

YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT
PURCHASING SERVICES
12797 Third Street, Yucaipa, CA 92399
909-797-0174 ext. 5852/fax 790-6113

REQUEST FOR PROPOSAL
RFP NO. 6.1617
WIDE AREA NETWORK DIGITAL CIRCUIT
TRANSMISSION SERVICES



NON-MANDATORY JOB WALK: JANUARY 18, 2017 – 9:00 A.M. BEGINNING AT
DISTRICT EDUCATION CENTER – 12797 THRD STREET – YUCAIPA, CA 92399

SEALED PROPOSALS RECEIVED
ATTENTION: BARBRA NEWLIN, PURCHASING MANAGER
12797 THIRD STREET – YUCAIPA, CA 92399

RFP DEADLINE UP TO, NO LATER THAN FEBRUARY 8, 2017, BY 2:00 P.M.

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WIDE AREA NETWORK DIGITAL
CIRCUIT TRANSMISSION SERVICES

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NOTICE TO VENDORS- REQUEST FOR PROPOSALS

470 and RFP availability date January 9, 2017

Notice is hereby given that the Board of Education of the Yucaipa-Calimesa Joint Unified School District will accept sealed proposals for:

RFP NO. 6.1617
WIDE AREA NETWORK DIGITAL
CIRCUIT TRANSMISSION SERVICES

Sealed proposals/bids plainly marked with the RFP# and title, received by the RFP Deadline shall be opened and publicly read aloud as indicated on February 8, 2017 at 2:00 p.m. at Yucaipa-Calimesa Joint Unified School District Office, 12797 Third Street, Yucaipa, CA 92399. Each proposal/bid must conform and shall be responsive to Contract Documents, plans, and specifications. Prospective bidders may secure this RFP from the Purchasing Manager, Yucaipa-Calimesa Joint Unified School District Office at 12797 Third Street, Yucaipa, CA 92399, 909-797-0174 ext. 5852 or www.yucaipaschools.com on the Technology Services page under the Educational Services link. **As well as the USAC EPiC Portal at www.usac.org/sl/tools/default.aspx**

A non-mandatory job walk is scheduled January 18, 2017 beginning at 9 a.m. at the District Education Center, 12797 Third Street, Yucaipa, CA 92399 and progressing to other sites. Prospective bidders may walk the sites in order to inspect entrance facilities – Demarc to MPOE.

Prospective bidders must participate in the E-Rate program and must provide a Service Provider Identification Number (SPIN) and Federal Registration Number (FCC-FRN) with the proposal.

This project is entirely contingent upon available funding from the federal E-Rate program and the Yucaipa-Calimesa Joint Unified School District may or may not undertake this project at its sole discretion.

The Board reserves the right to accept or reject any and all proposals and to waive any irregularities or informalities in any proposals received. No prospective bidder may withdraw his proposal/bid for a period of (180) calendar days after the date set for the receipt of proposals.

YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT
Publish January 9, 2017 and January 16, 2017
Assistant Superintendent, Business Services

470 + Bid/RFP Response Timeline	Due Date
Post and Certify E-Rate Form 470 and RFP	01/09/2017
Advertise Bids (#1)	01/09/2017
Advertise Bids (#2)	01/16/2017
Job walk/Pre-conference	01/18/2017 at 9:00 AM
Last day to ask questions	01/25/2017 by 2:00 PM
District posts answers	01/27/2017 by 4:00 PM
28 days (required) complete	02/06/2017
RFP Opening/ DUE DATE	02/08//2017 @ 2:00 pm
RFP Evaluations Begin	02/09/2017
Board Approval of E-rate Awards	03/14/2017
District Signs Contracts	03/15/2017
Service Provider Signs Contracts	NO LATER THAN 03/15/2017
Submit and Certify E-Rate Form 471	Prior to YR19 E-Rate Window Close-TBD- 3/31/2017

Instructions to Vendors

General Information

All responses shall conform to instructions provided in this Request for Proposal (RFP) document.

Job Walk

A **non-mandatory** job walk is scheduled January 18, 2017 beginning at 9 a.m. at the District Education Center, 12797 Third Street, Yucaipa, CA 92399 and progressing to other sites. Vendors may walk the sites in order to inspect entrance facilities – Demarc to MPOE.

Installation Timeline

No billing can take place prior to July 1, 2017 though start up work can begin as early as April 1, 2017 in order to meet this deadline and maintain compliance with the E-Rate Program rules.

Deadline for Request for Proposal Submittal

Vendors must submit all required documents prior to the deadline. All proposals shall be complete and final with no additional information required after the close of the submittal date, unless specifically requested by the District. Responses received after the deadline will be returned unopened as not meeting the RFP requirements

Request for Proposal Preparation Cost

Costs for preparing responses and any other related material is the responsibility of the VENDOR, and shall not be chargeable in any manner to the DISTRICT. The DISTRICT will not be held liable for any cost incurred by VENDORS in responding to the RFP.

Completion of the Price Module Worksheet

Proposals must include the attached pricing worksheet. Please include the installation (one time) costs and monthly (ongoing) costs for sites listed. Installation costs may be amortized into the monthly recurring charges.

Vendor Qualifications

Any individual firm submitting a proposal must be able to provide evidence that the individual or firm and its personnel carrying out the responsibilities have expertise and experiences in all areas identified in the Services Required section of this RFP. The vendor shall provide three (3) K-12 references consisting of similar work and scope.

Vendor Award

This RFP and contract for WAN DIGITAL CIRCUIT TRANSMISSION is being awarded by the District pursuant to Public Contract Code 20118.1, which permits the District to competitively negotiate such contract and to consider more than simply price in awarding the contract. In this case, price will be the most heavily weighted factor; though the District will also consider the proposer's ability to meet the minimum technical specifications for the equipment and services as described in this RFP, as well as other relevant factors including, but not limited to performance, and reliability.

Vendors may be required to provide the additional Contract Documents after Contract Award listed on pgs. 43-59.

GENERAL TERMS AND CONDITIONS

The following general terms and condition shall govern the submission of proposals and any agreement resulting from this procurement. Vendors, by virtue of submission of a proposal, acknowledge and accept these general terms and conditions. Vendors shall note that the use in the specifications of any term or phrase typically associated with particular commercially available systems is coincidental and not intended to imply preference or bias toward that system. Such specifications shall be deemed to be used for the purpose of facilitating the description of materials, process or article desired and shall be deemed to be followed by words "or equal."

Proposals, which do not comply with instructions, may be eliminated from further consideration. All proposals must contain all forms furnished in this request and be in printed form. Failure to provide and execute all enclosed forms as required may result in disqualification.

1. Preparation of Proposal Form

The Yucaipa-Calimesa Joint Unified School District ("District") invites proposals on the attached forms to be submitted at such time and place as is stated in the Notice to Vendors-Request for Proposals. Proposal shall be submitted on the prescribed proposal forms, completed in full. All proposal items and statements shall be properly filled out. Numbers shall be stated both in words and in figures where so indicated, and where there is a conflict in the words and the figures, the words shall govern.

All proposals shall be submitted in the format stated and in a sealed package bearing on the outside the name of the bidder, his address, and the name of the project for which the proposal is submitted. It is the sole responsibility of the Vendor to see that his proposal is received in proper time. In accordance with Government Code Section 53068 and Public Contract Code Section 4104.5, any proposal received after the scheduled closing time, for receipt of proposals or after any extension due to material changes, shall be returned to the Vendor unopened.

2. Bid Security

Each bid must be accompanied by one of the following forms of bidder's security: (1) a cashier's check made payable to the District; (2) a certified check made payable to the District; or (3) a bidder's bond executed by a California Admitted Surety as defined in Code of Civil Procedure Section 995.120, made payable to the District in the form set forth in the proposal documents. Such bidder's security must be in an amount not less than ten percent (10%) of the maximum amount of such bidder's bid as a guarantee that the bidder will enter into the proposed contract, if the same is awarded to such bidder, and will provide the required Performance and Payment Bond and insurance certificates. In the event that a bidder is awarded the contract and such bidder fails to enter into said contract or provide the necessary documents within ten (10) calendar days after notification of the award of the contract to bidder, said security will be forfeited.

3. Contractor's License and DIR Registration

Contractor must possess the appropriate license for the work to be performed in this RFP, and the Vendor/Contractor must maintain the license throughout the duration of the contract. If, at time of award of the contract, bidder is not licensed to perform the project in accordance with Division 3, Chapter 9, of the Business and Professions Code for the State of California such proposal will not be considered and the Vendor will forfeit its bid security to the District.

Bidders are advised this may require a public work project and all contractors and subcontractors bidding on this project shall be registered with the Department of Industrial Relations prior to entering into a contract with the district pursuant to Labor Code 1725.5.

4. Form and Delivery of Proposal

The proposal shall be made on the proposal form provided, and the complete proposal, together with any and all additional materials as required by the proposal documents, shall be enclosed in a sealed envelope, addressed and delivered or mailed to the attention of Barbra Newlin, Purchasing Manager, Yucaipa-Calimesa Joint Unified School District, 12797 Third Street, Yucaipa, CA 92399, and must be received on or before the time set forth in the Notice to Vendors – Request for Proposal. The envelope shall be plainly marked with the Vendor mailing address and the Proposal title and RFP No. **It is the Vendor's sole responsibility to ensure that its proposal is received prior to the scheduled closing time for receipt of proposals.**

5. Signature(s)

Any signature required on the proposal forms must be signed in the name of the Vendor and must bear the signature in longhand of the person or person(s) duly authorized to sign the proposal on behalf of the bidder in permanent ink.

6. Modifications

Changes in or additions to the proposal form, recapitulations of the work proposed upon, alternative proposals, or any other modification of the proposed form which is not specifically called for in the contract documents may result in the District's rejection of the proposal as not being responsive. No oral or telephonic modification of any proposal submitted will be considered.

7. Erasures, Inconsistent or Illegible Proposals

The proposal submitted must not contain any erasures, interlineations, or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the initials of the person(s) signing the proposal. In the event of inconsistency between words and figures in the proposal price, the words shall govern. In the event the District determines that any proposal is unintelligible, inconsistent or ambiguous, the District may reject such proposal as not being responsive.

8. Examination of Contract Documents

Bidders shall thoroughly examine and be familiar with the requirements and specifications. The failure or omission of any bidder to receive or examine any contract document, form, instrument, addenda, or the document, and acquaint himself with conditions there existing shall in no way relieve any bidder from any obligation with respect to his bid or to the proposal.

By submitting a proposal, the prospective Vendor represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of providing the equipment and services to achieve the District's objective.

9. Withdrawal of Proposals

Any proposal may be withdrawn, either personally by written request at any time prior to the scheduled closing time for receipt of proposals. All requests for proposal withdrawal must be accompanied by proof acceptable to the District which authorizes the individual requesting the proposal withdrawal to so act on behalf of the Vendor. No amendment, addendum or modification will be accepted after the proposal has been submitted to the District. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to the District prior to the scheduled closing time for receipt of proposals. No Vendor may submit more than one proposal. No Vendor may withdraw any proposal for a period of ninety (90) calendar days after the date set for the receipt of proposals.

10. Agreement Term and Performance & Payment Bonds

The Agreement form which the successful bidder, as Vendor, will be required to execute, and the form of the bonds and insurance endorsements which such Vendor will be required to furnish, are included in the contract documents and should be carefully examined by the bidder.

The agreement term shall begin 7/1/2017 and terminate on 6/30/2020 in order to have "BIIG" grant sites and "NON'BIIG" sites coterminous.

The awarded Vendor may be required to furnish a Performance and Payment Bond in the amount of one-hundred percent (100%) of the amount of the contract and in the form included in the proposal documents, all prior to execution of the Contract. Performance and Payment bonds are required for the protection of the District against failure of a successful Vendor to complete a contract. In the event that the successful Vendor fails to perform or abandons the contract, the District shall have the contract completed as expeditiously as necessary and possible and shall bring action against the bond for additional expenses incurred and administrative time expended.

11. Penalties for Non-Performance

Judgment of non-performance in regard to the system performance shall rest solely with District management. Failure to provide maintenance services in accordance with the

requirements specified shall constitute an essential breach of contract and be subject to all applicable remedies of law.

12. Interpretation of Documents

If any prospective Vendor is in doubt as to the true meaning of any part of the proposal documents, or finds discrepancies in, or omissions from the specifications, a written request for interpretation or correction thereof may be submitted to the District.

Note: All questions concerning this proposal must be submitted via e mail to Susan Brown, Director, Technology, Assessments & Accountability, at susan_brown@yciusd.us as indicated in Response Timeline. In the subject line make reference to Form 470 #170058336 RFP #6.1617

The Vendor submitting the request shall be responsible for its prompt delivery. Any interpretation or correction of the proposal documents will be made solely at District's discretion and only by written addendum duly issued by the District and a copy of such addendum will be e-mailed, hand-delivered, U.S. Postal Mailed, overnighted, or faxed to each Vendor known to have received a set of the Request for Proposal documents. No person is authorized to make any oral interpretation of any provision in the proposal documents, nor shall any oral interpretation be binding on the District. Vendor shall become familiar with the specifications. ***SUBMITTAL OF A PROPOSAL WITHOUT CLARIFICATIONS SHALL BE IRREFUTABLE EVIDENCE THAT THE VENDOR HAS DETERMINED THAT THE SPECIFICATIONS ARE SUFFICIENT FOR BIDDING AND COMPLETING THE JOB; THAT VENDOR IS CAPABLE OF READING, FOLLOWING AND COMPLETING THE JOB IN ACCORDANCE WITH THE SPECIFICATIONS; AND THAT THE SPECIFICATIONS FALL WITH AN ACCEPTABLE STANDARD FOR SPECIFICATIONS.***

13. Basis of Selection

No commitment will be made to select a Vendor's system solely on the basis of price. Selection will be made on a combination of factors, including: price; the degree to which the proposed services to meet functional and service level requirements; the quality of the service architecture, particularly in regards to business continuity and achievement of service level objectives; support procedures and service levels; our ability to understand and work with service billing; competence and reputation of the vendor; as well as any other factors that the District deems appropriate and in the best interest of the District. Points will be awarded based on the Evaluation Criteria indicated on page 29 for a total sum of 100 points; the vendor with the highest points total will be awarded the RFP:

14. Exception/Deviations.

Any exceptions to the requirements and terms in this RFP, including the language in the proposed Agreement, must be included in the proposal submitted by the prospective Vendor. Such exceptions must be segregated as a separate element of the proposal response and noted in the Cover Letter of the response. Significant exceptions may

remove the prospective Vendor from further consideration.

15. Data

The district provides information herein to assist Vendors in formulating their proposals. Although the District is providing this information in good faith, the District makes no warranty or representation about its accuracy, and the District does not intend any Vendor to rely solely on the accuracy of the information in submitting their proposal.

16. Award of Contract

The Yucaipa-Calimesa Joint Unified School District will be the sole judge of the quality, methodology, and suitability of the service offered by the Vendor in the proposal. Pursuant to State of California Public Contract Code Section 20118.1, which permits the District to competitively negotiate such contract will be by action of the governing board and be made to the Vendor whose proposal meets the evaluation standards set forth in this Request for Proposal and will be the most advantageous to the District with price and all other factors considered. Low bid does not constitute an award.

The District reserves the right to reject any or all proposals without identifying the cause of such rejection(s), or to waive any irregularities or informalities in any proposals or in the proposal process. The District reserves the right to withdraw this RFP at any time without prior notice. Further, the District makes no representations that an agreement will be awarded to any prospective Vendor responding to this Request for Proposal. The District also reserves the right to award its total requirements to one Vendor, or to apportion those requirements among several vendors, as the District may deem to be in its best interests. The District reserves the right to negotiate with other than the selected Vendor should negotiations with the selected Vendor be terminated, to negotiate with more than one Vendor simultaneously, or to cancel all or part of this RFP.

17. Vendor References and Information

The District expressly reserves the right to reject the proposal of any Vendor who, upon investigation, has been determined to fail to complete similar contracts in a timely fashion or in a satisfactory manner. Such rejection would, if applicable, be based upon the principle that the Vendor poses a substantial risk of being unable to complete the work in a cost-effective, professional and timely manner. In performing the above-described determination, the District reserves the right to utilize all possible sources of information in making its determination, including, but not limited to: inquiries to regulatory state boards and agencies; Dun and Bradstreet credit reports, inquiries to companies and public entities for which the Vendor has previously performed work, reference checks and examination of all public records.

18. Workers' Compensation

In accordance with the provisions of §3700 of the Labor Code, Vendor shall secure the payment of Compensation to his employees. Vendor shall sign and file with the District the following certificate prior to performing the work under this contract: "I am aware of the provisions of §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 the code, and I will comply with such provisions before commencing the performance of the work of the contract." The form of such certificate is included as part of the proposal documents.

19. Non-Collusion Declaration

The Vendor is required to submit a Declaration of Non-collusion with their proposal. This form is included with the proposal documents and must be signed under the penalty of perjury and dated.

20. Anti-Discrimination

It is the policy of the District that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, physical disability, mental disability, medical condition or martial status.

21. Hold Harmless

The Vendor shall protect and defend, indemnify and hold harmless, at its own expense, the District, its officers, employees, and agents from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other causes based or asserted upon any act, omission, or breach connected with services called for in this proposal.

- a) Liability for damages for (1) death or bodily injury to persons; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the Vendor or any person, firm or corporation employed by the Vendor upon or in connection with the services called for in the Contract Documents, except for liability resulting from the sole negligence, or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District, and except for liability resulting from the active negligence of the District.
- b) Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Vendor, or any person, firm, or corporation employed by the Vendor, either directly or independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including the District, arising out of, or in any way connected with the services covered by the Agreement, whether said injury or damage occurs either on or off school district property, if the liability arose from the negligence or willful misconduct of anyone employed by the Vendor, either directly or by independent contract, and not by the active negligence of the District.
- c) The Vendor, at Vendor's own expense, cost and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the

District, its officers, agents or employees, or any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

22. Vendor's Proposal Costs

The Vendor shall solely bear any costs incurred: to prepare and submit a proposal in response to this RFP; to negotiate with the District regarding any matter related to this proposal; by the Vendor prior to the date of award. Vendor shall not include any such costs as part of the price as proposed in response to this RFP.

23. SPIN

The District requires the Vendor to have a valid and current SPIN (Service Provider Identification Number) as issued by USAC (Universal Service Administrative Company), as well as a valid and current FCC Registration Number (FCC-FRN). The SPIN and FCC-FRN must be established at the time of the proposal submittal. Vendors who do not currently have "green light" status will not be considered. The loss of "green light" status with the FCC shall render any contracts entered into with the Vendor to be, at the discretion of the District, immediately null and void.

24. E-Rate Compliance

Vendor is, and agrees to remain, in compliance with all current E-Rate program guidelines established by the Federal Communications Committee (FCC). This project is entirely contingent upon available funding from the Federal E-Rate Program (Schools and Libraries Division) and the District may or may not undertake the project at its sole discretion.

Information regarding eligibility of goods and services, invoicing requirements, documentation requirements and other program rules are available from the SLD by calling Schools and Libraries Division ("SLD") of the Universal Service Administrative Company at (1-888) 203-8100 or see their website at www.sl.universalservice.org.

In all communications, including (but not limited to) invoices, any responses to this RFP, reports, and proposals, goods and services provided shall be clearly designated as "E-Rate Eligible". Non-Eligible goods and services shall be clearly called out as 100% non-eligible or shall be "cost-allocated" to show the percentage of eligible costs per SLD guidelines.

