or instituted against the DISTRICT Indemnitees on any such claim or liability and shall pay or satisfy any judgment that may be rendered against the DISTRICT Indemnitees in any action, suit or other proceedings as a result thereof.

5. ACCEPTANCE.

Work, assembled and installed pursuant to this Agreement and other Contract Documents shall be subject to inspection and rejection by the DISTRICT. The DISTRICT may reject, at the Bidder's sole cost and expense, any work which fails to meet the Specifications or other conditions of the Contract Documents or which is otherwise defective. Work shall be rejected and shall be promptly replaced by Bidder. No payment shall be required until replacement is complete.

6. WARRANTY.

- A. Bidder shall transfer to DISTRICT all of Bidder's rights to and interest to any and all manufacturers' warranties or guarantees for each article of all work related to this Agreement. Where applicable, DISTRICT shall be named as the owner-beneficiary in any warranty or guarantee. Bidder shall deliver to DISTRICT all the written material comprising the manufacturers' warranties or guarantees. Bidder shall ensure that each warranty or guarantee is in

full force and effect from the date the DISTRICT accepts work. All manufacturers' warranties or guarantees shall be in addition to the Bidder's warranty.

- B. In addition to all manufacturers' warranties and all other warranties implied by law, Bidder warrants that all of the work will conform to the specifications set forth in the Contract Documents; will be of good workmanship and material; and free from defect. DISTRICT's inspection, approval, acceptance, use of, or payment for all work shall not affect its warrant rights, regardless of whether a breach of warranty was evident at the time. Bidder shall repair or replace defective work in a timely manner to minimize the disruption to DISTRICT operations but in no event later than thirty (30) days from the date DISTRICT provides Bidder's with notice of such defect.

7. FINGERPRINTING.

- A. Bidder shall comply with all applicable provisions of Education Code Section 45125.1. Bidder will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on Bidder's behalf. Bidder will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. Bidder will provide DISTRICT with a list of all employees providing services pursuant to the Contract Documents.

8. EVENT OF DEFAULT.

- A. Any of the following events shall constitute an event of default ("Event of Default) under this Agreement:

- i. Bidder refuses or fails to perform work;
- ii. Bidder fails to fulfill or perform its obligations under this Agreement within the specified time, or if no time is specified, within a reasonable time;
- iii. Bidder delivers an item that does not conform to the specifications set forth in the Contract Documents;
- iv. Bidder and/or its employees disregard or violate any federal, state, local law, rule, procedure or regulation;
- v. Bidder institutes proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation;
- vi. Bidder refuses or fails to perform or observe any covenant, condition, obligation or provision of the Agreement;
- vii. DISTRICT discovers that a statement representation or warranty by Bidder relating to the Agreement is false, misleading or erroneous in any material respect;
- viii. For any other justifiable reason at the option and sole discretion of the DISTRICT.

- B. Upon the occurrence of an Event of Default, the DISTRICT, at its option and sole discretion, may exercise any one or more of the following remedies:

- i. Upon written notice to Bidder, the DISTRICT may terminate this Agreement in whole or in part;
- ii. Upon written notice to Bidder, the DISTRICT may extend the time of performance;
- iii. The DISTRICT may keep any item that the Bidder has delivered before or after the Agreement's termination or cancellation. The DISTRICT shall pay Bidder the fair value of any work in good condition and that is properly installed;

- iv. The DISTRICT may charge Bidder the amount by which the costs (i) of fabricating or procuring the canceled item from another source and/or (ii) obtaining substitute labor, work or services from another source – exceed the prices specified in the Agreement;
- v. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for Bidder’s breach of the Agreement or to rescind the Agreement;
- vi. The DISTRICT may exercise any other available and lawful right or remedy. Bidder shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon an Event of Default or in the DISTRICT’s exercise of its remedies under the Agreement.

C. Bidder shall bear all losses, costs and expenses resulting to Bidder because of: an unforeseen obstruction or difficulty that Bidder may encounter; the amount, scope, extent, character and/or nature of the work or services is different than what the Bidder assumed; fire; earthquake; casualty; weather; riot; war; epidemic; act of God; or other cause.

9. NOTICES.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

BIDDER:

DISTRICT:

[INSERT CONTACT INFO.]

[INSERT CONTRACT INFO.]

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

10. PROHIBITED INTERESTS.

Bidder warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for Consultant, to solicit or secure this Agreement. Further, Bidder warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for Bidder, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

11. TIME IS OF THE ESSENCE.

Time is of the essence for each and every provision of this Agreement.

12. GOVERNING LAW AND VENUE.

This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central DISTRICT of California located in the DISTRICT of Los Angeles, California.

13. ATTORNEY'S FEES.

If either Party commences an action against the other Party, neither legal, administrative nor otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

14. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding on the successors and assigns of the Parties.

15. NO THIRD PARTY BENEFIT:

There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

16. SEVERABILITY.

If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

17. CAPTIONS.

The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.

18. INCONSISTENCIES OR CONFLICTS.

In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.

