

GENERAL CONDITIONS

The following is part of and attachment to the Capistrano Unified School District "Field Services Contract".

1. **EQUIPMENT AND LABOR**: Contractor shall furnish all labor, materials and equipment necessary to complete the project in accordance with the approved plan and/or specifications. Where practical, "Standard Specifications for Public Works Construction" will apply.
2. **DEFAULT BY CONTRACTOR**: Failure to comply with any of the terms and/or conditions of this contract shall constitute default by the Contractor.
3. **FORCE MAJEURE CLAUSE**: Parties to the contract shall be excused from performance thereunder during the time and to the extent that they were prevented from obtaining or performing by act of "God, fire, strike, loss" or shortage of transportation facilities, lockout, or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
4. **PROVISIONS REQUIRED BY LAW**: Each and every provision of law and clause required to be inserted in the 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.
5. **SUBCONTRACTORS**: Subcontractors, if any, engaged by the Contractor shall be subject to the approval of the District, Contractor shall be held responsible for all operations of the subcontractors and shall require them to maintain adequate California Worker's Compensation and appropriate liability insurance.
6. **SENATE BILL 854**: Contractor and all subcontractors, if any, shall comply with all applicable provisions of Senate Bill 854 (Stats. 2014, Cir. 28) effective June 20, 2014.
7. **PREVAILING WAGE RATES**: Contractor and subcontractor shall adhere to the prevailing wage rate, and all applicable determinations made by the Director of Industrial Relations pursuant to California Labor Code.
8. **APPRENTICEABLE OCCUPATIONS**: Contractor shall be responsible for compliance with Labor Code for all apprenticeship occupations.
9. **PAYROLL RECORDS**: Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by Contractor, in connection with the public work.
10. **COMPLIANCE WITH SAFETY REGULATIONS**: It shall be the responsibility of the Contractor to perform all activities incident to this project in a manner consistent with applicable safety standards and to insure that all completed and in process work satisfies safety standards. Contractor is also responsible for obtaining District's rules and regulations pertaining to safety and security, including driving on school grounds, particularly when children are present.
11. **PROTECTION OF WORK AND PROPERTY**: Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. In an emergency affecting life and safety of life, work of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act to prevent such threatened loss or injury.
12. **ASBESTOS**: Contractor shall not use or allow any subcontractor to use any materials containing asbestos.

13. **HAZARDOUS MATERIAL AND MATERIAL SAFETY DATA SHEETS:** In the event the Contractor encounters (during the scope of work as specified by individual contract or specifications), material believed to be asbestos, polychlorinated biphenyl (PCB), or any other identified or non-identified potentially hazardous material (which has not been rendered harmless and is labeled as such), Contractor shall immediately stop work in the area affected and report the condition to the District.

14. **HOLD HARMLESS:** Contractor agrees to and shall defend, indemnify and hold harmless the District, its Governing Board, officers, agents, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, furnishing or use of any copyrighted or uncopyrighted matters or patented invention, contractual liability, and damage to property sustained or claimed to have been sustained arising out of activities/services provided by Contractor or its subcontractors, whether authorized by this Agreement or not. Contractor further agrees to waive all rights of subrogation against the District. The provisions of this article do not apply to any damage or losses caused solely by the gross negligence or willful misconduct of District or any of its agents or employees.

15. **INSURANCE:**

A. Insurance Requirements.

Before the commencement of the work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California with a financial rating of at least an A-VIII status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's work under the Contract and for which the Contractor may be legally liable, whether such work are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any required insurance shall not contain any exclusion that applies to the type of work performed by the Contractor under the Contract Documents:

- (1) Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
- (2) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- (3) Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- (4) Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the work;
- (5) Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors;
- (6) Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating (XCU); and
- (7) Claims involving sudden or accidental discharge of contaminants or pollutants.

B. Specific Insurance Requirements. Contractor shall take out and maintain and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain:

- (1) Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:
 - (a) Per occurrence (combined single limit) \$1,000,000.00
 - (b) Project Specific Aggregate (for this project only) \$1,000,000.00
 - (c) Products and Completed Operations (aggregate) \$1,000,000.00
 - (d) Personal and Advertising Injury Limit \$1,000,000.00
- (2) Insurance Covering Special Hazards

The following special hazards shall be covered by riders or riders to above mentioned public liability

insurance or property damage insurance policy or policies of insurance, in amounts as follows:

- (a) Automotive and truck where operated in amounts \$1,000,000.00
 - (b) Material Hoist where used in amounts \$1,000,000.00
 - (c) Explosion, Collapse and Underground (XCU) \$1,000,000.00
 - (d) Hazardous materials \$1,000,000.00
- (3) In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars (\$2,000,000.00).

C. Subcontractor Insurance Requirements. The Contractor shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under this Agreement in like amounts. A “claims made” or modified “occurrence” policy shall not satisfy the requirements of this section without prior written approval of the District.

D. Additional Insured Endorsement Requirements. The Contractor shall name, on any policy of insurance required under these articles, the District, Construction Manager (if any), Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to Article 18.A must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer’s liability shall not be reduced by the existence of such other insurance.