The annual E-Rate Funding Year begins on July 1st and September 30th of each year (for non-recurring services). Regardless of contract "signing date", goods and services requested in this RFP shall be delivered no earlier than the start of the 2017 Funding Year (July 1, 2017).

To assure that all charges are eligible for E-Rate funding, contract renewal and expiration dates shall coincide with the start/end dates of the E-Rate funding years.

Vendors agree to conform to all E-Rate guidelines for the billing of discounts to the SLD.

A current SPAC (Service Provider Annual Certification) form must be on file with USAC for the funding year 2017-18 and for the subsequent years throughout the term of the contract. If the awarded Vendor fails to file the appropriate forms with the SLD or fails to receive an SLD SPIN number, then at the discretion of the District, the contract may be terminated. Billing method will be in SPI form (Service Provider Invoice): The Vendor will only invoice Yucaipa-Calimesa Joint Unified School District for the non-discounted portion of the costs after the E-rate discount is applied.

The Vendor will then invoice the SLD for the E-rate discounted portion. The Vendor must also provide the name, title and telephone number for a single point of contact of E-Rate questions.

The E-Rate program requires that all records be retained for at least five (5) years. The Vendor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by SLD and/or the District, whichever is sooner. The District, its authorized agents, and/or auditors reserves the right to perform or have performed an audit of the records of the Vendor and therefore shall have full access to and the right to examine any of said materials within a reasonable period of time during said period.

25. E-Rate Funding

This RFP is 100% contingent upon the approval of E-Rate funding from the Universal Service Fund Schools and Libraries Program. Even after award of contracts, the Yucaipa-Calimesa Joint Unified School District may or may not proceed with the project, in whole or in part, even in the event E-Rate funding is approved. Execution of the project, in part or in whole, is solely at the discretion of Yucaipa-Calimesa Joint Unified School District. Vendors wishing to bid are doing so solely at their own risk. Yucaipa-Calimesa Joint Unified School District is not liable or responsible for any costs, loss, fees, or expenses, of any kind, associated with this proposal and/or a decision not to proceed with the project, even after award of the contracts. By submitting a proposal, each bidder/Vendor agrees to bear all of its own costs, fees, expenses, and losses, of any and all kind, should the Yucaipa-Calimesa Joint Unified School District cancel the project.

26. Invoice the Universal Services

Invoicing the E-Rate Administrator, USAC, is required to collect payment of Non-discounted share of Contract cost. It is required that the contractor specifies whether the customer bills will be the total cost of the service or only the Non-Discounted share of the contract cost. Contractor may provide applicants with discounted bills and submit the SPI to request payment from USAC for the amount of USF support to be paid. Contractors agree to sign the BEAR form when the applicant has paid the entire cost of services to the service provider. In all cases, USAC pays support to the contractor after invoicing process is completed and the Service Provider Annual Certification Form (Form 473).

27. E-Rate In-eligible Costs

Bidders must include complete bill of materials, including manufacturer make, model, quantity, unit price, extended price, installation and sales tax. Any E-rate ineligible costs must be submitted on a separate bill of materials.

28. Right to Source Program – Not Applicable

If Vendor, whether directly or through a successor or affiliate, shall cease to be in the hardware/software business, or cease to support the submitted application, or if Vendor should be declared bankrupt or insolvent by a court of competent jurisdiction, Yucaipa-Calimesa Joint Unified School District shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source program of the object programs supplied under this agreement, and single copy of the documentation associated therewith, upon payment to the person in control of the source program the reasonable cost of making each copy. Each source program supplied to the District shall be subject to each and every restriction on use set forth in the request for proposal. **VENDORS' MUST STIPULATE IF OPEN SOURCE CODE ON PROPOSAL FORM.**

29. System Availability

The proposals submitted must describe a system where all elements are currently available and will not include “futures” or “drawing board” elements. “Futures” or “Drawing Board” elements, if included, must be explicitly labeled as such and may serve only for information purposes and not be used to satisfy a requirement stipulated in the RFP.

30. Vendor Inquiries

All questions and/or clarifications regarding the submission and/or technical specifications regarding this proposal must be submitted via e mail to Susan Brown, Director, Technology, Assessments & Accountability, susan_brown@ycjUSD.us All requests for information or requests for clarifications must be submitted by the date and time specified in the Response Timeline. **In the subject line make reference to Form 470 #170058336 RFP #6.1617.** All responses will be sent to each Vendor known to have received the Request for Proposal, through an addendum. Questions submitted after the deadline will not be responded to.

31. Communications

Vendors who contact any member of the Board of Education, District administrators, or staff without following the above listed protocol will be eliminated from further consideration. Oral communications of District employees concerning this RFP shall not be binding on the District and shall in no way excuse the Vendor of his/her obligations as set forth in the RFP.

32. Proposal Confidentiality

All proposals received shall remain confidential, to the extent permitted by law until negotiations between the District and Vendor are complete; thereafter, the proposals

shall be deemed public records. In the event that a Vendor desires to have portions of its proposal remain confidential, it is incumbent upon the Vendor to identify those portions in its transmittal letter deposited with the proposal package. The transmittal letter must identify the page, the particular exemption(s) from disclosure and the contended justification of exemption upon which it is making its claim. Each page, or part thereof, claimed to be confidential must be clearly identified by the word "confidential" printed on the lower right hand corner of the page. The District will consider a Vendor's request(s) for confidentiality; however, the District will not be bound by the assertion that a page contains confidential material. An assertion by a Vendor that an entire volume of its proposal is confidential will not be honored. The District reserves the right to disclose all information in the proposal, even if the Vendor requests that it remain confidential, if the District determines that disclosure is not prohibited by law or court order. It is understood that the District is subject to the California Public Records Act (Gov. Code Section 6550, et seq.). If a public records request is made to view Vendor's proprietary and confidential information, the District shall notify Vendor of the request and the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain a court order enjoining that disclosure, the District will release requested information on the date specified. All materials submitted in response to this request will become the property of the District and will be returned only at the District's option and at the Vendor's expense.

33. Notification

Vendors whose proposals are rejected will be notified in writing at the address given in the proposal.

34. Taxes

The District is subject to State of California Sales and Use Tax. Proposal prices shall include allowances for all taxes including but not limited to all Federal, State and Local taxes.

35. Assignment/Subcontracting

No performance of the contract or any portion thereof shall be assigned by the Vendor without the expressed written consent of the District. Any attempt by the Vendor to assign any performance of the terms of this contract without the expressed written consent of the District will constitute a breach of this contract. Whenever the Vendor is authorized by the District to assign, he will include all the terms of this contract to each such assignment.

Every subcontractor shall be bound by the terms of the contract as far as it is applicable to the performance of the work. Nothing herein shall create any contract between any subcontractor and the District, or any obligation of the part of the District to pay, or see to the payment of any sums to any subcontractor by the Vendor.

36. News Releases

News releases pertaining to the award resulting from this RFP shall not be made without prior written approval of the District's Superintendent.

37. Disposition of Proposal

All materials submitted in response to this request for proposal will become the property of the District and will be returned only at the District's option and at the Vendor's expense. The master copy shall be retained for official files and will become a public record as subject to the Public Records Act. However, confidential financial information submitted in support of the requirement to show Vendor's responsibility and proprietary information will not be made public and will be returned upon request. Confidential and proprietary information must be clearly identified as such.

38. Insurance

Vendor shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain the following policies issued by insurance companies authorized to transact business in the State of California and which comply with all requirements of the Department of Insurance for the State of California:

a) **Vendor's Liability Insurance**

- i) Worker's Compensation
- ii) General Liability
 - (1) Injury or accidental death
\$1,000,000.00 Each Occurrence \$2,000,000.00 Aggregate
 - (2) Bodily Injury
\$1,000,000.00 Each Occurrence \$2,000,000.00 Aggregate
 - (3) Property Damage
\$1,000,000.00 Each Occurrence \$2,000,000.00 Aggregate
- iii) Automobile Liability (Any Auto)
 - (1) Combined Single Limit
\$1,000,000.00 Each Occurrence

Such liability insurance policies shall name Yucaipa-Calimesa Joint Unified School District and California Schools Risk Management as Additional Insured and shall agree to defend and indemnify the District against loss arising from operations performed under the contract.

39. System Performance

Not restricted by any other item, condition, disclaimer, warranty or guarantee, the Vendor represents and warrants that the system will perform the functions described in its product specifications and its proposal and the system will operate in the proposed configuration and the cost set forth.

40. Software Integrated Performance

Within the definition of the system described by the Vendor's proposal and resulting agreement, the vendor acknowledges that the nature of this procurement requires that each component function in accordance with its specification and be integrated and operate successfully with all other components of the system.

41. Invoicing and Payment Schedule

Once the service is fully "tuned up" and accepted by the District, the Vendor may invoice the District monthly for the agreed upon monthly service charge and for the agreed upon number of months. Vendor shall include with its invoice a line-item account of the costs and materials used during that month. The District may reduce the amount paid for a month when agreed upon service levels are not achieved pursuant to procedures set forth in the contract between the District and the Vendor. Any agreed upon, one-time (i.e., non-recurring) charges shall be invoiced within 120 days after the Vendor and District agree that the related work is complete.

42. Cancellation for Insufficient or Non-Appropriated Funds

The Vendor hereby agrees and acknowledges that monies utilized by the District to purchase the services listed in this proposal are public money appropriated by the State of California, the Federal Government under the E-Rate Program, or acquired by the District from similar public sources and is subject to variation. The District fully reserves the right to cancel this proposal at any time and/or to limit quantities of items due to non-availability or non-appropriation of sufficient funds.

43. Assignment of Contract

The Vendor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the performance bond and the District.

44. Binding Effect

This agreement shall inure to the benefit of and shall be binding upon the Vendor and District and their respective successors and assigns.

45. Severability

If any provisions of this agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

46. Amendments

The terms of this agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

47. Prevailing Law

In the event of any conflict or ambiguity between these instructions and State and Federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or services to be performed under the proposal shall conform to all applicable requirements.

48. Governing Law and Venue

The final contract between Vendor and the District shall be assembled and all disputes hereunder shall be settled in accordance with the laws of the State of California. Pending final resolution of a dispute hereunder, Vendor shall proceed diligently with the performance of the final contract. Venue shall only be with the appropriate state or federal court located in San Bernardino County, California.

49. Acceptance Testing

Acceptance testing will begin when components are installed, the service has been “tuned up,” and the Vendor informs the District that the service is functioning according to specifications and agreed upon service levels.

50. Clarifications and Corrections

The right is reserved, as the interests of the District may require, to revise or amend the RFP Documents prior to the date set for opening proposals. Such revisions and amendments, if any, will be announced by an addendum or addenda to this Request for Proposal. If the revisions and amendments are of a nature which require material changes, the date set for the opening of the proposals may be postponed by such number of days as in the opinion of the District will enable Vendors to revise their proposals to account for such changes. In such cases, the addendum will include an announcement of the new date for opening proposals. Any clarifications or corrections to the RFP Documents will not be considered valid unless it is provided in writing by the District to all Vendors as a numbered Addendum.

51. Local Account Team

Local account team support must be available and the District will be provided with an account manager who acts as a single point of contact that is responsible for the entire account. The District shall have the opportunity to review and approve all members of the Vendor’s team and shall have the right to request removal of personnel it considers unsuitable. The Vendor shall not substitute members of its account team without prior written notification to the District. New members assigned to the District’s account team shall have a trail period of three months; during this period, the District may request that the new member be replaced. At the District’s discretion, semi-annual status meetings shall be held with the Vendor’s account team or upon request by the District. These meetings shall include a written problem escalation procedures review as a standard agenda item.

52. Coordination

The Vendor shall coordinate installation schedules with the District and their designated

agent(s). The Vendor shall be responsible for placing all service orders with local and long distance telephone companies as needed. The Vendor shall appoint a project manager from the account team. The Project Manager shall be the primary point of contact for the Vendor during the implementation process. The Vendor shall prepare a separate plan for changing the District's communication services from their vendor(s) as well as establishing new services. Vendor's implementation plan shall be reviewed and approved by the District's IT team.

53. Notice of Labor Dispute

Whenever Vendor has knowledge that any actual or potential labor dispute may delay the implementation of the services contracted from Vendor, Vendor shall immediately notify and submit all relevant information to the District. Vendor shall insert the substance of this entire clause in any subcontract hereunder.

54. Guarantee

The District requires work performed according to RFP No. 6.1617 WIDE AREA NETWORK DIGITAL CIRCUIT TRANSMISSION SERVICES provided by the Vendor shall be guaranteed for a minimum of one (1) year after acceptance by the District. All services necessary to repair malfunctions discovered shall be provided at no cost to the District during the guarantee period. Any defects shall be rectified by the successful Vendor(s) promptly to the satisfaction to the District without expense to the District.

55. Warranty

All warranties must be clear, concise and in writing. Warranties shall be specific as to what is and is not covered along with the exact term (in calendar days) of each covered item. Warranties shall cover all individual modules, supplies or created interfaces and any ancillary product that is purchased from the awarded Vendor. In addition, the awarded Vendor will warrant and guarantee the seamless integration and interface modules proposed herein.

Vendor(s) must warrant that the specifications, capabilities and performance characteristics are as stated in the proposal and accompanying documentation. Submission of a proposal will represent your agreement to these conditions.

56. Vendor Protest

A bidder may protest the district's intent to award if he/she believes that the award is inconsistent with Board policy, the bid's specifications, or is not in compliance with law. A protest must be filed in writing with the Superintendent or designee before 4 p.m. of the fifth calendar day following the Notice of Intent to Award has been given. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

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

1. The protest must be submitted in writing to the district (email is not acceptable), before 4 p.m. of the fifth calendar day following the Notice of Intent to Award has been given.
2. The protest document must contain a complete statement of any and all bases for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence
3. The protest must refer to the specific portions of all documents which form the basis for the protest.
4. The protest must include the name, address and telephone number of the person representing the protesting party.
5. Any bid protest not conforming to the foregoing shall be rejected by the district as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the district's Superintendent or designee, shall review and evaluate the basis of the bid protest. Superintendent or designee shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest within 30 working days, the decision of the Superintendent or designee shall be final.
The Superintendent or designee may also convene a meeting with the bidder in order to attempt to resolve the problem.
6. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

57. Vendor Certification Regarding Background Checks

Pursuant to Education Code Section 45125.1, Vendor has conducted criminal background checks through the California Department of Justice, of all employees providing services to the District.

58. Conduct Rules for Vendors

Each Vendor/subcontractors, when performing work/services on Yucaipa-Calimesa Joint Unified School District properties shall adhere to the rules of conduct.

59. Prevailing Wage Rates

- (a) Pursuant to Labor Code Sections 1770 et. Seq., the DISTRICT has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Prevailing wage rates are available from the Director of the Department of Industrial Relations website at (www.dir.ca.gov/dlsr/pwd). **The CONTRACTOR shall obtain copies of the above-referenced prevailing wage sheets and post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.**

- (b) Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
- (c) Holiday and overtime work, when permitted by law, shall be paid at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1 ½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.
- (d) These per diem rates, including holiday and overtime work, and employer payments for health and welfare, pension, vacation and similar purposes, are on file at the administrative office of the DISTRICT, located as noted above and are also available from the Director of the Department of Industrial Relations. **It is the CONTRACTOR's responsibility to ensure the appropriate prevailing rates of per diem wages are paid for each classification. It shall be mandatory upon the CONTRACTOR to whom the contract is awarded, and upon any subcontractor under such CONTRACTOR, to pay not less than the said specified rates to all workers employed by them in the execution of the contract.**
- (e) Job Site Posting - On each job site that is subject to compliance monitoring by the Department of Industrial Relations, the prime contractor shall post a Notice containing Compliance and Monitoring information.

60. Certified Payroll Records

- (a) The Contractor and each subcontractor shall maintain Certified Payroll and basic records required under the Labor Code and applicable Industrial Welfare Commission and shall preserve them for a period of three (3) years thereafter for all trade workers working on District project for submittal to the District at times designated in the contract or within ten (10) days upon request. The Contractor shall be responsible for submittal of all payroll records of all its subcontractors directly to the Department of Industrial Relations All Certified Payroll Records shall be accompanied by a statement of compliance signed by the Contractor or each subcontractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the employee conform with the work performed.
- (b) In accordance with the California Labor Code Section 1776 (g), if the Contractor fails to comply within the ten (10) day period, he or she shall, as a penalty to the State or Political Subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated.

61. Labor Code 1725.5.

Labor Code 1725.5 establishes a new public works contractor registration program which will collect fees to fund compliance monitoring and enforcement, determine prevailing wage and public works coverage, and hear enforcement appeals.

All contractors and subcontractors intending to bid or perform work on public works projects will be required to register, and annually renew, online for the program. The cost to register for the program is currently \$300.00 and is non-refundable. This is a DIR fee paid to the State. The District will not register a contractor, nor collect funds for registration.

Contractors or subcontractors submitting bids must be registered by March 1, 2015. The requirement to use only registered contractors and subcontractors on public works projects, greater than \$1,000, applies to all projects awarded on or after April 1, 2015. No bid can be accepted nor any contract or subcontract entered into nor purchase order issued without proof that the contractor or subcontractor is registered.

If you intend to bid or provide services on District projects in the future, please ensure you are registered with the DIR prior to March 1, 2015. Effective immediately, the District will be required to complete a PWC-100 form alerting the DIR of the services you are providing the District. Detailed information is required to complete this form. You may be asked to provide information needed to complete the DIR form. You will be asked to complete this in a timely manner to avoid interruption in the services you are providing.

Are you currently registered with the DIR? Please submit proof of DIR Registration.

Yes **No** If yes, what is your registration number? _____

62. Suspension and Debarment Certification

The Vendor will be required to complete the Suspension and Debarment Certification form (enclosed) and **must be submitted with your proposal**. Review the attached Debarment Instruction for Certification and Certification and Disclosure Statement.

63. Notice to Proceed

After all documents have been received and verified and deemed to be acceptable to the District, a Notice to Proceed will be issued. An executed copy of the Agreement, purchase order and related documents will be returned to the Vendor. The purchase order must appear on all billing and correspondence.

64. Work Hours

All work to be done shall be performed between the hours of 7:00 a.m. to 4:30 p.m., Monday thru Friday, or as determined by district administration to be in the best interest of students and staff.

Note: Scheduling timeframes will be discussed at the Pre-Construction Meeting with the awarded Vendor.

65. References

Before awarding any contract, the DISTRICT reserves the right to require the vendor to submit evidence of qualifications, as it may deem appropriate. This evidence may be concerning financial, technical, and other qualifications as well as relevant experience and skills of the vendor.

66. Payment and Funding

The District may intend to partially fund the services contemplated herein by leveraging the federal E-Rate program. Vendors should be familiar with and compliant with all applicable federal E-Rate policies. Bids from vendors that are not E-Rate eligible will not be considered for this RFP. Vendors must provide a response to this RFP that is compliant with E-Rate. Vendors must submit their E-Rate Service Provider Identification Number (SPIN) in the vendor response. Vendors must submit their E-Rate Federal Communications Commission Registration Number (FCCRN) in the vendor response along with proof of FCC Green Light Status. The successful bidder also must abide by the requirements for vendors under the E-rate program as set forth by the E-Rate program administrators. These requirements include, but are not limited to; filing of all Form 474 forms, extension of appropriate discounts to the participating eligible entities, careful record keeping for auditing purposes, and the provision of any information participating eligible entities must submit as part of their filing requirements. The bidder must identify and separate any costs that are associated with non E-Rate eligible entities and services as identified in the scope of work herein.