19. ENTIRE AGREEMENT.

For purposes of this Agreement the capitalized term "Contract Documents" means and includes the following documents contained in the Bid Packet for: **Bid No. 2011-P12(2) (Rosemead High School Basketball Courts)**: the Notice Inviting Bids, the Instructions to Bidders, this Bid Form including the Bidder's completed Bidding Sheet; the Specifications; this Agreement; the Notice Re: Criminal Records Check; the Criminal Records Check Certification; the Drug-Free Workplace Certification; the Non-Collusion Affidavit; the Workers' Compensation Certification; Site Visit Certification; Designation of Subcontractors List; the Prevailing Wage and Related Labor Requirements Certification; the Disabled Veteran Business Enterprise Participation Certification; the Performance Bond; the Labor

and Materials Bond and any notices and/or addenda issued by the DISTRICT. For purposes of this Agreement, the capitalized term "Specifications" means the specifications attached to the Bid Packet for **Bid No. 2011-P12(2)** under Section 04000 and entitled "**Rosemead High School Basketball Courts.**" The Contract Documents constitute the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and Bidder prior to the execution of this Agreement.

20. COUNTERPARTS.

This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

EL MONTE UNION HIGH SCHOOL DISTRICT

BIDDER:

By: _____

Print Name: _____

Title: _____

Date: _____

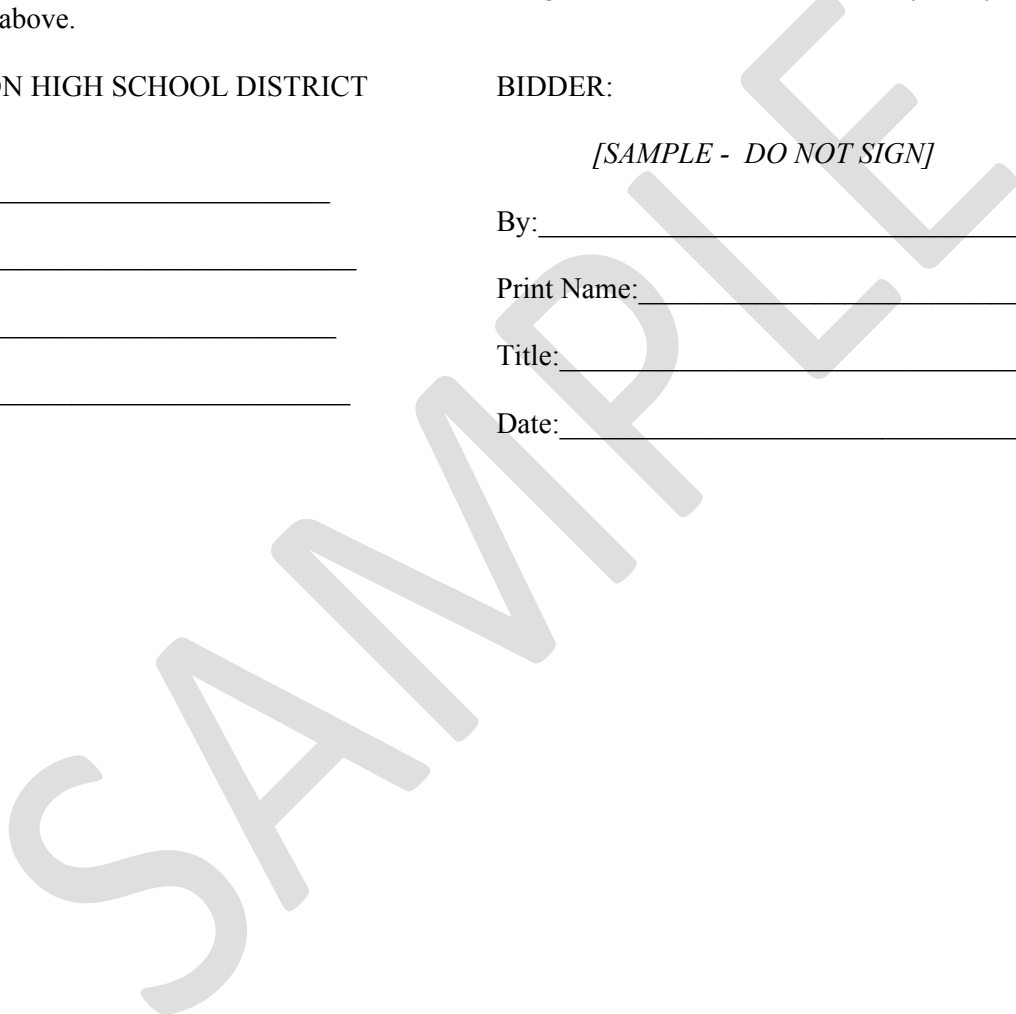
[SAMPLE - DO NOT SIGN]

By: _____

Print Name: _____

Title: _____

Date: _____



LABOR PROVISIONS

The provisions of this Exhibit "C" shall apply to the services and tasks rendered in connection with the delivery, installation and assembly of work. For purposes of this Exhibit "C", the capitalized term "Work" shall be a collective reference to the entire delivery, installation and assembly effort contemplated under **Bid No. 2011-P12(2) (Rosemead High School Basketball Courts)**. The Bidder and any subcontractor performing or contracting any work shall comply with all applicable provisions of the California Labor Code for all workers, laborers and mechanics of all crafts, classifications or types, including, but necessarily limited to the following:

- a. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under this Contract. Bidder and any subcontractor shall pay workers overtime pay (not less than 1 1/2 times the base rate of pay) as required by California Labor Code Section 1815. Vendor and any subcontractor shall, as a penalty to the District, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation so the provisions of Article 3 of Chapter 1 of Part 7, Division 2 of the California Labor Code, which is incorporated by this reference as though fully set forth herein.
- b. Pursuant to the provisions of California Labor Code, Sections 1770 et. seq., the Bidder and any subcontractor under him shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Pursuant to the provisions of California Labor Code Section 1773.2, the Bidder is hereby advised that copies of the prevailing rate of per diem wages and a general prevailing rate for holidays, Saturdays and Sundays and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract, are on file in the office of the District Secretary, which copies shall be made available to any interested party on request. The Bidder shall post a copy of said prevailing rate of per diem wages at each job site.
- c. As required by Section 1773.1 of the California Labor Code, the Bidder shall pay travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.
- d. To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and payments whenever filed thirty (30) days prior to the call for bids.
- e. The Bidder shall comply with the provisions of Section 1775 of the California Labor Code and shall, as a penalty to District, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the contract. The Bidder shall pay each worker an amount equal to the difference between the prevailing wage rates and the amount paid worker for each calendar day or portion thereof for which a worker was paid less than the prevailing wage rate. Bidder is required to pay all applicable penalties and back wages in the event of violation of prevailing wage law, and Bidder and any subcontractor shall fully comply with California Labor Code Section 1775, which is incorporated by this reference as though fully set forth herein.
- f. Bidder and any subcontractor shall maintain and make available for inspection payroll records as required by California Labor Code Section 1776, which is incorporated by this reference as though fully set forth herein. Bidder is responsible for ensuring compliance with this section. Bidder and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day

and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project. Said payroll shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Bidder on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in subsection 8(f), herein, shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in Paragraph 4(f), herein, shall be made available upon request by the public for inspection or for copies thereof; provided, however, that a request by the public shall be made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to subparagraph 4(f)(2) herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by 8(f) the Bidder, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal offices of the Bidder. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. Each Bidder shall file a certified copy of the records, enumerated in Subsection 8(f) with the entity that requested the records within ten (10) days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Bidder awarded the contract or performing the contract shall not be marked or obliterated. The Bidder shall inform the District of the location of the records enumerated under Subsection 8(f) including the street address, District and county, and shall, within 5 working days, provide a notice of change of location and address. The Bidder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Bidders must comply with this Subsection 8(f). In the event that the Bidders fails to comply within the 10-day period, he or she shall, as a penalty to the state or the District, forfeit \$25.00 dollars for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Responsibility for compliance with Subsection 8(f) lies with the Bidders.
- g. The Bidders and any subcontractors shall, when they employ any person in any apprenticeable craft or trade, apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the construction site for a certificate approving the Bidder or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; and shall comply with all other requirements of Section 1777.5 of the California Labor Code, which is incorporated by this reference as though fully set forth herein. The responsibility of compliance with California Labor Code Section 1777.5 during the performance of this contract rests with the Bidder. Pursuant to California Labor Code Section 1777.7, in the event the Bidder willfully fails to comply with the provisions of California Labor Code Section 1777.5, the Bidder shall be denied the right to bid on any public works contract for up to three (3) years from the date noncompliance is determined and be assessed civil penalties.
- h. In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860), and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the California Labor Code, the Bidder is required to secure the payment of compensation to its employees and for that purpose obtain and keep in effect adequate Workers' Compensation Insurance and Employers Liability Insurance. If the Bidder, in the sole discretion of the District satisfies the District of the responsibility and capacity under the applicable Workers' Compensation Laws, if any, to act as self-insurer, the Bidder may so act, and in such case, the insurance required by this paragraph need not be provided. The Bidder is advised of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of

that Code and shall comply with such provisions before commencing the performance of the work of this Contract. The Notice to Proceed with the Work under this Contract will not be issued, and the Bidder shall not commence work, until the Bidder submits written evidence that it has obtained full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the work under this Contract. This insurance shall be in accordance with the requirements of the most current and applicable state Workers' Compensation Insurance Laws. In accordance with the provisions of Section 1861 of the California Labor Code, the Bidder in signing this Contract certifies to the District as true the following statement: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract." A subcontractor is not allowed to commence work on the project until verification of Workers' Compensation Insurance coverage has been obtained and verified by the Bidder and submitted to the Construction Manager for the District's review and records.

- i. In accordance with the provisions of Section 1727 of the California Labor Code, the District, before making payment to the Bidder of money due under a contract for public works, shall withhold and retain there from all wages and penalties which have been forfeited pursuant to any stipulation in the contract, and the terms of Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1720). But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Standards Enforcement or by the District.

END OF DOCUMENT