E. Workers’ Compensation Insurance. During the term of this Contract, the Contractor shall provide workers’ compensation insurance for all of the Contractor’s employees engaged in work under this Contract on or at the Site of the Project and, in case any of the Contractor’s work is subcontracted, the Contractor shall require the Subcontractor to provide workers’ compensation insurance for all the Subcontractor’s employees engaged in work under the subcontract. Any class of employee or employees not covered by a Subcontractor’s insurance shall be covered by the Contractor’s insurance. In case any class of employees engaged in work under this Contract on or at the Site of the Project is not protected under the Workers’ Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance as required under Article 18.J and in compliance with Labor Code section 3700. Workers’ compensation limits as required by the Labor Code, but not less than \$1,000,000 and employers’ liability limits of \$1,000,000 per accident for bodily injury or disease.

F. Builder’s Risk/ “All Risk” Insurance. The Contractor, during the progress of the work and until final acceptance of the work by District upon completion of the entire Contract, shall maintain Builder’s Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect’s and engineering services and expenses required as a result of any insured loss upon the work and Project which is the subject of the Contract Documents, including completed work and work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the work due to the perils covered by the “Builder’s Risk/All Risk” Insurance, as well as any other hazard which might result in damage to the work, is that of the Contractor and the Surety, and no Claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory

performance of the Contract by the Contractor.

G. **Fire Insurance.** Before the commencement of the work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the work is accepted by the District. This requirement may be waived upon confirmation by the District that such coverage is provided under the Builder's Risk Insurance being provided.

H. **Automobile Liability.** The District, Architect and Construction Manager (if any), Inspectors, their directors, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Such insurance coverage shall be primary and non-contributory insurance as respects the District, Architect, Construction Manager (if any), Project Inspector, their directors, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, Architect, Construction Manager (if any), Project Inspector, their directors, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it. The insurer shall agree to waive all rights of subrogation against the District, Architect, Construction Manager (if any), Project Inspector, their directors, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy that arise from work performed by the Contractor. Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto) is required. Comprehensive Automobile Liability insurance is to include all autos, owned, non-owned, and hired, with limits of \$1,000,000 per accident for bodily injury and property damage.

I. **Other Insurance.** The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

J. **Proof of Insurance.** The Contractor shall not commence work nor shall it allow any Subcontractor to commence work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:

(1) Certificates and insurance policies shall include the following clause:

"This policy and any coverage shall not be suspended, voided, non-renewed, canceled, or reduced in required limits of liability or amounts of insurance or coverage until notice has been mailed via certified mail to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."

(2) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

(3) Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.

(4) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the District.

K. **Compliance.** In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.

L. **Waiver of Subrogation.** Contractor waives (to the extent permitted by law) any right to recover

against the District for damages to the work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this Section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

16. WORKERS:

A. Contractor shall at all times enforce strict discipline and good order among Contractor's employees. Contractor and subcontractor shall not employ any person or anyone not skilled (or unfit, unqualified), in assigned work.

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

17. FINGERPRINTS: Contractor shall comply with the fingerprinting and criminal background investigation requirements of the California Education Code. Contractor shall comply with all the California Department of Justice fingerprinting requirements.

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

19. CONTRACTOR NOT OFFICER, EMPLOYEE OR AGENT OF DISTRICT: While engaged in carrying out the terms and conditions of the Contract, Contractor is an independent contractor and not an officer, employee or agent of District, by direction or inference.

20. PERMITS AND LICENSES: Contractor shall be responsible for acquiring all necessary permits and shall secure and maintain in force such licenses and permits as required by law in connection with the project, including, but not limited to, registration required under SB854.

21. ACCESS TO WORK: District representatives shall at all time have access to work, wherever it is, in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

22. OCCUPANCY: District reserves the right to occupy buildings or facilities at any time before contract completion. Such occupancy shall not constitute final acceptance of any part of work covered by this contract nor shall such occupancy extend the specified date for completion.

23. CHANGES: No changes or alterations to this contract shall be made without specific prior written approval by District.

24. ASSIGNMENT: No assignment of this Contract shall be made without the prior written approval of District.

25. WARRANTY: Contractor will be required to warranty all work and equipment supplied in the contract for a minimum one year period from date of final acceptance.

26. BRAND OR TRADE NAMES: Attention of the Contractor is directed to the Government Code, which must be complied with as to brand or trade name products. Whenever in the specifications brand or trade name products are specified in writing, the words 'or approved equal' are to be assumed included. Exact compliance with specified brand or trade name products is required unless the District issues a written amendment. All requests to substitute must be in writing directed to the District's applicable representative. Contractor must provide for District's approval, the brand name, model number (including drawings and specifications) or other relative

information on any proposed product or equipment to be supplied by the Contractor.

27. **PAYMENT**: Payment for work will be made in a lump sum upon acceptable completion (unless specified otherwise by agreement in writing or under special conditions in writing) and approval by the District.
28. **ANTI-DISCRIMINATION**: It is the policy of the Capistrano Unified School District Board of Trustees that in connection with any and all work and/or services performed under Public Works and Construction contracts, there will be no discrimination against any employee, company or individual or group of individuals, because of race, color, ancestry, sex, age, national origin, or religious belief. Therefore, the Contractor agrees to comply with applicable Federal and California laws including, but not limited to, California Fair Employment Practice Act, and/or Labor Code, or any code where anti-discrimination language occurs. In addition, Contractor agrees to require like compliance by all subcontractors.
29. **CLEAN UP**: Debris shall be regularly removed from the premises. The job site shall be free of any and all debris at all times when work is not actually being performed. Upon completion, all debris and containers shall be removed and the work site left clean.