In addition, the Wide Area Network (WAN) Telecommunications and Internet Access Services must also be eligible for, and receive, the applicable discounts funded through the California Teleconnect Fund (CTF) which is administered by the California Public Utilities Commission (CPUC). In accordance to CPUC resolution T-16763 all E-Rate program discounts must be posted via the Service Provider Invoice Form 474. The District will not file a Billed Entity Applicant Reimbursement Form 472 for applicable E-Rate discounts.

Failure of vendor to apply appropriate discounts will be basis for termination of contract without penalty.

PROJECT BACKGROUND

The YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT (YCJUSD) has an on-going strategic plan which includes telecommunication services, connectivity, and support. YCJUSD's technology infrastructure consists of a local area network installed at each campus with a wide area network connecting the campuses together. The District is seeking to leverage its investment in these areas to achieve maximum operating efficiencies and cost savings.

E-RATE REQUIREMENT

The Telecommunications Act of 1996 established a fund by which Schools and Libraries across the Country could access discounts on eligible telecommunications products and services. The program is commonly known as the E-Rate Program. The eligibility for discounts on internet access, telecommunications products and services, and internal connection products, services and maintenance is determined by the Federal Communications Commission (FCC). Funding is made available upon application approval by the Schools and Libraries Division (SLD) of the Universal Service Corporation, which was established by the Act. The amount of discount is based on the numbers of children receiving free and reduced price meals.

YCJUSD has applied for E-Rate discounts since the program's inception. Suppliers are required to be in full compliance with all current requirements and future requirements issued by the SLD for participation in the E-Rate program throughout the contractual period of any contract entered into with YCJUSD as a result of this RFP.

In addition, the district reserves the right to fund, (proceed with project or purchase) all, some, or none of the project regardless of E-Rate approval.

Additionally, respondents are required to submit the following to substantiate E-Rate Service Provider compliance.

- Proposers Service Provider Identification Number (SPIN)
- Service Provider Annual Certification (SPAC) verification (2014/2015 and/or 2015/2016
 - (SPIN contact page from USAC website will suffice)
- Verification that the proposer is an eligible telecommunications provider (Y) for the telecommunications aspect of this RFP
 - (SPIN contact page from USAC website will suffice)
- Proof that Proposer is not on FCC Red-Light Status
 - Requires FCC Registration Number and documentation from FCC. Information can be accessed at <http://www.fcc.gov/redlight/>

PROJECT GOALS

The DISTRICT (YCJUSD) is seeking telecommunication providers that are able to meet its data telecommunication needs. The present system utilizes various levels and types of services at multiple locations. Attached Appendix A provides a listing of all facilities.

QUALIFICATIONS

Please provide responses to the following questions as well as details to offer a comprehensive representation of your company and its services.

	Yes/No
1. The vendor must be able to guarantee network availability at least 99.5% of the time in a calendar month, and packet delivery of 99.5% or greater, except for outages caused by the customer's equipment, fiber cuts by third parties, acts of God, or other Force Majeure events.	
Please elaborate:	
2. Does your company monitor all telecommunication and/or Internet services 24 hours per day, seven days per week, 365 days per year?	
Please elaborate:	
3. Can your company ensure YCJUSD 99.95% for all telecommunication and/or Internet service availability during each week of service provided with telecommunication and/or Internet service latency across your company's network, facilities and services not to exceed 30 milliseconds maximum?	
Please elaborate:	
4. Is your company able to provide, at no additional charge, immediate notification to YCJUSD network department representative of any and all telecommunication and/or Internet service outages or anomalies which affect the use of the facilities, circuits, or network within YCJUSD?	
Please elaborate:	
5. Please provide the process for YCJUSD to report any problems with the facilities, circuits, network or telecommunication and/or Internet services including the minimum response time.	
Please elaborate:	

6. Provide details regarding your company's service center, including, but not limited to, staffing experience, process and priority service.	
Please elaborate:	
7. Your company will provide a non-performance policy with YCJUSD which provides YCJUSD a monthly credit equal to two times the monthly rate multiplied by the percentage of monthly outage to any site within YCJUSD, when such faults, outages or anomalies are due to the oversight neglect or unreliability of your company's services.	
Please elaborate:	
8. Does your company maintain compliance with any and all legal requirements set forth under the California Public Utilities Commission and the Federal Communications Commission of the United States of America?	
Please elaborate:	
9. Does your company agree that YCJUSD can reserve the option to terminate service, without penalty and full expectation of refund of any and all proceeds paid prior to date of termination of contract or services for balance of services not rendered?	
Please elaborate:	

TRANSITION PLAN

As the cut-over date for any new carrier is **July 1, 2017**, YCJUSD requires a transition plan to be provided with any proposal response. The plan is to include the resources to be dedicated to the transition, all costs associated with the transition, a timeline of actions with a completion target date for the supplier and for the YCJUSD transition team. The transition plan is to outline the expectations the supplier team would have of YCJUSD and the information or task YCJUSD is to provide the supplier and the date any information or task would be required.

YCJUSD reserves the option to terminate service, without penalty and full expectation of refund of any and all proceeds paid prior to date of termination of contract or services for balance of services not rendered, if the district is dissatisfied with the service.

Service Provider warrants that such facilities and services will maintain the performance criteria stated above at all times during the continuation of this Agreement. Service Provider warrants that it had good title to all elements of the facilities and services and has the legal right to contract with YCJUSD for the installation and use of such facilities and services. Service Provider shall indemnify YCJUSD and its trustees and employees against any claims or threat of claims brought by any third party alleging infringement of any proprietary rights.

Customer Requirements

- Wide Area Network Digital Circuit Transmission Services: Please provide quotes for the following bandwidths.
- **1 Gbps, 2 Gbps, 5 Gbps and 10 Gbps**
- Routing - Internal routing scheme cannot be changed
- **Current WAN connections are Point-to-Point from each site back to Yucaipa High School, and YHS to SBCSS. (except in the case of 1 Gbps, then that line may or may not be site to site then back to Yucaipa High School).**
 - **The District has upgraded routers and desires to maintain a full mesh network.**
- Option for growth including, but not limited to, increases in bandwidth and/or additions of locations, as determined necessary by the District
- Options for removal of sites due to closures or re-organization requirements as deemed necessary by the District. The District will require that there be no early termination charges or other penalties assessed in such situation that is determined to be outside the control of the District.
- All equipment necessary to provide this connectivity shall be provided with no option of transfer of ownership to YCJUSD. All vendor equipment installed shall be under repair maintenance at no cost to YCJUSD for the life of the contract agreement.

Information Requested

- Proposed solution pricing

- **Special construction costs (curb to MPOE) should be amortized over the initial contract term as part of the MRC. DISTRICT WILL NOT BE RESPONSIBLE FOR ANY EASEMENT/RIGHT OF WAY COSTS INCURRED BY THE PROPOSER WHILE IMPLEMENTING THE SOLUTION. The Minimum Point of Entry (MPOE) and Demarcation point at each site and in the Data Center at the District Office and Yucaipa High School shall be determined by YCJUSD technical staff. All cost proposals must include pricing to install services to the MPOE and Demarcation point.**
- MRC for initial contract month term as well as MRC starting with contract renewal term.
- Include any one-time and recurring costs and explain any additional associated contractual obligations associated with growth option (as stated above).
- Support agreements including response times.

Proposal Submission Requirements

All responses to this RFP should be submitted in hard copy form (no email or other electronic submission), up to and no later than 2:00 p.m. on February 8, 2017 and clearly marked "RFP No. 6-1617 Wide Area Network Digital Circuit Transmission Services and Internet Access Services delivered Attention:

Yucaipa-Calimesa Joint Unified **School District**
ATTN: Barbra Newlin, Purchasing Manager
12797 Third Street
Yucaipa, CA 92399

All other inquiries should be submitted in writing to: Susan Brown, Director, Technology, Assessment & Accountability susan_brown@ycjUSD.us

All proposals received shall remain confidential, to the extent permitted by law until negotiations between the District and Vendor are complete; thereafter, the proposals shall be deemed public records. In the event that a Vendor desires to have portions of its proposal remain confidential, it is incumbent upon the Vendor to identify those portions in its transmittal letter deposited with the proposal package. The transmittal letter must identify the page, the particular exemption(s) from disclosure and the contended justification of exemption upon which it is making its claim. Each page, or part thereof, claimed to be confidential must be clearly identified by the word "confidential" printed on the lower right hand corner of the page. The District will consider a Vendor's request(s) for confidentiality; however, the District will not be bound by the assertion that a page contains confidential material. An assertion by a Vendor that an entire volume of its proposal is confidential will not be honored. The District reserves the right to disclose all information in the proposal, even if the Vendor requests that it remain confidential, if the District determines that disclosure is not prohibited by law or court order. It is understood that the District is subject to the California Public Records Act (Gov. Code Section 6550, et seq.). If a public records request is made to view Vendor's proprietary and confidential information, the District shall notify Vendor of the request and the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain a court order enjoining that disclosure, the District will release requested information on the date specified. All materials submitted in response to this request will become the property of the District and will be returned only at the District's option and at the Vendor's expense. All submissions meeting the deadline requirement are the property of YCJUSD and will not be returned.

All responses to this RFP should be submitted in hardcopy form (no email or other electronic submissions).

The content and sequence of the proposal will be as follows:

1. Cover Letter/Letter of Interest
2. Table of Contents
3. Vendor Company Data
4. Experience and Client References
5. Technical Capabilities
6. Cost Proposal
7. Bid Form and Pricing Module Worksheet (*See 'WAN Digital Circuit Transmission Svcs. Access Pricing Module Worksheet.xls'*)

- 8. Transition Plan
- 9. Bid Bond
- 10. Designation of Subcontractors
- 11. Non-Collusive Bidding Declaration

EVALUATION CRITERIA:

Evaluation Criteria May Include, But is Not Limited To:

Eligible Cost is the most heavily weighted factor in selecting the awarded Service Provider **25%**

Other evaluation criteria may include, but are not limited to:

Ineligible Cost	5%
References	15%
Ability to deliver services within desired timeframe	15%
Understanding of needs	15%
Past successful E-Rate experience	15%
Completeness of response	10%
TOTAL:	100%

E-RATE SUPPLEMENTAL TERMS AND CONDITIONS

Signed copy to be returned with bid response.

The Telecommunications Act of 1996 established a fund by which Schools and Libraries across the Country could access discounts on eligible telecommunications products and services. The program is commonly known as the E-rate Program. The eligibility for discounts on internet access, telecommunications products and services, internal connection products, services and maintenance is determined by the Federal Communications Commission (FCC). Funding is made available upon application approval by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), which was established by the Act. The amount of discount is based on the numbers of students receiving free and reduced price meals.

1. E-RATE CONTINGENCY

The project herein may be contingent upon the approval of funding from the Universal Service Fund's Schools and Libraries Program, otherwise known as E-rate. Even after award of contract(s) and/or E-rate funding approval is obtained, the District may or may not proceed with the project, in whole or in part. Execution of the project, in whole or in part, is solely at the discretion of the District.

2. SERVICE PROVIDER REQUIREMENTS

The District expects Service Providers to make themselves thoroughly familiar with any rules or regulations regarding the E-rate program.

- a. Service Providers are required to be in full compliance with all current requirements and future requirements issued by the SLD throughout the contractual period of any contract entered into as a result of this RFP.
- b. Service Providers are responsible for providing a valid SPIN (Service Provider Identification Number). More information about obtaining a SPIN may be found at this website: <http://www.usac.org/sl/service-providers/step01/default.aspx>
- c. Service Providers are responsible for providing a valid Federal Communications Commission (FCC) Registration Number (FRN) at the time the bid is submitted. More information about obtaining an FRN may be found at this website: <https://fjallfoss.fcc.gov/coresWeb/publicHome.do>
- d. Service Providers are responsible for providing evidence of FCC Green Light Status at the time the bid is submitted. Any potential bidder found to be in Red Light Status will be disqualified from participation in the bidding process and will be considered non-responsive. More information about FCC Red and Green Light Status may be found at this website: http://www.fcc.gov/debt_collection/welcome.html
- e. Products and services must be delivered before billing can commence. At no time may the Service Provider invoice before July 1, 2017.

- f. Prices must be held firm for the duration of the associated E-rate Funding Year(s) or until all work associated with the project is complete (including any contract and USAC approved extensions).
- g. Goods and services provided shall be clearly designated as “E-rate Eligible”. Non-eligible goods and services shall be clearly called out as 100% non-eligible or shall be “cost allocated” to show the percentage of eligible costs per SLD guidelines.
- h. Within one (1) week of award, the awarded Service Provider must provide the District a bill of materials using a completed USAC “Item 21 Template”. Subsequent schedules of values and invoices for each site must match Item 21 Attachment or subsequent service substitutions.**
- i. In the event of questions during an E-rate pre-commitment review, post-commitment review and/or audit inquiry, the awarded Service Provider is expected to reply within 3 days to questions associated with its proposal.
- j. The awarded Service Provider is required to send copies of all forms and invoices to the District prior to invoicing USAC for pre-approval. Failure to comply with this requirement may result in the District placing the vendor on an “Invoice Check” with the USAC <http://www.usac.org/sl/applicants/step07/invoice-check.aspx>
- k. Services providers must comply with the FCC rules for Lowest Corresponding Price (“LCP”). Further details on LCP may be obtained at USAC’s website: <http://www.usac.org/sl/service-providers/step02/lowest-corresponding-price.aspx>

3. SERVICE PROVIDER ACKNOWLEDGEMENTS

- a. The Service Provider acknowledges that no change in the products and/or services specified in this document will be allowed without prior written approval from the district and a USAC service substitution approval with the exception of a Global Service Substitutions.
- b. The Service Provider acknowledges that all pricing and technology infrastructure information in its bid shall be considered as public and non-confidential pursuant to §54.504 (2)(i)(ii).
- c. The Service Provider acknowledges that its offer is considered to be the lowest corresponding price pursuant to § 54.511(b). Should it not be the lowest

corresponding price, the service provider must disclose the conditions leading to the applicant being charged in excess of lowest corresponding price.

- d. This offer is in full compliance with USAC's Free Services Advisory <http://www.usac.org/sl/applicants/step02/free-services-advisory.aspx>. There are no free services offered that would predicate an artificial discount and preclude the applicant.
- e. from paying its proportionate non-discounted share of costs. The service provider agrees to provide substantiating documentation to support this assertion should the applicant, USAC, or the FCC request it.

4. STARTING SERVICES/ADVANCE INSTALLATION


The annual E-rate Funding Year begins on July 1 and expires on June 30 of each calendar year. Regardless of the contract "effective date", E-rate eligible goods and/or services requested in this RFP shall be delivered no earlier than the start of the 2017 funding year (July 1, 2017). If Category 1 services (Telecommunication Services and Internet access) will begin on or shortly after July 1 of a funding year, the service provider, in some cases, may need to undertake some construction and installation work prior to the beginning of that funding year. Within the limitations indicated below, the infrastructure costs of a service provider can be deemed to be delivered at the same time that the associated Category 1 services begin. That is, if services begin on July 1, then the delivery of service provider infrastructure necessary for those services can be considered as also delivered on July 1.

EARLY FUNDING CONDITIONS

Category 1

There are four conditions that must be met in order for USAC to provide support in a funding year for Category 1 infrastructure costs incurred prior to that funding year.

- *Initiation of installation cannot take place before selection of the service provider pursuant to a posted Form 470 and in any event no earlier than six months prior to July 1 of the funding year.*
- *The Category 1 service must depend on the installation of the infrastructure.*
- *The underlying Category 1 service cannot have a service start date prior to July 1 of the funding year.*
- *No invoices can be submitted to USAC for reimbursement prior to July 1 of the funding year.*

For more information, please refer to the FCC Order involving the Nassau County Board of Cooperative Educational Services (DA 02-3365 , released December 6, 2002). This FCC decision only applies to Priority 1 services (telecommunications services and Internet access).

The complete text can be found at the following URL:
<http://www.usac.org/sl/applicants/step05/installation.aspx>

Category 2

There is one condition that allows USAC to provide support in a funding year for Category 2 installation costs incurred prior to that funding year.

- *We also amend our rules for category two non-recurring services to permit applicants to seek support for category two eligible services purchased on or after April 1, three months prior to the start of funding year on July 1. This will provide schools with the flexibility to purchase equipment in preparation for the summer recess and provide the maximum amount of time during the summer to install these critical networks.*

For more information, please refer to the FCC Report and Order and Further Notice of Proposed Rulemaking ([FCC 14-99](#) , released July 23, 2014). This FCC decision only applies to Category 2 services (Internal Connections).

5. INVOICING

- a. The Service Provider agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI). The District will only be responsible for paying its non-discounted share of costs and does not intend to use the BEAR process (Form 472). The maximum percentage the District will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Block 5 and any identified ineligible costs. Upon the successful receipt or posting of a Funding Commitment Decision Letter from the SLD and submission and certification of Form 486, the District shall pay only the discounted amount beginning with the billing cycle immediately following said approval. Alternatively, should the District decide that it is in the best interest of the District to file a Form 472, the District will inform the Service Provider of its intent.
- b. All Service Provider invoicing to USAC must be completed within 120 days from the last day of service. Should the Service Provider fail to invoice USAC in a timely manner, the District will only be responsible for paying its non-discounted share.

6. FCC/SLD AUDITABILITY

The E-rate program requires that all records be retained for at least ten (10) years from the last date of service provided on a particular funding request. Respondent hereby agrees to retain all books, records, and other documents relative to any Agreement resulting from this RFP for ten (10) years after final payment. The District,

its authorized agents, and/or auditors reserves the right to perform or have performed an audit of the records of the Respondent and therefore shall have full access to and the right to examine any of said materials within a reasonable period of time during said period.

7. PROCUREMENT OF ADDITIONAL GOODS AND/OR SERVICES/COTERMINOUS EXPIRATION

During the term of any Agreement resulting from this RFP, the District may elect to procure additional or like goods and/or services offered by the Respondent. Such services shall be negotiated and obtained via an official amendment to this Agreement and approval by the District's Governing Board. All terms, conditions, warranties, obligations, maintenance and support of said goods or services shall have a coterminous expiration date with the original date of this Agreement. The District shall not enter into a separate Agreement for said goods or services. Respondents must state in their proposal that they acknowledge, accept and are in agreement with coterminous expiration conditions.

I, the undersigned, as an authorized agent of _____ (Service Provider Name), hereby certify that I have read the E-rate Supplemental Terms and Conditions, am fully compliant and intend to cooperate with the E-rate process as outlined above.

Signature: _____ **Title:** _____

Phone Number: _____ **Email:** _____

Service Provider Name:

BID BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT, hereinafter called "District," in the sum of _____ DOLLARS (\$_____), (not less than ten percent (10%) of the total amount of the bid) for 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.

WHEREAS, said Principal has submitted a bid to said District to perform all work required under the bidding schedule of the District's Contract Documents for:

**BID NO. 6-1617
WIDE ARE NETWORK DIGITAL CIRCUIT
TRANSMISSION SERVICES**

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within ninety (90) days after said opening; and if the Principal is awarded the contract, and shall within the period specified therefore, or, if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the District, in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, if the Principal shall pay the District the difference between the amount specified in said bid and the amount for which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the District in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force.

Surety, for value received, hereby stipulate and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in anyway effect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

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

SIGNED AND SEALED this _____ day of _____, 2017.

(Corporate Seal of Principal,
if Corporation)

Principal

Proper Name of Bidder

By: _____

Title: _____

Signature of Bidder

(Corporate Seal of Surety)

Surety

By: _____

Name: _____

Title: Attorney-In-Fact

Address of California Agent of Surety

Phone: _____

(Attach Attorney-In-Fact Certificate and Required Acknowledgments)

DESIGNATION OF SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 [commencing at Section 4100], Division 2, Part 1 of the Public Contract Code of the State of California) and any amendments thereof, each bidder shall set forth below: (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement to be performed under this contract or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one-half ($\frac{1}{2}$) of one percent (1%) of the prime contractor's total bid and (b) the portion of the work which will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each such portion as is defined by the prime contractor in this bid. If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half ($\frac{1}{2}$) of one percent (1%) of the prime contractor's total bid, Contractor shall be deemed to have agreed that Contractor is fully qualified to perform that portion, and that Contractor alone shall perform that portion.

No prime contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half ($\frac{1}{2}$) of one percent (1%) of the prime contractor's total bid as to which the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one-half ($\frac{1}{2}$) of one percent (1%) of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this contract setting forth the facts constituting the emergency or necessity.

Bidders are advised that this contract may consist of a public work, as of March 1, 2015 all contractors and subcontractors bidding on a public works project shall be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. (www.dir.ca.gov/Public-Works/PublicWorks.html)

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

Designation of Subcontractors

Portion of Work	Subcontractor	Address of Business	Phone Number	License No. and Exp. Date and DIR #

Portion of Work	Subcontractor	Address of Business	Phone Number	License No. and Exp. Date and DIR #

RFP/Bid Package # _____ RFP/Bid Package Name _____

Proper Name of Bidder _____ Address _____

By (Print Name) _____ Title _____

Phone _____ Fax _____

Date _____

NONCOLLUSION DECLARATION
(To be Executed by Bidder and Submitted with Bid)
(Public Contract Code 7106)

The undersigned declares:

I am the _____ of _____ the party making the forgoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding, that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in this bid are true, and, further, that the bidder has not, directly or indirectly, submitted his bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

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

Executed the _____ day of _____, 2016__ at _____, California.

Authorized Company Signature

APPENDIX A - *Broadband Infrastructure Improvement Grant (BIIG)

Locations of Non-*BIIG Sites: REQUESTING SERVICES

1. District Education Center (District Office)
12797 Third Street, Yucaipa, CA 92399
2. Mesa View Middle School
800 Mustang Way, Calimesa CA 92320
3. Park View Middle School
34875 Tahoe Drive, Yucaipa, CA 92399
4. Special Services/Early Childhood Education Center
35912 Avenue H, Yucaipa, CA 92399
5. Yucaipa High School (Hub to District)
33000 Yucaipa Blvd., Yucaipa, CA 92399
6. Yucaipa High School (Hub to SBCSS)

Locations of BIIG Sites: INFORMATION ONLY, UNDER CONTRACT UNTIL 6/30/2020

1. Calimesa Elementary School
13523 Second Street, Yucaipa, CA 92399
2. Chapman Heights Elementary School
33692 Cramer Road, Yucaipa, CA 92399
3. Competitive Edge Charter Academy
34450 Stonewood Drive, Yucaipa, CA 92399
4. Dunlap Elementary School
32870 Avenue E, Yucaipa, CA 92399\
5. Ridgeview Elementary School
11021 Sunnyside Drive, Yucaipa, CA 92399
6. Valley Elementary School
12333 Eight Street, Yucaipa, CA 92399
7. Wildwood Elementary School
35972 Susan Street, Yucaipa, CA 92399
8. Green Valley High School
35948 Susan Street, Yucaipa, CA 92399
9. Oak View High School & Ed Center
12358 Sixth Street, Yucaipa, CA 92399

CONTRACT DOCUMENTS AFTER AWARD

THIS AGREEMENT dated _____ in the County of San Bernardino, State of California by and between the Yucaipa-Calimesa Joint Unified School District, hereinafter called the "DISTRICT" and _____ hereinafter called CONTRACTOR.

WITNESSETH that the District and the Contractor for the consideration stated herein agree as follows:

ARTICLE I - SCOPE OF WORK: The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, equipment, tools, utility services, and transportation and perform and complete in a workmanlike manner all work required in connection with the following entitled project:

**RFP NO. 6 1617
WAN DIGITAL CIRCUIT TRANSMISSION SERVICES**

in strict accordance with the Contract Documents enumerated in Article 8 below. The Contractor shall be liable to the District for any damages arising as a result of a failure to comply with that obligation, and the Contractor shall not be excused with respect to any failure to so comply by act or omission of the Architect, Engineer, Inspector, Division of the State Architect, or representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with the Contract Documents that the act or omission is preventing the Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the District office within seven days of the date of occurrence of the act or omission preventing the Contractor from fully complying with the Contract Documents.

ARTICLE 2 – CONTRACT TERM

Work performed or services provided will be for a term of 36 months beginning 7/1/2017. No billing can take place prior to July 1, 2017.

ARTICLE 3 - TIME OF COMPLETION: The work shall commence on the date of the District's Notice to Proceed, start up work can begin as early as April 1, 2017 in order to meet the July 1, 2017 deadline and maintain compliance with E-Rate program rules. Work not completed in conformance with the foregoing shall be subject to liquidated damages in the amount set forth in Article 3 of the Agreement.

In the event that District desires to postpone the giving of the notice to proceed beyond this three month period, it is expressly understood that with reasonable notice to the Contractor, the giving of the date to proceed may be postponed by District. 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 giving of the notice to proceed.

If Contractor believes that a postponement will cause a hardship to Contractor, such Contractor may terminate the contract with written notice to District within 10 days after receipt by Contractor of District's notice of postponement. It is further understood by 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. Should 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 responsible bidder.

ARTICLE 3 - LIQUIDATED DAMAGES: It is agreed that the Contractor will pay the District the sum of FIVE-HUNDRED DOLLARS (\$ 500.00) per calendar day for each and every day of delay beyond the time prescribed in the Contract Documents for finishing said work, as Liquidated Damages and not as a penalty or forfeiture. In the event the same is not paid, the Contractor further agrees that the District may deduct that amount thereof from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of damages under provisions of the Contract Documents.

ARTICLE 4 - CONTRACT PRICE: The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, according to Service Provider Pricing Response Worksheet..

Should any change order or construction change directive result in an increase in the contract price, the cost of such change order or construction change directive shall be agreed to in advance by Contractor and District and subject to the monetary limitations set forth in Public Contract Code Section 20118.4. In the event that Contractor proceeds with any change in work without agreeing to the cost of a change order or a construction change directive, Contractor waives any claim of additional compensation for such additional work.

ARTICLE 5 - HOLD HARMLESS AGREEMENT: The Contractor agrees to and does hereby indemnify and hold harmless the District, Architect, Construction Manager, Project Inspector, its officers, agents, and employees from every claim or demand made and every liability, loss, damage, or expense of any nature whatsoever, which may be incurred by reason of:

- a. Liability for damage for (1) death or bodily injury to persons, (2) injury to, loss or theft of property, or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the Contractor or any other person, firm or corporation employed by the Contractor upon or in connection with the work called for in this Agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the District, its officers, agents or independent contractors who are directly employed by the District.

- b. Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the District, including all damages due to loss or theft arising out of, or in any way connected with the work covered by this Agreement, whether on or off school district property, caused by any act, neglect, default or omission of the Contractor or any person firm or corporation employed by the Contractor either directly or by independent contract, except for liability for damages which result from the sole negligence or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District.
- c. Any dispute between Contractor and Contractor's subcontractors, suppliers and sureties, including, but not limited to, stop notice actions.

The Contractor, at their own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees on any such claim, demand or liability and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

ARTICLE 6 - PROVISIONS REQUIRED BY LAW: This contract is governed by the laws of the State of California. Each and every provision of law and clause required 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 herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 7 - SUBSTITUTION OF SECURITIES: It is understood that at the request and expense of the Contractor, the District will pay the amounts retained pursuant to these Contract Documents as security for the completion of the work in compliance with the requirements of Public Contract Code Section 22300.

ARTICLE 8 - COMPONENT PARTS OF THE CONTRACT: The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Notice to Vendors – Request for Proposals
- Instruction to Bidders
- General Terms and Conditions
- Project Background
- Project Goals
- Transition Plan
- Proposal Submission Requirements
- E-Rate Supplemental Terms and Conditions
- Bid Bond
- Designation of Subcontractors

Non-Collusion Affidavit
Agreement w/attachments
Performance Bond
Payment Bond
Payer's Request for Taxpayer's Identification Number
Drug Free Workplace Certificate
Workers Compensation Insurance Certificate
Criminal Background Investigation Certification
Site Certification
Vendor Conduct Certification
Debarment and Suspension Certification
Warranties and Guarantees
General Conditions and Supplementary Conditions
Plans, Specifications, Drawings, All Addenda as Issued

All of the above named Contract Documents are intended to be complimentary. Work required by one of the above named contract documents and not by others shall be done as if required by all.

ARTICLE 9 - LABOR CODE PROVISIONS: Contractor shall comply with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are available at www.dir.ca.gov/OPRL/PWD. A copy of these rates shall be posted at the job site. It shall be mandatory upon the Contractor and all subcontractors to comply with all Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, and debarment of Contractors and subcontractors.

ARTICLE 10 - RECORD AUDIT: In accordance with Government Code, Section 8546.7 records of both the District and the Contractor shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

ARTICLE 11 - NOTICE TO PROCEED: No work, services, material or equipment shall be performed or furnished under this Agreement unless and until a Notice to Proceed has been given to the Contractor by the District, and all bonds and certificates of insurance have been furnished to, and approved by, the District.

ARTICLE 12 - CONTRACTOR'S LICENSE: If public works is required, the Contractor must possess a current license pursuant to the Business and Professions Code and shall be licensed in the appropriate classification of contractors license for the work bid upon, and must maintain the license throughout the duration of the Contract in current and good standing and current registration with the Department of Industrial Relations.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above named parties, on the day and year first above written.

YUCAIPA-CALIMESA JOINT UNIFIED
SCHOOL DISTRICT

CONTRACTOR/PROVIDER

By _____
George Velarde
Assistant Superintendent, Business
Services

By _____
Signature

Typed or Printed Name

Agents)

Title (Authorized Officers or

Date

Date

Bond # _____

WHEREAS, the Yucaipa-Calimesa Joint Unified School District (hereinafter referred to as "District") has awarded to _____

as Principal,

(hereinafter referred to as "Principal"), the contract for the work described as follows:

And WHEREAS, the Principal is required to furnish a bond in connection with such contract guaranteeing the faithful performance thereof;

**RFP NO. 6 1617
WAN DIGITAL CIRCUIT TRANSMISSION SERVICES**

NOW, THEREFORE, we the undersigned Principal and Surety, are held and firmly bound to the District, in the sum of \$ _____ to be paid to the District; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the District, its 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.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on 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 to the work, or to the specifications.

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

Any claims under this bond may be addressed to:
(Name and Address of Surety)

(Name and Address of agent or representative in California, if different from above)

(Telephone Number of Surety or agent or representative in California)

IN WITNESS WHEREOF, we have hereto set our hands and seals on this _____ day of _____, 2017.

(Corporate Seal of Principal, if Corporation) By: _____
Principal (Proper Name of Contractor)

By: _____
(Signature of Contractor)

(Seal of Surety) By: _____
Attorney-in-Fact

(Attached Attorney-in-Fact
Certificate and Required
Acknowledgments)

The rate of premium on this bond is \$ _____ per thousand. Total amount of premium charged \$ _____.

(The above must be filled in by surety).

(Attach acknowledgment of signatures of principal and surety. This bond must be recorded).

(Labor and Material Bond)

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Yucaipa-Calimesa Joint Unified School District, hereinafter called "District",
has awarded to _____ hereinafter designated as the "Principal", a

Notice of Intent to Award Contract for the work described as follows:

RFP NO. 6 1617
WAN DIGITAL CIRCUIT TRANSMISSION SERVICES

WHEREAS, said contractor is required by Division 4, Part V
I, Title III, Chapter 5, (commencing at Section 9550) of the California Civil Code to furnish a
bond in connection with said contract;

NOW THEREFORE, we, the undersigned contractor and _____
_____ as surety are held and firmly bound unto the

_____ District in the sum of

_____ Dollars (\$ _____), for

which payment well and truly to be made, we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said contractor, his or its
heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any of
the persons named in Civil Code Section 9100, or amounts due under the Unemployment
Insurance Code Section 13020 with respect to work or labor performed by any such claimant, or
for any amounts required to be dedued, withheld, and paid over to the Franchise Tax board from
the wages of employees of the contractor and his subcontractors, with respect to such work and

YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT RFP NO. 6.1617 WAN DIGITAL CIRCUIT
TRANSMISSION SERVICES

labor, then the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

And the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder of the specifications accompanying the same shall in anywise affect its obligations on 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 to the work, or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the contractor and surety above named, on the _____ day of _____, 2017.

Surety

Contractor

By _____
Attorney-in-fact

PAYMENT BOND
00610-Page 2 of 2

DOCUMENT 00620

YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT

RFP NO. 6.1617 WAN DIGITAL CIRCUIT
TRANSMISSION SERVICES

PAYERS REQUEST FOR TAXPAYER ID

PAYER'S REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

As required by the Internal Revenue Code & SB542 we are requesting that you complete substitute form W-9 data below. Purchase orders and/or payments for services rendered will not be processed until this form, completed in full, has been returned to the Yucaipa-Calimesa Joint Unified School District.

COMPLETE LEGAL NAME

d.b.a. IF APPLICABLE

STREET ADDRESS

CITY AND STATE

ZIP CODE (NINE DIGIT NUMBER IF KNOWN)

TELEPHONE NUMBER
NUMBER

FAX

MAILING ADDRESS (IF DIFFERENT) STREET OR P.O. BOX #

CITY AND STATE

ZIP CODE (NINE DIGIT NUMBER IF KNOWN)

CORPORATION. _____ PARTNERSHIP _____ *SOLE PROPRIETORSHIP _____
TYPE OF BUSINESS (CHECK ONLY ONE)

FEDERAL EMPLOYER IDENTIFICATION NUMBER

OR

SOCIAL SECURITY NUMBER _____

*Sole proprietor's please complete the following pursuant to SB542, effective January 1, 2001.

OWNER'S FULL NAME

OWNER'S SOCIAL SECURITY NO.

CERTIFICATION: Under the penalties of perjury, certify that the information provided on this form is true, correct and complete.

AUTHORIZED SIGNATURE: _____ DATE: _____

WORKERS COMPENSATION CERTIFICATE

I am the _____ of _____ the party making this forgoing bid.

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.
- (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 that, as stated in Section 00700 General Conditions, Article 28, insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the state. Such insurance carrier shall have not less than an "A" policyholder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide unless otherwise approved by the District.

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.

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

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

Executed the _____ day of _____, 2017 at _____, California.

Company Name

Print Name

Signature

Title

ASBESTOS-FREE MATERIALS CERTIFICATION

The undersigned declares that he or she is the person who executed the bid for WORK SPECIFIED IN CONTRACT DOCUMENTS (hereinafter referred to as the "Project"), and submitted it to the Yucaipa-Calimesa Joint Unified School District (hereinafter referred to as the "District") on behalf of _____ (hereinafter referred to as the "Contractor").

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

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

All work or materials installed by the contractor which is found to contain asbestos, or work or material installed with asbestos-containing equipment, will be immediately rejected. At contractor's expense, decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

The asbestos consultant shall be chosen and approved by the Architect or the District who shall have sole discretion and final determination in this matter. The work will be not accepted until asbestos contamination is reduced to levels deemed acceptable by the Asbestos Consultant.

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

Executed on this day of _____, 2017 at _____

«Company_Name»

By: _____

Print Name _____

Title _____

Education Code Section 45125.1 in relevant part provides:

- A. If the employees of an entity which has a contract with the school district have more than limited contact with students as defined by the school district, those employees must have their fingerprints submitted to the Department of Justice;
- B. The department of Justice shall determine whether the individuals have been arrested or convicted of a crime and notify the employer of criminal history;
- C. An entity with a school district contract shall not permit an employee to come in contact with pupils until the Department of Justice ascertains that the employee has not been convicted of a felony as defined in Education Code Section 45122.1.
- D. The entity must certify that none of its employees who may come in contact with pupils have been convicted of a felony as defined in Education Code Sect 45125.1
- E. The entity must provide a list of names of employees who may come in contact with pupils.

More than limited contact as defined by Yucaipa-Calimesa Joint Unified School District:

In determining that a contract employee has more than limited contact with pupils, the YCJUSD considers the following circumstances:

- A. The contractor will be on school grounds for more than a limited length of time, or on numerous occasions.
- B. Pupils will be in proximity to the site where the contractor will be working.
- C. The contractor will be working by himself or herself, without other school employee's supervision.

Please check one:

- I certify that my employees or I will not have more than limited contact with pupils during terms of the agreement.
- I certify that my employees or I will have more than limited contact with pupils during terms of the agreement and that:
 - A. Each employee who may have contact with pupils has been fingerprinted;
 - B. The Department of Justice has provided a report on the criminal background of each employee;
 - C. No employee who may come in contact with pupils has been convicted of a crimes as defined in Education Code section 45122.1;
 - D. Attached is a list of the names of each employee who may come in contact with pupils;

Any changes to the above information will be forwarded to the District immediately.

ACCEPTED BY: _____ DATE: _____

CONDUCT RULES FOR CONTRACTORS

Each contractor and/or subcontractor, when performing work on Yucaipa-Calimesa Joint Unified School District property, shall adhere to the following rules of conduct:

1. Professional and courteous conduct is expected and will be displayed at all times.
2. Interaction with students, staff, and/or other visitors is prohibited with the exception of designated administrators.
3. The use of profanity and/or disparaging language will not be tolerated.
4. All contractors/subcontractors shall wear a means of identification on site when school is in session which must be approved by the District prior to commencement of work.
5. All contractors/subcontractors shall remain in the vicinity of his/her work and will not stray to other areas of the property not involved in the project, including student and staff restroom facilities.
6. Pursuant to Government Code, Section 8350 et. Seq., the Yucaipa-Calimesa Joint Unified School District is a drug free workplace. This policy is strictly enforced.
7. Alcoholic beverages are prohibited from being consumed or brought on any District property.
8. The use of any tobacco products on District property is strictly prohibited.
9. Any lewd, obscene or otherwise indecent acts, words, or behavior by any contractor/subcontractor shall not be tolerated.
10. All contractors/subcontractors shall conform to a dress code whereby:
 - 10.1 No clothing that contains violent, suggestive, derogatory, obscene, or racially biased material may be worn.
 - 10.2 Garments, accessories or personal grooming artifacts with slogans, graphics, or pictures promoting drugs, alcohol, tobacco, or any other controlled substances which are prohibited to minors will not be allowed.

Non compliance with any of the above stated rules of conduct by any contractor/subcontractor may be sufficient grounds for immediate removal from the job site and termination of the contract.

I acknowledge that I am aware of the above stated rules of conduct and hereby certify that all of my Company's employees, consultants, suppliers, and any subcontractors will adhere to these provisions.

Printed Name

Company Name

Authorized Signature

Date

DOCUMENT 00692
SITE CERTIFICATION

I certify that I have visited the sites of the proposed work and have fully acquainted myself with the conditions relating to construction and labor. I fully understand the facilities, difficulties, and restrictions attending the execution of the work under contract.

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

I fully indemnify YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT, the Architect, the Construction Manager, and all of their respective officers, agents, employees, and consultants from any damage, or omissions, related to conditions that could have been identified during my visit to each of the sites.

Executed on this _____ day of _____, 2017, at _____

Signature Authorized Representative

Typed Name of Authorized Representative

Company Name

Date

To: Yucaipa-Calimesa Joint Unified School:

We hereby guarantee the _____
_____ which we have installed in _____
_____ has been done in accordance with the drawings and specifications and that the work as installed will fulfill the requirements included in the specifications. The undersigned agrees to repair or replace any or all of such work, together with any other adjacent work which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of one (1) year, or longer if required in other sections of the contract documents or if a longer guarantee is provided by a manufacturer, from the date of acceptance of the above-mentioned structure by the Yucaipa-Calimesa Joint Unified School, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the undersigned's failure to comply with the above mentioned conditions within a reasonable period of time, as determined by the District, but not later than ten (10) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned, which will pay the costs and charges therefore upon demand.

(Proper Name)

By _____
(Signature of Subcontractor or General Contractor)

Countersigned

(Proper Name)

By _____
(Signature of General Contractor if for Subcontractor)

Representatives to be contacted for service:

Name: _____

Address: _____

Phone Number: _____

Date: _____

DISTRICT STANDARD GENERAL TERMS AND CONDITIONS

STANDARD DISTRICT TERMS AND CONDITIONS
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DOCUMENT 00700

STANDARD DISTRICT TERMS AND CONDITIONS

ARTICLE I: DEFINITIONS

- A. Acceptable, Acceptance or words of similar import are used, it shall be understood that the acceptance of the Construction Manager, Architect and/or the District is intended.
- B. Approval means written authorization by Construction Manager, Architect and/or District for specific applications within the Contract.
- C. Architect means the Architect employed by District to provide architecture and related services for the Project.
- D. Construction Manager means the Construction Manager employed by the District to provide construction management and related services for the Project.
- E. Contract, Contract Documents include all Contract Documents including: Notice to Contractors Calling for Bids, Instructions to Bidders, General Conditions and Supplementary General Conditions, Plans, Specifications, Addenda as issued, Bid Form, Bid Bond, Information Required of Bidders, Guarantee, Contractor's Certificate Regarding Worker's Compensation, DVBE Certification, Drug-Free Workplace Certification, Recycled Content Certification, Asbestos-Free Materials Certification, Contractor Fingerprinting, Requirement, Non-Collusive Bidding Declaration, Performance Bond, Payment Bond, Agreement, and Drawings.
- F. Day as used herein shall mean calendar day unless otherwise specifically designated.
- G. District and Contractor are those mentioned as such in the Contract. For convenience and brevity, these terms, as well as terms identifying other persons involved in the Contract are treated throughout the Contract Documents as if they are of singular number and masculine gender. The terms District and Owner are used interchangeably. The terms Contractor, Trade Contractor and Prime Contractor are all references to the other. These terms are used interchangeably in the course of the Contract Documents.
- H. District's Representative or Representative means any representative of the District authorized in writing to act on behalf of the District, including but not limited to the District's Architect, Inspector and/or Construction Manager.
- I. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the Construction Manager, Architect, and/or District is required.
- J. Includes and Including do not limit the work to the items following those words.
- K. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation,

selection, or similar import of the Construction Manager, Architect, and/or District is intended, unless stated otherwise.

- L. Locality in which the work is performed means the county in which the public work is done.
- M. Perform shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- N. Project is the undertaking planned by District and Contractor as provided in the Contract Documents.
- O. Provide shall include "provide complete in place," that is, "furnish, install, test and make ready for use."
- P. Required and words of similar meaning are used, it shall mean "as required to properly complete the work" as required by the Construction Manager, Architect and/or District, unless stated otherwise.
- Q. Subcontractor as used herein, includes those having a direct contract with Contractor and one who furnishes material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.
- R. Surety is the person, firm, or corporation, admitted as a California admitted surety, that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works. Surety must be an admitted surety insurer pursuant to Code of Civil Procedure section 995.120.
- S. The Work means the entire improvement proposed by the District to be constructed in whole, or in part, pursuant to the Contract Documents.
- T. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.
- U. Worker includes laborer, worker, or mechanic, and any supervisors thereto.

ARTICLE 2: SPECIFICATIONS AND/OR DRAWINGS

- A. Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to provide the District with complete and fully operational facilities as indicated and specified including all labor and materials, equipment, and transportation necessary for the proper execution of the Work. Materials or Work described in words which so applied have a well known technical or trade meaning shall be deemed to refer to such recognized standards.
- B. Interpretations. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, the Contractor shall promptly notify the Construction Manager in writing and any necessary changes shall be adjusted as provided in contracts for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:
 - 1. Special Conditions shall take precedence over General Conditions.
 - 2. Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event of conflict between the technical specifications and the General Conditions, the General Conditions shall take precedence.

3. In the event of: conflict between the technical specifications and the drawings, conflicts between drawings and drawings, conflicts between technical specifications and technical specifications, and conflicts between administrative specifications and technical specifications, the higher quality, higher quantity and the most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.
4. With regard to drawings:
 - a. Figures govern over scaled dimensions;
 - b. Larger scale drawings and details govern over smaller scale drawings;
 - c. Addenda/change order drawings govern over Contract drawings;
 - d. Contract drawings govern over standard drawings.
5. Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

Misunderstanding of drawings and specifications shall be clarified by the Architect, whose decisions shall be final, and which shall be communicated to the Contractor by the Construction Manager.

Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.

- C. Compliance with Applicable Laws. Drawings and Specifications are intended to comply with all laws, ordinances, codes, rules and regulations of authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, codes, rules and regulations shall be considered as part of said Contract Documents within the limits specified. The Contractor shall bear all expenses correcting Work done contrary to said laws, ordinances, codes, rules and regulations and if the Contractor performed same (1) without first consulting the Construction Manager for securing the Architect's instructions regarding said Work or (2) disregarded the Architect's instructions regarding said Work.
- D. Provisions of Law Deemed Inserted. Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all authorities and public utilities affecting the construction and operation of the Project site, all quasi-governmental and other regulations affecting the construction and operation of the Project site, and other special requirements, if any, designated in the Contract Documents. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall immediately notify the Construction Manager in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder.

- E. Addenda and Deferred Approvals. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 21, California Code of Regulations, addenda shall be approved by the DSA. The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 21, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

- F. Organization of Work. Organization of the specification into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.
- G. Copies Furnished. Contractor will be furnished five (5) copies of the drawings and specifications, free of charge. Additional copies may be obtained for the cost of reproduction.
- H. Ownership of Drawing. All drawings, specification, and copies thereof furnished by the District are property of the District. They are not to be used by Contractor or subcontractor on any other Work nor shall Contractor claim any right to such documents. With the exception of one (1) Contract set, all documents shall be returned to District on request at completion of Work.
- I. Detail Drawings and Instructions.
1. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify District and both the Construction Manager and the Architect of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its subcontractors, material or equipment suppliers, or any of their officers, agents and employees performs, permits, or causes the performance of any Work under the Contract Documents which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance. In no case shall any subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.
 2. Within ten (10) days of notification of any ambiguity, conflict or lack of information, the Construction Manager will provide the Architect's prepared, additional instructions by means of drawings or otherwise, necessary for proper execution of Work. All such drawings and instruments shall be consistent with Contract Documents, true developments thereof, and reasonably inferable there from.
 3. Work shall be executed in conformity therewith and Contractor shall do no Work without proper drawings and instructions.
 4. Any necessary additional details furnished by the Construction Manager and/or the Architect shall be considered as part of the Contract Documents.
 5. Should any details need to be more elaborate, in the opinion of the Contractor, than scale drawings and specifications warrant, written notice thereof shall be given to the Construction Manager within five (5) days of the receipt of same. In case no notice is given to the Construction Manager within five (5) days, it will be assumed the details are a reasonable development of the scale drawings.

In case notice is given, then the Construction Manager and the Architect, together, will consider the claim and if found justified, the Architect will either modify the drawings or the Construction Manager, in consultation with the Architect, shall recommend to District a change order for the extra Work involved within a reasonable amount of time.

6. The Contractor shall keep on the Work site one legible copy of all approved drawings, setting plans, schedules and specifications. Said documents shall be available to the Construction Manager, the Architect and to their representatives and all constituted authorities having jurisdiction.
7. All parts of the described and shown construction shall be of the best quality of their respective kinds and the Contractor is hereby advised to use all diligence to inform himself fully as to the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from the Construction Manager and/or the Architect such directions and/or drawings as may be necessary for the proper performance of the Work.
8. If it is found that the Contractor has varied from the drawings and/or specifications, in materials, quality, form or finish, or in the amount or value of the materials and labor used, the Construction Manager shall be at liberty at any time, before or after completion of the Work, to order such improper Work removed, remade and replaced, and all work distributed by these changes shall be made good at the Contractor's expense, or the Construction Manager, after consultation with the Architect, shall receive from the Contractor, for the District (or District shall deduct from amount due Contractor), a sum of money equivalent to the difference in value between the Work performed and that called for by the drawings and specifications, it being optional with the Construction Manager and the Architect to pursue either course.

**ARTICLE 3: TIME FOR COMPLETION;
LIQUIDATED DAMAGES; AND EXTENSION OF TIME**

- A. Time for Completion. District may give a notice to proceed within **three (3) months** of the award of the bid by District. Once Contractor has received the notice to proceed, Contractor shall complete the Work in the time specified in the Supplementary General Conditions.

In the event that District desires to postpone the giving of the notice to proceed beyond this two (2) month period, it is expressly understood that with reasonable notice to the Contractor, the giving of the date to proceed may be postponed by District. 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 giving of the notice to proceed.

If the Contractor believes that a postponement will cause a hardship to Contractor, Contractor may terminate the Contract with written notice to District within ten (10) days after receipt by Contractor of District's notice of postponement. It is further understood by 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. Should 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 responsible bidder.

- B. Liquidated Damages. If the Work is not completed within the time specified in the Supplementary General Conditions, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Agreement and Supplementary General Conditions for each calendar day of delay in completion. Contractor and his surety shall be liable for the amount thereof, pursuant to Government Code Section 53069.85.
- C. Extension of Time. Contractor shall not be charged liquidated damages because of any delays in completion of Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by District or acts of another contractor in performance of a Contract with District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe

weather or delays of subcontractors due to such causes. Contractor shall within three (3) calendar days of beginning of any such delay (unless District grants a further period of time prior to date of final settlement of the Contract) notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. The District's finding of fact thereon shall be final and conclusive on the parties hereto. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the Project should be requested by the Contractor as they occur and without delay. Regardless of the schedule submitted by Contractor, no delay claim shall be accepted by the District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.

- D. The Contractor will not be allowed a day-for-day weather delay when the Contract is bid to be constructed during a period that will normally include inclement weather. The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than twenty-two (22) calendar days will be allotted for in the Contractor's schedule for each winter weather period which is defined as the months of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the project's use. A day-for-day extension will only be allowed for those days in excess of the norm.

The Contractor is expected to Work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and weather protect the Work under construction. During wet periods, Contractor shall provide site/soil stabilization to allow access for his construction equipment. Stabilization of the site shall be achieved by lime stabilization, placement of aggregate base and fabric on roadways and Work/staging areas or other suitable means as approved by the Construction Manager and the Architect. Each Contractor and/or subcontractor performing excavation, trenching, etc. necessary for the completion of Work of that prime Contract shall seal all excavated areas each night to promote drainage and to decrease saturation.

If the weather is unusually severe (or conditions resulting therefrom) in excess of the NOAA data norm and prevents the Contractor from beginning at the usual starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five (5) hours, and the crew is dismissed as a result thereof, the Construction Manager may designate such time as unavoidable delay and grant one (1) calendar-day extension.

Whenever the Contractor foresees any delay in the prosecution of the controlling (critical path) Work activity, and in any event immediately upon the occurrence of the delay which he regards as an unavoidable delay, the Contractor shall notify the Construction Manager in writing of such delay and its cause, in order that the Construction Manager may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work are to be delayed thereby.

After the completion of any part of the whole or the Work, the Construction Manager, in calculating the amount due the Contractor, will assume that any and all delays which have occurred have been avoidable delays, except such delays as shall have been called to the attention of the Construction Manager at the time of their occurrence and found by the Construction Manager to have been unavoidable as substantiated by a change order. The Contractor will make no claims that any delay not called to the attention of the Construction Manager at the time of its occurrence has been an unavoidable delay.

In the event the Contractor requests an extension of Contract time for unavoidable delay, such request shall be submitted in accordance with Article 5 herein. When requesting time (i.e. extensions) for proposed change orders they must be submitted with the proposed change order with full justification.

If the Contractor fails to submit justification with the proposed change order Contractor will waive his right to a time extension at a later date. Such justification must be based on the official Contract schedule as updated at the time of occurrence of delay or execution of Work related to any changes to the scope of Work. The justification must include, but is not limited to, the following information:

1. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.
2. Logical ties to the official Contract schedule for the proposed changes and/or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and/or delay.

The Construction Manager, after receipt of such justification and supporting evidence, shall make its finding of fact. The Construction Manager's decision shall be final and conclusive and the Construction Manager will advise the Contractor in writing of such decision. If the Construction Manager finds that the Contractor is entitled to any extension of Contract time, the Construction Manager's determination as to the total number of days of extension shall be based upon the latest updated version of the official Contract schedule. Such data will be included in the next monthly updating of the schedule.

ARTICLE 4: PROGRESS SCHEDULE

- A. Estimated Schedule. Within seven (7) calendar days after receiving the Letter of Intent to Award, each Contractor shall prepare an estimated progress schedule and shall submit same to District's Construction Manager for approval. The schedule shall clearly identify all staffing, manpower loading and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The schedule shall include milestones, manpower loading, cost loading, and shall include the "critical path" of construction. Such schedule shall be submitted to District, Construction Manager and Architect for the District's approval. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project; the District's approval of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required for a completed Project within the specified Contract time period, notwithstanding the District's acceptance of the schedule. If the required schedule is not received by the time the first monthly pay period is complete, Contractor shall not be paid until the schedule is received, reviewed and accepted by the District.
- B. Schedule Contents. The schedule shall allow enough time for inclement weather. Such schedule shall indicate graphically the beginning and completion dates of all phases of construction, shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration to match the Contract time. Excess time may be picked up with "float time" if needed or desired by the Contractor. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims. See Specification Section 01320 for additional requirements.
- C. State Testing. In no event shall Contractor conduct any Work on the project on dates on which State Testing of Pupils is conducted. District will provide Contractor with a schedule of test dates concurrent with the District's issuance of notice of award of Contract, or as soon as such test dates are made available to the District.

ARTICLE 5: CHANGES AND EXTRA WORK

- A. District, without invalidating the Contract, and as provided by law, may order extra Work or make changes by altering, adding to, or deducting from Work, with the Contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted pursuant to Article 3 herein. In giving instructions, the Construction Manager and the Architect together, shall have authority to make minor changes in Work, not involving change in cost, and not inconsistent with purposes of the Project. Otherwise, except in an emergency endangering life or property, no extra Work or change shall be made unless pursuant to a written Change Order from District, and no claim for addition to Contract sum shall be valid unless so ordered. If the Contractor is delayed in completing the Work by reason of any change made pursuant to this Article, the time for completion of the Work shall be extended by Change Order for a period commensurate with such delay. The Contractor shall not be subject to any claim for liquidated damages for this period of time, and the Contractor shall have no claim for any other compensation for any such delay.
- B. The value of any such extra Work, change, or deduction shall be determined, at the discretion of District, in one (1) or more of the following ways:
 - 1. By acceptable lump sum proposal from Contractor
 - 2. By unit prices contained in Contractor's original bid and incorporated in Contract Documents or fixed by subsequent agreement between District and Contractor
 - 3. By cost of material and labor and percentage for overhead and profit. The following form shall be followed as applicable for additions and deductions to Contract:

EXTRA CREDIT

- a. Material (attached itemized quantity and unit cost plus sales tax)

- b. Labor (attach itemized hours and base rates from identified prevailing wage schedules)

- c. Commercial General Liability Insurance and Property Damage Insurance, Workers' Compensation Insurance, Social Security, and Unemployment Taxes, at actual and

verified cost.

d. Subtotal	_____	_____
e. Subcontractor's overhead and profit not to exceed 15% of item (d.)	_____	_____
f. Subtotal	_____	_____
g. General Contractor's Overhead and Profit, not to exceed 5% of item (f.) for work performed by subcontractor, or 15% if performed by Contractor	_____	_____
h. Subtotal	_____	_____
i. Bond Premium not to exceed 1% of item (h.)	_____	_____
j. Total	_____	_____

- C. If the Contractor should claim that any instruction request, specification, action, condition, omission, default, or other situation obligates the District to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Contract, or constitutes a waiver of any provision in the Contract, he shall notify the District, in writing, in accordance with Article 3, entitled "Time for Completion; Liquidated Damages and Extensions of Time" and Article 6 entitled "Claims for Damages and Dispute Resolution Procedures."
- D. Changes in plans or specifications shall be made by change orders approved by the Division of State Architect pursuant to applicable law.

**ARTICLE 6: CLAIMS FOR DAMAGES AND
DISPUTE RESOLUTION PROCEDURES**

A. The following shall be applicable to all Claims:

1. Definition of Claim: A "Claim" means a separate demand by the Contractor for (a) time extension, (b) payment 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 the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
2. Filing Claim is Not Basis To Discontinue Work: The Contractor shall promptly comply with Work under the Contract or Work requested by the District even though a written claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all claims that may arise during the performance of the Work covered by this contract.

3. Claim Notification: The Contractor shall, within seven (7) calendar days after the claim arises, submit notification to the District stating clearly the basis for the claim, and must comply with the procedure set forth in Public Contract Code Section 20104 et seq., if applicable, as set forth in this Article 6. If the notification is not submitted in compliance with these requirements, the Contractor shall be deemed to have waived all right to assert the claim, and the claim shall be denied. Claims submitted after the final payment date shall also be considered null and void by District.

The District shall review and render a decision regarding the Contractor's Claim Notification within ten (10) calendar days of receipt of Contractor's Claim Notification.

4. Formal Claim Submission: If the Contractor does not concur with the District's decision regarding the Claim Notification, the Contractor will issue a formal claim within fifteen (15) calendar days of receipt of District's decision and all detailed information in support of the formal claim within thirty (30) calendar days. All claims shall be submitted before the date of final payment. If the formal written claim is not submitted within fifteen (15) calendar days and detailed information within thirty (30) calendar days, the Contractor shall be deemed to have waived his right to assert the claim and the claim shall be denied. Contractor's failure to submit any detailed information which is in the possession of Contractor shall render such information inadmissible by Contractor at trial or arbitration.
5. Formal Claim Format: The Contractor shall provide all written detailed documentation which supports the claim, including but not limited to: arguments, justifications, cost, estimates, schedule analysis and detailed documentation. The format of the claim shall be as follows:
 - a. Cover letter.
 - b. Summary of factual basis of claim and amount of claim.
 - c. Summary of the basis of the claim, including the specific clause to section under the Contract under which the claim is made.
 - d. Documents relating to the claim, including:
 - i. Specifications.
 - ii. Drawings.
 - iii. Clarifications (RFI's).
 - iv. Other relevant information.
 - v. Analysis of claim merit.
 - vi. Analysis of claim cost.
 - vii. For claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path.
 - viii. Certification.
 - ix. Chronology of events and correspondence.
6. Certification: The Contractor (and subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury that:
 - a. That the Contractor has reviewed the claim and that such claim is made in good faith;
 - b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief.
 - c. The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.

- d. That the Contractor is familiar with Government Code Sections 12650 et seq. and Penal Code Section 72 and that false claims can lead to imprisonment.
- 7. Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
- 8. False Claims: If a false claim is submitted, it will be considered fraud, and the Contractor may be subject to criminal prosecution.
- 9. Mandatory Claim Procedure: The Contractor's claim will be denied if it fails to provide the written basis of the claim and certification as set forth herein.
- 10. District may Request Additional Information: Within thirty (30) calendar days of receipt of the formal claim and the detailed information from Contractor, the District may request in writing any additional documentation supporting the claim or documentation relating to defenses to the claim which the District may assert.
- 11. Notification Procedure: All written claims submitted by the Contractor to the District under this Article 6 shall be personally delivered, sent by a recognized overnight delivery service or mailed by certified or registered mail, return receipt requested, postage prepaid to the District's Associate Superintendent, Business Services.

B. Procedure for Claims \$375,000 and Under:

Notwithstanding Subsection A, above, any formal claim of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) and under shall be processed as follows in accordance with Public Contract Code Section 20104 et. seq.:

- 12. Claims less than \$50,000 For claims less than Fifty Thousand Dollars (\$50,000.00), the District shall respond in writing to any written claim within forty-five (45) calendar days of receipt of the claim, or may request, in writing, within thirty (30) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the District and the Contractor. The written response of the District to the claim, as further documented, shall be submitted to Contractor within fifteen (15) calendar days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.
- 13. Claims in Excess of \$50,000 For claims over Fifty Thousand Dollars (\$50,000.00), and less than or equal to Three Hundred Seventy-five Thousand Dollars (\$375,000.00), the District shall respond in writing to all written claims within sixty (60) calendar days of receipt of the claim, or may request, in writing, within thirty (30) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided by mutual agreement of the District and the Contractor. The written response of the District to the claim, as further documented, shall be submitted to the Contractor within thirty (30) calendar days after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.
- 14. Informal Meet and Confer Conference: If Contractor disputes the written response of the District, or the District fails to respond within the time prescribed, Contractor may so notify the

District, in writing, either within fifteen (15) calendar days of receipt of the District's response or within fifteen (15) calendar days of the failure of the District 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 District shall schedule a meet and confer conference within thirty (30) calendar days for settlement of the dispute.

15. Tort Claim: If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of the Title 1 of the California Government Code. For purposes of those provision, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his/her written claim until the time the claim is denied, including any period of time utilized by the meet and confer conference.

C. Procedures for Civil Actions to Resolve Disputed Claims:

16. Non-binding Mediation: Within sixty (60) calendar days, but no earlier than thirty (30) calendar days, following the filing of a responsive pleading, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation by both parties. The mediation process shall provide for the selection within fifteen (15) calendar days by both parties of a disinterested third person as mediation, shall be commenced within thirty (30) calendar days of the submittal, and shall be concluded within fifteen (15) calendar days from the commencement of the mediation unless a time requirement is extended upon a good cause shown to the court. If the parties fail to select a mediator within the fifteen (15) day period, any party may petition the court to appoint the mediator.
17. Judicial Arbitration: 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 California Code of Civil Procedure, notwithstanding Section 1141.11 of the code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subsection consistent with the rules pertaining to judicial arbitration. Arbitrators shall be experienced in construction law.
18. Appeals: In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of the Code of Civil Procedure), any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees, also pay the attorneys' fees on appeal of the other party.
19. Interest: In any suit filed pursuant to Public Contract Code Section 20104.4, the District 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 the court of law.

D. Procedure for Claims Over \$375,000:

Any claim of over Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) shall be processed as follows:

1. All appealed or unsettled claims, disputes or other matters involving more than Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) between District and Contractor arising out of or relating to the Contract Documents or the breach thereof, shall first be submitted to mediation under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them exercising any rights or remedies as either may otherwise have under the Contract Documents or by laws or regulations with respect to any dispute.

2. Notice of demand for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association with a copy to the Construction Manager and the Architect for information. Any demand for mediation of any appealed or unsettled claim, dispute or other matter that is required to be referred to the Construction Manager or Architect initially as provided for herein, shall be filed by the appealing party within ten (10) calendar days after the executive negotiation has been declared unsuccessful by the District or Contractor, and in all other cases within a reasonable time after the unsettled claim, dispute or other matter has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such unsettled claim, dispute or other matter would be barred by the applicable statute of limitations. Failure to demand mediation within said ten (10) day period will result in Construction Manager's or Architect's decision being final.
 3. If after the mediation, the matter remains in dispute, the matter shall be submitted to final and binding arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association.
- E. Rights and Remedies. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto and all of the rights and remedies available to District, Construction Manager and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.
- F. Arbitration Award. Pursuant to California Government Code Section 818, the Arbitrator shall have no jurisdiction to award punitive or exemplary damages.
- G. Attorney's Fees and Costs. In the event that any arbitration, action, suit or other proceeding is instituted to enforce any provision of this Contract, and/or to remedy, prevent, or obtain relief from a breach of this Contract, the prevailing party shall be entitled to recover all of its attorney's fees and costs incurred in each and every such arbitration, action, suit or other proceeding, including any and all appeals or petitions there from, except as may be provided to the contrary above. As used herein, attorney's fees shall be deemed to mean the full actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fees charged by the attorneys performing such services and shall not be limited to "reasonable attorney's fees" as defined by any statute or rule of court.

ARTICLE 7: DEDUCTION FOR UNCORRECTED WORK

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

ARTICLE 8: PROGRESS PAYMENTS

- A. Each month within thirty (30) days after receipt of an undisputed and properly submitted payment request, there shall be paid to Contractor at a sum equal to ninety percent (95%) of value of Work performed up to last day of previous month, less aggregate of previous payments. Monthly payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth (5th) day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall

release Contractor or any bondsman from such Work or from enforcing each and every provision of this Contract and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for Work performed so long as any lawful or proper direction concerning Work, or any portion thereof given by the District, shall remain uncomplished with.

1. The title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety, shall remain in the Contractor until incorporated in the Work of this Contract and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in at a manner satisfactory to the District or its authorized representative.
- B. The following is a summary of the provisions of Article 1.7 of Chapter 1 of Part 3 of Division 2 (commencing with Section 20104.50) of the Public Contract Code, regarding progress payments, and is subject to the actual provisions of that statute.
1. If District fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from Contractor, District shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
 2. Upon receipt of a payment request the District shall act in accordance with both of the following:
 - i. Each payment request shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
 - ii. Any payment request determined not to be a proper payment request suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing why the payment request is not proper.
 3. The number of days available to the District to make a payment without incurring interest pursuant to this Article shall be reduced by the number of days by which the District exceeds the seven (7) day return requirement set forth herein.
 4. For purposes of this Article, a "progress payment" includes all payments due the Contractor, except that portion of the final payment designated under this Contract as retention earnings.
 5. Refer to Specification Section 01019 "Contract Considerations" Application for Payment for requirements and procedures for submitting requests for payment.

ARTICLE 9: PAYMENTS WITHHELD

- A. Subject to Article 8 entitled "Progress Payments", and Article 10 entitled "Acceptance of Completion; Release of Retention," District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:
1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.
3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
4. Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
5. Damage to another Contractor.
6. Amounts which may be due the District for just claims against Contractor.
7. Failure of Contractor to keep the record ("as-built") drawings up to date.
8. Failure to provide update on construction schedule as required by Article 9 hereof. When the above grounds are removed, payment shall be made for amounts withheld because of them.
9. Site clean up.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

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

ARTICLE 10: ACCEPTANCE OF COMPLETION; RELEASE OF RETENTION

- A. District shall accept completion of the Contract and have the Notice of Completion recorded when the entire Work has been completed to the satisfaction of the District, except for minor corrective items, as distinguished from incomplete items.
- B. Pursuant to Public Contract Code Section 7107, within thirty-five (35) days after the date of completion, District shall release the retention being held by the District. In the event of a dispute between the District and Contractor, District may withhold from the final payment an amount not-to-exceed one hundred and fifty percent (150%) of the disputed amount. For purposes of this Article, "completion" means any of the following:
 1. The occupation, beneficial use, and enjoyment of a Work of improvement, excluding any operation only for testing, start-up, or commissioning, by the District, or its agents, accompanied by the cessation of labor on the Work of improvement.
 2. The acceptance by the District, or its agent, of the Work of improvement.
 3. After the commencement of a Work of improvement, a cessation of labor on the Work of improvement for a continuous period of one hundred (100) days or more, due to factors beyond the control of Contractor .
 4. After the commencement of a Work of improvement, a cessation of labor on the Work of improvement for a continuous period of thirty (30) days or more, if the District files for record a Notice of Cessation or a Notice of Completion.

In the event that retention payments are not made within the time periods required by this Article, the District shall be subject to a charge of two percent (2%) per month on the improperly withheld amount in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld pursuant to Public Contracts Code Section 7107, the prevailing party shall be entitled to attorneys' fees and costs.

If at the end of the thirty-five (35) day period, if there are items remaining to be corrected, the District may request the Contractor, in writing, to make immediate correction of said item; and if the Contractor fails to make such correction with ten (10) days of the date of the written notice, the District may make the correction and deduct the costs from the amount withheld therefore.

No certificate given or payments made under the Contract, except the final certificate or final payment, shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance of any defective Work or improper materials.

Contractor shall be required to execute a release of liens and claims pursuant to Civil Code section 3262 as a condition precedent to receipt of a progress payment.

ARTICLE II: PAYMENTS BY CONTRACTOR

A. Contractor shall pay:

1. For all transportation and utility services not later than the twentieth (20th) day of the calendar month following that in which such services are rendered.
2. For all materials, tools and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the twentieth (20th) day of the calendar month following that in which such materials, tools, and equipment are delivered at site of project and balance of cost thereof not later than the thirtieth (30th) day following completion of that part of Work in or on which such materials, tools, and equipment are incorporated or used; and
3. To each of his subcontractors, not later than the seventh (7th) day following each payment to Contractor, the respective amount allowed Contractor on account of Work performed by respective subcontractor to the extent of such subcontractor's interest therein.

ARTICLE 12: CONTRACTOR'S SUPERVISION

- A. Unless personally present on the premises where work is being done, Contractor shall keep on the work, during its progress, a competent full-time job (project) superintendent satisfactory to the District's Construction Manager. The job superintendent shall not be changed except with consent of the District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.
- B. Contractor shall give efficient supervision to work, using his best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to the Construction Manager of any error, inconsistency or omission which he may discover.
- C. The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by Contractors retained directly by the District, Contractor shall be responsible for the

coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 4. Specific duties of the Contractor shall be in accordance with Title 21 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements in the manner prescribed by Title 21, or any other reporting requirements that may otherwise be required by law.

- D. The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its subcontractors.
- E. If the Contractor's construction superintendent is found to be incompetent, uncooperative, disruptive, vindictive, argumentative, non-responsive, etc. to the District, Architect and/or the Construction Manager, the Contractor's superintendent shall be removed and replaced, with an acceptable superintendent, within seventy two (72) hours upon written notification by the District through the Construction Manager.

ARTICLE 13: DOCUMENTS ON WORK

- A. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations (Building Standards Administrative Code), Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the Contract, and any other laws, rules or regulations governing building standards for public school construction, which by this reference is a part of the Contract Documents, on job at all times. Said documents shall be kept in good order and available to both the Construction Manager and the Architect and their representatives. Contractor shall be acquainted with and comply with the provisions of said these laws, rules or regulations as they relate to this Project. (See particularly Duties of the Contractor, Titles 21 California Code of Regulations, Section 43.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project. (See particularly Titles 17, 19, 21 and 24.)
- B. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of the District.

ARTICLE 14: PROVISION OF UTILITIES

- A. All utilities, including but not limited to gas and telephone used on Work shall be provided and paid in accordance with the provisions of Article 11, herein. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the Work as specified in: Section 01500 "CONSTRUCTION FACILITIES". Upon completion of Work, Contractor shall remove all temporary distribution systems. Contractor shall only be required to pay for utilities until District accepts the project or takes occupancy thereof.
- B. If Contract is for addition to existing facility, Contractor may, with written permission of District, use District's existing utilities by making prearranged payments to District for utilities used by Contractor for construction.

ARTICLE 15: SANITARY FACILITIES

The Construction Manager shall coordinate the provision of a sanitary temporary toilet building for use by all workmen. The District shall provide sanitary temporary toilets, all toilets shall comply with local codes and ordinances. The building shall be maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the Construction Manager. Use of toilet facilities in the Work under construction shall not be permitted.

ARTICLE 16: PROTECTION OF WORK AND PROPERTY

- A. Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this Contract and shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the District. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and Contract Documents. Contractor shall take all necessary precautions for safety of employees on the Work site and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to premises where Work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of Work, all necessary safeguards, signs, barriers, light, and watchman for protection of workmen and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his organization on the Work site, whose duty shall be prevention of accidents. Name and position of person so designated shall be reported to the Construction Manager by Contractor.
- B. In an emergency affecting safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from either the Construction Manager or the District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury and he shall so act, without appeal, if so authorized or instructed by the Construction Manager or the District. Any compensation claimed by Contractor on account of emergency Work shall be determined by separate agreement.
- C. Contractor, at Contractor's expense, shall provide drainage, heat, covering, structures and enclosures as are necessary to protect all Work, materials, equipment, appliances and tools against damage by weather conditions.
- D. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereof, and repair any damage thereto caused by construction operations.
- E. Before the start of Work on the project site, The District shall provide temporary fencing with locked entrance gates to substantially enclose the construction site. Contractors shall be responsible to provide individual locks if desired. The District assumes no liability or responsibility for damage or loss suffered by any entity.
- F. Should the Contractor encounter material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) on the site which has not been rendered harmless, the Contractor shall immediately stop work in the affected area and notify the District of the condition orally and in writing within one day of discovery. Work in the affected area shall not be resumed except by written agreement of the District and Contractor if the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless. The Contractor shall not be required to perform without consent any work relating to asbestos or PCB.
- G. Barricades and fencing
1. The District shall enclose the working area with a substantial barricade, arrange Work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities and perform Work which may interfere with school activities either before or after school hours. (This subsection applies to construction on existing school sites.)
 2. The Contractor shall deliver materials to building area over route designated by the District
 3. When directed by District, the Contractor shall take preventive measures to eliminate objectionable dust and follow air quality regulations as appropriate.

4. The Contractor shall confine any apparatus, the storage of materials, and the operations of workers' to limits indicated by law, ordinances, permits, or directions of the Construction Manager and shall not unreasonably encumber premises with his materials, and enforce all instructions of Construction Manager regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on Work comply with all regulations while on construction site.
5. The Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer at no cost to the District.

ARTICLE 17: CLEAN UP

- A. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this Work. Contractor shall not leave debris under, in or about the premises. Upon completion of Work, each Bid Package Contractor shall thoroughly clean their respective portion and any adjacent portion of Work effected by construction of same, including but not limited to interior and exterior of building and/or the school site, in addition, clean interior and exterior of building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall also clean and polish all glass, plumbing fixtures, and finish hardware and similar surfaces and equipment. Upon completion of Work, Contractor shall completely remove barricades, planking and any and all temporary construction provided. In addition, Contractor shall patch, repair and/or replace all Work affected by the use and/or installation of temporary construction measures. The General Construction Bid Package 02 shall completely wash Building T, all new and/or existing adjacent building exteriors, asphalt, masonry and concrete surfaces affected by Work of this project, and provide final "white glove" clean up (see Scope of Work Section 01010) upon completion of all work of all Contractors and as directed and/or required by the Construction Manager.
- B. If the Contractor fails to clean up at the completion of the Work, the District may do so and the cost of such clean up shall be charged back to the Contractor.

ARTICLE 18: CORRECTION OF WORK BEFORE ACCEPTANCE

- A. Contractor shall promptly remove from premises all Work condemned by District, Architect or the Construction Manager as failing to conform to contract, whether incorporated or not. Contractor shall promptly replace and re-execute his own Work to comply with Contract Documents, without additional expense to District, and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
- B. If Contractor does not remove such condemned Work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days time thereafter, District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

ARTICLE 19: CONTRACT CLOSE-OUT

- A. Utility Connections. The building and/or buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

B. Record Drawings.

1. Contractor shall keep one (1) complete set of blue line prints of all drawings which form a part of the Contract, in good order on the job. They shall be used only for the purpose intended. Drawings shall be kept up to date as the Work progresses and shall be available at all times for inspection.
 2. The intent of this procedure is to obtain an exact "as built" record of the Work upon completion of the project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings:
 - a. Any Work not installed as indicated on drawings.
 - b. The exact location and elevations of all covered utilities, including valves, cleanouts, etc.
 3. Contractor is liable and responsible for inaccuracies in as-built drawings, even though they become evident at some future date.
 4. Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Construction Inspector's approval of the corrected prints and employ a competent draftsman to transfer the "as-built" information to a complete set of transparent sepias. When completed, Contractor shall have one complete set of Kronar negatives made from the corrected sepias and both sets shall be delivered to District.
 5. Contractor shall deliver to the Construction Manager five (5) complete sets of operating manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties.
- C. Maintenance Manuals. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals shall be submitted for review. All installation, operating, and maintenance information and drawings shall be bound in 8-1/2" x 11" binders, provide a table of contents in front, and all items shall be indexed with tabs. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to contact in case of emergencies. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.

D. Inspection Requirements

1. Before calling for final inspection, Contractor shall determine that the following Work has been performed:
 - a. General construction has been completed.
 - b. Mechanical and electrical Work complete, fixtures, in place, connected and ready for tryout and test.
 - c. Electrical circuits scheduled in panels and disconnect switches labeled.
 - d. Painting and special finish complete.
 - e. Door complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order.

- f. Tops and bottoms of doors sealed.
 - g. Floors waxed and polished as specified.
 - h. Broken glass replaced and glass cleaned.
 - i. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from site.
 - j. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.
 - k. Finished and decorative Work shall have marks, dirt and superfluous labels removed.
2. Final inspection will be made by the Construction Manager or district representative upon written notification from Contractor that Work has been completed. Contractor shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from Contractor that all items have been corrected, the Construction Manager and Architect will reinspect for final acceptance of the Project. Failure of Contractor to complete punch list items will necessitate further reinspection by the Construction Manager and the Architect. Costs of reinspection will be deducted from Contract amount.
 3. Furnish a letter to District stating that a responsible representative of District (give name and position) has been instructed in working characteristics of mechanical and electrical equipment.

ARTICLE 20: ACCESS TO WORK

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

ARTICLE 21: OCCUPANCY

District reserves the right to occupy before completion, and such occupancy shall not constitute final acceptance of any part of Work covered by this Contract except as provided for in Public Contract Code Section 7107.

ARTICLE 22: DISTRICT'S INSPECTOR

- A. One or more Inspectors employed by District in accordance with requirements of Title 21 of the California Code of Regulations may be assigned to the Work. The Inspector's duties are specifically defined in Section 42 of said Title 21.
- B. Inspector shall have access to all plant operations involving Work under this Contract and shall be provided reasonable advance notice of the time and place of operations which he desires to observe. Inspector shall be provided with all necessary samples of materials and Work for testing purposes.

All Work shall be under observation of said Inspector. Inspector shall have free access to any or all parts of Work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information respecting progress and manner of Work and character of materials. Inspection of Work shall not relieve Contractor from any obligation to fulfill this Contract. Inspector or District's representative shall have authority to stop or reject Work whenever provisions of Contract Documents are not being complied with and Contractor shall instruct his employees accordingly.

ARTICLE 23: INSPECTOR'S FIELD OFFICE

- A. Bid Package 01, General Construction, shall provide a temporary office for the use of Inspector at the site of not less than seventy-five (75) square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by the District or the District's Representative. Bid Package 01 to provide the Inspector's Field Office, the office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock clasp.
- B. A table satisfactory for study of plans, four drawer file cabinet, desk, and two chairs shall be provided by Bid Package 01. Bid Package 01 shall provide and pay for adequate electric lights, telephone service, (not a pay phone), fax machine and supplies, bottled water and adequate HVAC for the field office until authorized removal.

ARTICLE 24: CONSTRUCTION MANAGER AND ARCHITECT'S STATUS

- A. Both the Architect and the Construction Manager shall be the District's representatives during the construction period, and shall have the responsibilities and authorities to act on behalf of the District only to the extent identified in the Contract Documents, and generally as follows:
 - 1. The Architect is responsible for:
 - a. Interpreting the DSA approved plans and specifications, and providing any necessary amplification of the plans and specifications.
 - b. Observing the construction and, in the first instance, judging the Contractor's performance with respect to the quality standards for materials and work in place.
 - c. Accepting and approving decisions and clarifications, pertaining to the technical aspects of the Contract Documents.
 - 2. The Construction Manager is responsible for:
 - a. Serving as the Contractor's point of contact for management and administration of the Contract and coordination of interfaces with other Contractors and organizations participating in the same or adjacent projects, as well as those of the Architect and Inspector.
 - b. Implementing the established procedures for processing all required submissions and documentation.
 - c. Monitoring and reviewing the Contractor's safety program , personnel and equipment, scheduling and progress of the work, and, without assuming any of the Architect's legal responsibilities, the work of the Contractor for conformance with the Contract Documents.
- B. The Construction Manager shall have authority to direct stoppage of the work whenever such stoppage may be necessary in the Construction Manager's, the Architect's, or Inspector's reasonable opinion to insure the proper execution of the Contract.

- C. The District retains the authority to issue the ultimate decision in the event the Construction Manager and Architect cannot reach a consensus regarding any decisions, clarifications, instructions, directions, acceptances, or approvals required, issues, or made pursuant to the Contract Documents and in connection with the prosecution and progress of the Work.
- D. Contractor shall promptly notify the District in writing if either the Construction Manager or Architect fail within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the work.

ARTICLE 25: CONSTRUCTION MEETINGS

The District may conduct construction and progress meetings with the Construction Manager, Architect, Contractor and any other interested parties, as required by the District, to discuss such matters as procedures, progress and scheduling. The Construction Manager shall provide written notice to the Architect, Contractor and other interested parties at least three (3) days prior to the date of any such meeting in accordance with the notice provisions set forth in Article 61 herein. Attendance at such meetings shall be required by all noticed parties.

ARTICLE 26: PERFORMANCE/PAYMENT BONDS

- A. Per California Civil Code 3247, all Contractors with a contract amount in excess of \$25,000.00, shall furnish a surety bond in an amount equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Both the Payment and Performance Bonds must be executed by an admitted Surety, as defined in California Code of Civil Procedure Section 995.120. The Payment and Performance Bonds must be accompanied by the original or a certified copy of the unrevoked power of attorney or other appropriate instrument entitling or authorizing the person who executed the bond to do so. In addition, to the extent required by law, the Payment and Performance Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Bernardino that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California. Aforesaid bonds shall be in form set forth in these Contract Documents. Upon request of Contractor, the District will consider and accepting multiple sureties on such bonds.
- B. In addition, the Contractor shall obtain a performance bond indemnifying the District and the Contractor from all subcontractors providing goods and services in excess of \$100,000.00. Any subcontractor or vendor supplying material alone shall not be required to provide such bond. Contractor shall keep the performance bond in effect until expiration of the guarantee period referenced in Article 46 of these General Conditions. Contractor shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code Section 3184.

ARTICLE 27: SUBSTITUTION OF SECURITY

In accordance with Public Contract Code Section 22300, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the District, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. Any costs associated with the substitution of securities shall be borne by Contractor.

ARTICLE 28: CONTRACTOR'S INSURANCE; RESPONSIBILITY

- A. The Contractor shall not commence Work pursuant to the Contract Documents until it has obtained all insurance required as set forth below, which include, but are not limited to, General Commercial Liability Insurance, Automobile Liability Insurance, Workers' Compensation Insurance, and Employers Liability Insurance. Such policies shall be placed with a company or companies qualified to do business in the State of California and acceptable to the District, and pursuant to criteria set forth below. Further, Contractor shall have obtained all required insurance certificates required below concurrent with the execution of the Contract. Such insurance certificates shall have been delivered in duplicate and approved by District. In addition, the Contractor shall not allow any subcontractor to commence Work on its subcontract until such subcontractor has obtained the same insurance coverage required of the Contractor under the Contract Documents and until such insurance policies have been approved by the District.
- B. The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof. Where necessary to protect the Work or materials from damage, the Contractor shall at his expense provide suitable drainage and erect such temporary structures as are necessary to protect the Work or materials from damage. The suspension of the Work from a cause whatsoever shall not relieve the Contractor of his responsibility for the Work and materials herein specified.
1. Notwithstanding the above, in the event of damage, as a result of "Acts of God", as defined in Public Contract Code Section 7105, Contractor shall not be responsible for cost of repair or for restoring damage to the Work proximately caused by Acts of God in excess of five percent (5%) of the Contract amount, provided the Work damaged is built in accordance with the applicable building standard and the plans and specifications.
- C. Insurance Requirements for Contractors. Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries or damages to property which may arise from or in connection with the Work by the Contractor, his agents, representative's employees or subcontractors. The cost of such insurance shall be borne by the Contractor.
1. Worker's Compensation: Contractor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, as it may be amended from time to time, 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 he/she will comply with such provisions of that code, and he/she will comply with such provisions before commencing the performance of the Work of this Contract. The Contractor and all subcontractors shall insure (or be a qualified self-insured) pursuant to such provisions relating to workers' compensation insurance, all of their employees working on or about the construction site. The Contractor shall also provide employer's liability insurance in the amount set forth in Subsection 4 below. Such insurance shall be maintained during the life of this Contract. In case any class of employees engaged in Work under this contract, on or at the site of the project, is not protected under Workers' Compensation laws, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workmen. Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code.
 2. Commercial General Liability. Contractor shall provide and maintain commercial liability as follows:
 - a. Coverage for commercial general liability insurance shall be as broad as the following and in the amounts set forth in Subsection 4 below.

- i. Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
3. Automobile Liability Insurance. Contractor shall provide and maintain Automobile Liability Insurance as follows:
- a. Coverage for automobile liability insurance shall be at least as broad as the following and in the amounts set forth in Subsection 4 below.
 - i. Insurance Services Office Automobile Liability Coverage (Form CA 0001 (ed. 6/92) covering symbol 1 (any auto), including all owned, non-owned, and hired automobiles.

4. Minimum Policy Limits Required:

- a. The following insurance limits are required for this Contract:

	<u>Combined Single Limit</u>
Commercial General Liability	If Contractor's Contract (total bid price) is less than \$500,000; Insurance amount must be \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Contractor's Contract (total bid price) is at least \$500,000 but not more than \$2,000,000 the insurance coverage must be \$1,000,000 per occurrence for bodily injury, personal injury and property damage, plus an excess Umbrella Liability policy in the amount of \$1,000,000 covering the above named perils. If Contractor's Contract (total bid price) is more than \$2,000,000 the insurance coverage must be \$1,000,000 per occurrence for bodily injury personal injury and property damage, plus an excess umbrella Liability policy in the amount of \$4,000,000 covering the above perils.
Automobile Liability	\$1,000,000 for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence

5. Evidence Required. Prior to execution of the Contract, the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Accord Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insured's, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. Such evidence shall also include confirmation that coverage includes or has been modified to include the provisions required pursuant to Subsection 8, below.

Acceptance and approval of the insurance documents by the District does not relieve Contractor or subcontractors from liability under this hold harmless and responsibility clause. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages to persons or property resulting from his operations or the operations of any subcontractor under him. If Contractor fails to maintain such insurance, the Work must be terminated.

6. **Qualifying Insurers.** Insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the state. Such insurance carrier shall have not less than an “A” policyholder’s rating and a financial rating of not less than “Class VII” according to the latest Best Key Rating Guide unless otherwise approved by the District.

7. **Required Provisions.** The general liability and automobile policies are to contain, or be endorsed to contain the following provisions:
 - a. “Yucaipa-Calimesa Joint Unified School District, the Board and each member of the Board, its officers, employees, agents, Construction Manager, and authorized volunteers” **and Southern California Schools Risk Management** shall be named additional insured on all policies. This endorsement shall be provided on ISO Form CG 2010, CG 2033, or insurers equivalent for general liability coverage, as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operation of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, the Board and each member of the Board, its officers, employees, or authorized volunteers.
 - b. For any claims related to this project, the Contractor’s insurance shall be primary insurance as respects the District, the Board and each member of the Board, its officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, the Board and each member of the Board, its officers, employees, or authorized volunteers shall not contribute to it.
 - c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, the Board and each member of the Board, its officers, employees, or authorized volunteers.
 - d. The Contractor’s Insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
 - e. Said policies shall have a clause requiring that thirty (30) days’ (ten (10) days for nonpayment) written notice will be given District prior to cancellation or material alteration of the policy. Statements that the carrier “will endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates.

Such liability insurance shall indemnify the Contractor and his/her subcontractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her subcontractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

8. Subcontractors. In the event that the Contractor employs other contractors (subcontractors) as part of the Work covered by this Contract, it shall be the Contractor's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above.

ARTICLE 29: PERMITS AND LICENSES

Before the date of the commencement of the Work or before they are legally required to continue the Work without interruption, all permits, licenses, and certificates necessary for prosecution of work shall be secured by CONTRACTOR and paid for by DISTRICT, unless otherwise specified. The Contractor, acting in the name of the District shall obtain and pay, only where legally required, for all licenses and permits, inspections and inspection certificates, required to be obtained or made by any authority having jurisdiction over any part of the work included in the Contract. All such permits, licenses and certificates shall be delivered to the Architect through the Construction Manager before demand is made for the certificate of final payment. Contractor shall, and shall require subcontractors to, maintain Contractor's licenses current and in effect.

ARTICLE 30: SURVEYS

Surveys to determine locations of property lines and corners will be supplied by District. Surveys to determine locations of construction, grading and site Work, shall be provided by Contractor, if required.

ARTICLE 31: EXCISE TAXES

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

ARTICLE 32: PATENTS AND ROYALTIES

The Contractor shall indemnify, defend and hold harmless the District, its Board and each members of the Board, its officers, agents, Architect, Construction Manager, Project Inspector and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the Contract Documents.

ARTICLE 33: INDEMNITY

- A. The District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the work. The Contractor shall be responsible for any damage or injury to any person or property resulting from

defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work; provided, however, that the Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of the District, its Board members, directors, officers, employees, agents and authorized volunteers who are directly responsible to the District.

1. Contractor shall indemnify the District, Architect, the Construction Manager, and their Board members, directors, officers, employees, agents and authorized volunteers against and will hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm entity, corporation, political subdivision or other organization arising out of or in connection with the Work, operation or activities of Contractor, its agents, employees, subcontractors or invitees, provided for herein, whether or not there is concurrent passive or active negligence on the part of the District, the District's Representative, the Construction Manager, the Architect, or their Board members, directors, officers, employees, agents and authorized volunteers, but excluding such actions, claims, damages to persons or property penalties, obligations or liabilities arising from the sole established negligence, willful misconduct or active negligence of the District, the District's Representative, the Construction Manager, the Architect, or those who are directly responsible to them; and in connection therewith:
 - a. Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorney's fees incurred in connection therewith.
 - b. Contractor will promptly pay any judgment rendered against Contractor, the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations, or activities of Contractor hereunder and Contractor agrees to save and hold the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers harmless therefrom.
 - c. In the event the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the Work, or operation or activities of Contractor hereunder, Contractor agrees to pay to the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers any and all costs and expenses incurred by the District, the District's Representative, the Construction Manager, the Architect, and their Board members, directors, officers, employees, agents and authorized volunteers in such action or proceeding together with reasonable attorney's fees.
 - d. The District may retain, to the extent it deems necessary, the money due to the Contractor under and by virtue of the Contract Documents until disposition has been made of such actions or claims for damages as specified hereinabove.
- B. The Contractor shall require the following to be inserted in any agreement with a subcontractor or subcontractors: "The Subcontractors shall defend, indemnify, and hold harmless the District, the Construction Manager and the Architect, and their consultants, the Inspector of Record, the State of California, and their respective Board Members, agents, employees, and officers from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and costs, including

consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Subcontractors' use of the Project Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnities; or any act, omission, negligence, or willful misconduct of the Subcontractors, or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.”

1. In the event more than one (1) subcontractor is connected with an accident or occurrence covered by this indemnification, then all such subcontractors shall be jointly and severally responsible to each of the Indemnities for indemnification, and the ultimate responsibility among such indemnifying subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnity. The provisions of the Indemnity provided for herein shall not be construed to indemnify any Indemnity for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnity has by law or equity.
- C. Neither the District, the Construction Manager, Architect, nor any other board member, director, officer, employee, authorized assistant or agent of the District shall be personally responsible for any liability arising under the Contract.

ARTICLE 34: TESTS AND INSPECTIONS –

- A. If this Contract, District's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by authority other than District, Contractor shall inform Construction Manager of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District, the Construction Manager, Architect or Inspector shall be promptly made, and where practicable at source of supply. If any Work should be covered up without approval or consent of District, it must, if required by the District, the Construction Manager and/or the Architect, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with contract. Costs of tests of any materials found to be not in compliance with Contract shall be paid for by Contractor. Other costs for tests and inspections of materials shall be paid by District. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- B. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or District's representative, and not by Contractor.
- C. Contractor shall notify the Construction Manager a sufficient time in advance of manufacture of materials to be supplied by him under contract, which must by terms of Contract be tested in order that District may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in Work without prior approval of District and subsequent testing and inspection.

- D. Re-examination of questioned Work may be ordered by District and, if so ordered, Work must be uncovered by Contractor. If such Work is found in accordance with Contract Documents, District shall pay costs of re-examination and replacement. If such Work is not found to be in accordance with Contract Documents, Contractor shall pay such costs.

ARTICLE 35: MATERIALS

- A. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as notes and/or specified, and workmanship shall be of good quality.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work under this contract.
- D. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage, or under a conditional sale or other agreement by which an interest therein, or in any part thereof, is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claim, liens or charges. He further agrees that neither he nor any person, firm or corporation furnishing any materials or labor from any Work covered by the Contract shall have any right to lien upon premises or any improvement of appurtenances thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for Work when no formal contract is entered into for such material.
- E. Materials shall be stored on the premises in such manner so as not to interfere with the Work and so that no portion of the structure shall be overloaded.
- F. Materials or Work required or necessary to be tested shall be tested under supervision of, as directed by, and at such places as may be convenient to the District and/or the District's Representative. The required testing of all structural materials shall be done by an approved testing laboratory.

ARTICLE 36: WORKERS

- A. Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ on Work any unfit person or anyone not skilled in Work assigned to Contractor.
- B. Contractor shall remove from the Work site any person in the employ of the Contractor whom District or District's Representative may deem incompetent or unfit immediately upon written notification by the District through the Construction Manager and such worker shall not again participate in the Work and shall not again be employed on it except with written consent of District.

ARTICLE 37: WAGE RATES

- A. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public Work is to be performed for each craft, classification, or type of workmen needed to execute the Contract.
- B. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code Section 1773.1 apprenticeship or other training programs authorized by Labor Code Section 3093, and similar purposes when the term "per diem wages" is used herein.
- C. The Contractor shall pay each worker needed to execute the Work, travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
- D. Holiday and overtime Work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per them wages, unless otherwise specified.
- E. There shall be paid each worker of the Contractor or any of his subcontractors engaged in Work on the project not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractors and such workers.
- F. The Contractor shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code Section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for such Work or draft in which such worker is employed for any public Work done under the Contract by him or by any subcontractor under him. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- G. Copies of the determined prevailing wage rates are on file and available upon request at the District's office. Contractor shall post, at appropriate conspicuous points on the site of the project, a schedule showing all determined general prevailing wage rates.
- H. Any worker employed to perform Work on the project which is not covered by any classification available in the District office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with Work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.
- I. A certified copy of all payroll records shall be submitted to the Construction Manager no later than the tenth (10th) day of each month for the immediately preceding month. This submission shall be a condition precedent for payment to the Contractor. Failure to submit payroll records shall be grounds for withholding of payment to Contractor until such submission is made.

ARTICLE 38: RECORD OF WAGES PAID: INSPECTION

- A. Pursuant to Labor Code Section 1776, Contractor stipulates to the following:
 - 1. Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, Work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public under this contract. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.

2. The payroll records enumerated under subdivision (1), above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employees or his or her authorized representative on request.
 - b. A certified copy of all payroll records enumerated in subdivision (1), above, shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.
 - c. A certified copy of all payroll records enumerated in subdivision (1), above, shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
3. Contractor shall file a certified copy of the records enumerated in subdivision (1), above, with the entity that requested such records within ten (10) days after receipt of the written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.
5. Contractor shall inform the District of the location of the records enumerated under subdivision (1), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of Twenty-five Dollars (\$25.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.
7. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 39: HOURS OF WORK

- A. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's Work. The time of service of any worker employed at any time by the Contractor or by the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the

provisions herein above set forth, Work performed by employees of contractors in excess of eight (8) hours per day and forty (40) hours during any one week upon this public Work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

- B. Contractor shall pay to the District at a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to Work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- C. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed only with prior written permission and without additional expense to District. Normal working hours are 7 am to 7 pm, Monday through Saturday.

ARTICLE 40: APPRENTICES

- A. Contractor and subcontractor under it shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices.
- B. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

ARTICLE 41: DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

ARTICLE 42: FINGERPRINTING REQUIREMENTS

Unless exempted, Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. The Contractor shall also ensure that its subcontractors on the Project also comply with the applicable requirements of Sections 45125.1 and 45125.2. To this end, the Contractor and its subcontractors must provide for the completion of the certification form, which is provided in the Bid Forms, prior to any of their employees coming into contact with District pupils.

ARTICLE 43: CERTIFICATIONS/ASBESTOS

- A. Contractor shall, for all contracts involving state funds, submit the following Certifications: 1) "Drug-Free Workplace Certification;" 2) "Recycled Content Certification;" 3) "Asbestos-Free Materials Certification;" 4)"Disabled Veteran Business Enterprise Certification of Compliance;" and "Contractor

Fingerprinting Requirements.” Copies of these forms are included in the Contract documents and must be signed under the penalty of perjury and dated prior to commencing Work on this Project.

B. Contractor, further, is aware of the following:

1. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 - a. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - b. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 - c. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - d. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
2. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
3. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Contract, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its Architect, Construction Manager, Project Inspector and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.

ARTICLE 44: ASSIGNMENT OF CONTRACT

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof, including any claims, without prior written consent of District. Any assignment without the prior written consent of District shall void such assignment. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or materials supplied for performance of Work called for under this Contract in favor of all persons, firms or corporation rendering such service or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure and/or the Government Code.

ARTICLE 45: CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the District in order that proper steps may be taken to have the change reflected on the Contract.

ARTICLE 46: GUARANTEE

- A. In addition to any other guarantees provided elsewhere, Contractor shall, and hereby does, guarantee all Work for a period of one (1) year after date of acceptance of Work by District. Contractor shall repair or replace any or all such Work, together with any other Work, which may be displaced in so doing that may prove defective in workmanship and/or materials within a two (2) year period from date of completion as defined in Public Contract Code Section 7107 (c) without expense whatsoever to District; ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.
- B. In the event of failure of Contractor to comply with above mentioned conditions within one (1) week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at expense of Contractor who hereby agrees to pay costs and charges therefore immediately on demand.
- C. If, in the opinion of the District or District Representative, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District or District Representative will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article, proceed to make such correction or attention shall be charged against Contractor. Such action by the District or its Representative will not relieve the Contractor of the guarantee provided in this Article or elsewhere in this contract.
- D. This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee or warranty certificates upon completion of the Project.

ARTICLE 47: SUBCONTRACTING

- A. Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's Work. If Contractor shall subcontract any part of this contract, Contractor shall be as fully responsible to District for acts and omissions of his subcontractor and of persons either directly or indirectly employed by subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained in Contract Documents shall create any contractual relation between any subcontractor and District.
- B. District's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his obligations under this Contract and no such consent or approval shall be deemed to waive any provisions of this contract.
- C. Substitution or addition of subcontractors shall be permitted only as authorized in Public Contract Code Sections 4100 et seq.

ARTICLE 48: ASSIGNMENT OF ANTITRUST CLAIMS

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public work contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 49: SUBSTITUTIONS

- A. Whenever in specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacture, such specifications shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by words "or equal," and Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. Any material, process or article not exactly meeting the specifications in the documents in every respect shall be considered a substitution. If material, process or article offered by Contractor is not, in opinion of Architect, substantially equal or better in every respect to that specified, then Contractor shall furnish material, process or article specified. Burden of proof as to the equality of any material, process or article shall rest with Contractor.
- B. The Contractor shall submit any substitution requests together with all data required to substantiate that the substituted product or item is an "or equal" to the specified product or item substantiating data for substitution of any "or equal" item no later than thirty five (35) calendar days from the Notice to Proceed, Architect and District to complete review with seven (7) days of receipt. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted product is equivalent to the specified product or item in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the Contract Price. The substantiating data must also include information regarding the durability and life cycle cost of the substituted item, product or work. Failure to submit all the needed substantiating data, including the signed affidavit, to the Construction Manager in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Construction Manager and Architect are not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package initially.
- C. Time limitations in this Article must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor's failure to request the substitution of an alternative item at the times and manner set forth herein. Further, the Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.
- D. In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

ARTICLE 50: SEPARATE CONTRACTS

- A. District reserves the right to let other contracts in connection with this Work. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their Work and shall properly connect and coordinate his Work with theirs.
- B. If any part of Contractor's Work depends for proper execution or results upon Work of any other contractor, the Contractor shall inspect and promptly report to Construction Manager any defects in such Work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute his acceptance of other Contractor's Work as fit and proper for reception of Work, except as to defects which may develop in other contractor's Work after execution of his Work.
- C. To ensure proper execution of his subsequent Work, Contractor shall measure and inspect Work already in place and shall at once report to the Construction Manager any discrepancy between executed Work and Contract Documents. Contractor shall ascertain to his own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the District in prosecution of Project to the end that Contractor may perform this Contract in light of such other contracts. Nothing herein shall

be interpreted as granting to Contractor exclusive occupancy at the site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on Project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other contract or contracts, the District or the District's Representative shall decide which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. District shall not be responsible for any damages from award or performance or attempted performance of any other contract or contracts on the project, or caused by any decision or omission of the District or District's Representative respecting the order of precedence in performance of contracts.

ARTICLE 51: SHOP DRAWINGS

- A. Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his own work or in that of any other contractor, subcontractor, Construction Manager, Architect, other independent contractor or worker on the Project, seven (7) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the Contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Construction Manager. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- B. Contractor shall advise the District immediately, if Construction Manager and/or Architect have not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of Project and compliance with information given in the Contract Documents. Contractor shall make any corrections required by the Architect, and file with the Construction Manager seven (7) corrected copies each, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Construction Manager's attention to such deviations at time of submission and has secured the Architect's written approval. Architect's approval of such drawings and schedules also shall not, nor shall it relieve him from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Construction Manager and Architect's professional judgment to permit adequate review.

ARTICLE 52: COST BREAKDOWN AND PERIODICAL ESTIMATES

- A. Contractor shall furnish to Construction Manager, on forms approved by District:
 - 1. Within ten (10) days of award of contract, a detailed estimate giving complete breakdown of Contract Price: and,
 - 2. A periodic itemized estimate of Work done for purpose of making partial payments thereon.
 - 3. Within ten (10) days of request by District, a schedule of estimated monthly payments which shall be due him under the contract.
- B. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deduction from Contract price.

ARTICLE 53: LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out this Work and establishing grades for earthwork operations shall be furnished by the Contractor at his expense. Such Work shall be done by a qualified civil

engineer approved by the Architect. Any required "As-built" drawings of site development shall be prepared by the approved civil engineer.

ARTICLE 54: CUTTING AND PATCHING

- A. Contractor shall do all cutting, fitting, or patching of Work as required to make its several parts come together properly and fit it to receive or be received by Work of other contractors showing upon, or reasonable implied by, the drawings and specifications for the completed structure, and he shall make good after them as the Construction Manager may direct.
- B. All costs caused by defective or ill-timed Work shall be borne by party responsible therefor.
- C. Contractor shall not endanger any work by cutting, excavating or otherwise altering the Work and shall not cut or alter work of any other contractor save written consent of the District or the District's Representative.

ARTICLE 55: SOILS INVESTIGATION REPORT

- A. When soils investigation report obtained from test holes at the site is available, such report shall not be part of this contract. Any information obtained from such report, or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock, is approximately only, is not guaranteed, and does not form a part of the Contract.
- B. Contractor is required to make a visual examination of site and must make whatever tests Contractor deems appropriate to determine underground condition of soil. No claims for allowances or damages because of Contractor's negligence in acquainting himself or herself with the conditions of the site as described herein will be recognized.

ARTICLE 56: SAMPLES

- A. Contractor shall furnish for approval, within thirty-five (35) days after receiving the Letter of Intent to Award, unless specified otherwise, all samples as required in specifications together with catalogs and supporting data required by Architect, unless specified otherwise. This provision shall not authorize any extension of time for performance of this contract. Architect will check and approve such samples, within ten (10) working days from receipt of same, only for conformance with design concept of Work and for compliance with information given in Contract Documents. Work shall be in accordance with approved samples.
- B. Unless specified otherwise, sampling, preparation of samples and tests shall be in accordance with the latest standards of the American Society for Testing and Materials. Contractor shall bear the costs associated with testing any samples required under this Contract.
- C. Samples of materials and/or articles shall, upon demand, be submitted for tests or examinations and consideration before incorporation of same in Work is started. Contractor shall be solely responsible for delays due to samples not being submitted in time to allow for proper time to make tests. Acceptance or rejection will be expressed in writing. Materials furnished must be equal to approved samples in every respect. Samples which are of value after testing will remain the property of the Contractor.

ARTICLE 57: TRENCH EXCAVATION

- A. Trenches Five Feet or More in Depth. If the Contract Price exceeds \$25,000, the Contractor shall submit to the District's Construction Manager, for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the

hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL-OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

1. All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
2. Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

B. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the District's Construction Manager, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated.
3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

District or District's Representatives shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in the Contract.

In the event that a dispute arises between the District or District's Representative and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 58: REGIONAL NOTIFICATION CENTER

- A. Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by the Contractor.

- B. Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code Section 4216).
- C. Subsurface installation means any underground pipeline, conduit, duct, wire, or other structure operated or maintained in or across a public street or public right of way (Government Code Section 4216).

ARTICLE 59: UTILITIES - REMOVAL AND RESTORATION

- A. The District has endeavored to determine the existence of utilities at the site of the work from the records of the owners of known utilities in the vicinity of the work. The positions of these utilities as derived from such records are shown on the plans.
- B. No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify the District's Representative as to any utility discovered by him in a different position than shown on the plans or which is not shown on the plans.

- 1. Main or Trunkline Facilities

- a. Notwithstanding the above, pursuant to Section 4215 of the Government Code, as it may be amended from time to time, the District has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for bids, District shall assume the responsibility for their timely removal, relocation, or protection.
- b. The Contractor shall be compensated by the District for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing, relocating, protecting or temporarily maintaining such main or trunkline utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in the Project necessarily idled during such work. In this regard, Contractor will be required to do such work in accordance with Article 5 herein.
- c. Alternatively, District may make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, or temporarily maintain the utility, in accordance with Article 5 or District may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.
- d. The Contractor shall not be assessed a forfeiture for delay in completion of the Project when such delay is caused by the failure of the District or the owner of the utility to provide for the removal, relocation, protection or temporary maintenance of all such main or trunkline facilities not indicated with reasonable accuracy.
- e. Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.
- f. Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

- g. If the Contractor while performing the Contract discovers utility facilities not identified by the District in the Contract plans or specifications, he shall immediately notify the District and utility in writing.
- h. The owner of the public utility shall have the sole discretion to perform repairs or relocation work or hire the Contractor to do such repairs or relocation work at a reasonable price.

2. Other Utilities

- a. In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the work, the work on the utility shall be performed and paid for as follows:
 - i. When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the work to be done by the Contractor.
 - ii. When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the work to be done by the Contractor.
 - iii. When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, the District will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with Article 5 or will make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with Article 5 herein.
 - iv. No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.
 - v. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the work and for the purpose of maintaining and making repairs to their property.

ARTICLE 60: LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of Work as indicated and specified. If Contractor observes that drawings, if any, and specifications are at variance therewith, he shall promptly notify the Construction Manager in writing and any necessary changes shall be adjusted as provided in Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Construction Manager, he shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 USC §12101 et seq.). Installation of equipment and other devices shall be in compliance with ADA regulations.

ARTICLE 61: NOTICE AND SERVICE

- A. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by party giving such notice or by the duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:
 - 1. If notice is given to the District, by personal delivery thereof to the Construction Manager or the District or by depositing same in United States mails, enclosed in a sealed envelope addressed to the District and for attention of the Construction Manager, postage prepaid and registered;
 - 2. If notice is given to Contractor by personal delivery thereof to said Contractor or to his foreman at site of Project, or by depositing same in United States mails, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this Contract, postage prepaid and registered;
 - 3. If notice is given to surety or other person by personal delivery to such surety or other person or by depositing same in United States mails, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.
 - 4. If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

ARTICLE 62: DISTRICT'S RIGHT TO TERMINATE CONTRACT

- A. The District may, without prejudice to any other right or remedy, serve written notice upon Contractor and his surety of its intention to terminate this Contract if the Contractor (i) refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said work within such time, or (iii) if the Contractor should file a bankruptcy petition or be adjudged a bankrupt, or (iv) if he should make a general assignment for the benefit of his creditors, or (v) if a receiver should be appointed on account of his insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of the District or those of District's Representatives, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if he or his subcontractors should violate any of the provisions of this Contract. The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) calendar days after the service of such notice, such condition shall cease or such violation shall cease and

satisfactory arrangements for the correction thereof be made, this Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until work is finished. In event of any such termination, the District shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this Contract, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give the District written notice of its intention to take over and perform this Contract and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, the District may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and his surety shall be liable to the District for any excess cost or other damages occasioned the District thereby. If the District takes over the work as hereinabove provided, the District may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefor. If Surety does not perform the Project work itself, the Surety shall consult with the District regarding its planned choice of a contractor or contractors to complete the Project, and upon request by District, Surety shall provide District evidence of responsibility of Surety's proposed contractor or contractors. District shall be entitled to reject Surety's choice of contractor or contractors if District determines in its sole discretion that the contractor or contractors are nonresponsible. If Surety provides District written notice of its intention to take over and perform this Contract, within fifteen (15) calendar days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractor's are approved by District) shall provide District a detailed Progress Schedule as specified in Article 8 above. Contractor and his surety shall be liable to District for any excess cost or other damages occasioned the District as a result of Surety or Surety's contractor or contractors takeover and performance.

- B. If the unpaid balance of the Contract Price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to the District. Expense incurred by the District as herein provided, and damage incurred through Contractor's default, shall be certified by the Construction Manager.
- C. Should the District determine that environmental considerations mandate that the underlying Project should not go forward, District may notify Contractor that this Contract is terminated due to environmental considerations and District shall only be obligated to pay Contractor for the work that Contractor had performed at the time of notification of termination of this Contract for environmental considerations.
- D. Termination For Convenience. The District may terminate performance of the work called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.

The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the District, the extent of termination, and the effective Date of such termination.

After receipt of Notice of Termination, and except as directed by the District, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

3. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
6. Submit to the District, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the District no later than thirty (30) calendar days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed. In the event that the District exercises its right to terminate this Contract pursuant to this provision, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, all actual reimbursable costs incurred according to the provisions of this Contract.

- E. Termination of Contract by Contractor: The Contractor may terminate the Contract upon ten (10) calendar days written notice to the District, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume the Work or to terminate the Contract has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against the District except for Work performed as of the date of termination.
- F. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.
- G. Notwithstanding the foregoing provisions, this Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. Section 365 (Federal Bankruptcy Act).
- H. Should the Contractor, at any time during the process of construction, fail or refuse to furnish enough materials or workman to properly execute the work and maintain construction schedule unless prohibited from so doing through the action of the District, Architect, Construction Manager or other authorized official agencies, the District, after giving seventy-two (72) hours written notice to the Contractor, through the Construction Manager, may without prejudice to any other right he may have, proceed to furnish the materials and/or workmen necessary to proceed with or complete the work, and may deduct all cost thereof, together with reasonable expenses arising from such procedure, from any amounts then due or which may thereafter become due to the Contractor.

ARTICLE 63: PROHIBITED INTERESTS

No official of the District, and no District Representative who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any

subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, Construction Manager, Architect, attorney, engineer or Inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof.

ARTICLE 64: REMOVAL OF HAZARDOUS MATERIALS

- A. Since removal and/or abatement of Asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the Contract Documents, the District shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.
- B. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District's Inspector, and the Construction Manager in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the District and Contractor, or by arbitration under Article 6 hereof.

ARTICLE 65: COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A. All Contractors shall comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Run off Associated with Construction Activity (the "Permit") for all construction activity which results in the disturbance of in excess of five acres of total land area or which is part of a larger common area of development or sale. District shall be responsible for filing the Notice of Intent and for obtaining the Permit. A copy of the permit and supporting rules and orders by the State Water Resources Control Board is on file with the District. District shall provide a draft of the Storm Water Pollution Prevention Program (SWPPP) for the Project to Contractor at least two weeks prior to the opening of bids. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Contract. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- B. Contractor shall provide copies of all reports and monitoring information to the District's Construction Manager.
- C. All Contractors shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Permit is in violation of federal and state law. All Contractors hereby agree to indemnify and hold harmless District, its Board members, officers, agents, employees, authorized volunteers and District's Construction Manager from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or

authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with Article 6 hereof, caused by Contractor's failure to comply with Permit.

ARTICLE 66: COMPLIANCE WITH DTSC GUIDELINES-IMPORTED SOILS

If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code and CCR, Title 22, Division 4, Chapter 30, Articles 9 and 10. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with applicable Regional Water Quality Control Board regulation, and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

ARTICLE 67: NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

ARTICLE 68: PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

ARTICLE 69: NON-DISCRIMINATION

Pursuant to the provisions of Labor Code Section 1735, Contractor and its subcontractor shall not unlawfully discriminate in the employment of persons on this project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, and sex.

ARTICLE 70: INTEGRATION

- A. Oral Modifications Ineffective. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, except by a waiver or modification thereof in writing and signed by the authorized representative of the District and the Contractor.
- B. Contract Documents Represent Entire Agreement. The Contract Documents represent the entire understanding of the District and Contractor as to those matters contained therein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered by the Contract Documents.

ARTICLE 71: MISCELLANEOUS

These Contract Documents shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of these Contract Documents, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California. Except as otherwise provided in these Contract Documents, in the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT

BID FORM

TO: Yucaipa-Calimesa Joint Unified School District, acting by and through its Governing Board, herein called "District."

Pursuant to and in compliance with your Notice to Contractors Calling for Bids and other documents relating thereto, the undersigned bidder, having thoroughly examined and familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, and with the drawings, plans, specifications and other Contract Documents hereby proposes and agrees to perform within the time stipulated, the contract, including all of its component parts, and everything required to be performed, including its acceptance by the District, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with the construction of the Project described below, all in strict conformance with the drawings and other contract documents on file at the offices of said District for amounts set forth herein.

**RFP NO. 6 1617 WAN DIGITAL CIRCUIT
TRANSMISSION SERVICES**

(Name and Address of Bidder)

ADDENDA

The undersigned has thoroughly examined any and all Addenda (if any) issued during the bid period and is thoroughly familiar with all contents thereof and acknowledges receipt of the

following Addenda: (Bidder to list all addenda)

Addendum No. _____
Addendum No. _____
Addendum No. _____

Date Received _____
Date Received _____
Date Received _____

PRICING PER THE ATTACHED SERVICE PROVIDER PRICING RESPONSE FORM.

TIME FOR COMPLETION

District may give a Notice to Proceed within three (3) months of the award of the bid by District; after all contract documents have been received pending board approval. Once Contractor has received the Notice to Proceed, Contractor shall complete the work as the time specified in the Supplementary General Conditions. District anticipates the Notice to Proceed be given September 2016, pending board approval. .

It is understood that the District reserves the right to reject any or all bids and/or waive any irregularities or informalities in this bid or in the bid process. Contractor understands that it may not withdraw this bid for a period of ninety (90) days after the date set for the opening bids.

Attached is bid security in the amount of not less than ten percent (10%) of the bid: (in words) _____ (\$_____)

Bid bond Certified Check Cashier's Check Cash.
(circle one)

The required list of designated subcontractors, complete with DIR Registration # is attached hereto.

It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the District a contract in the form attached hereto in accordance with the bid as accepted. The undersigned will also furnish and deliver to the District if necessary for Public Works the Performance Bond, Payment Bond, however certificates of insurance as specified, will be required. The work under the contract shall be commenced by the undersigned bidder, if awarded the contract, on the date to be stated in the District's Notice to the Contractor to Proceed, and shall be completed by the Contractor in the time specified in the District.

Notice of Intent to Award Contract or other correspondence should be addressed to the undersigned at the address stated below.

The names of all persons interested in the foregoing proposal as principals are as follows:

Name of Bidder

Type of Organization

Signed By Print Name

Title of Signer

Address of Bidder

Telephone Number Fax Number

E mail address: _____

(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last names in full.)

The undersigned bidder shall be licensed in accordance with the act providing for registration of contractors and documented as follows:

Bidder's California Contractor's License Number is: _____

License expiration date is: _____

License in the Name of: _____

Type of License: _____

DIR Registration No. _____

If the bidder is a joint venture, each member of the joint venture must include the above information.

Pursuant to Section 7103.5 of the Public Contract Code, submitting a bid to the District, the bidder offers and agrees that if the bid is accepted, it will assign to District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing bond tenders final payment to the

bidder.

Proper Name of Bidder

Address

Signature of Bidder

Date

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

Proper Name of Bidder _____

By _____

Signature of Bidder _____

Business Address _____

Place of Residence _____

Telephone: _____

Fax: _____

Note: If bidder is a corporation or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, the bidder'