

**Yuba Gardens Intermediate School**  
**Presentation to the Board of Trustees**

Karl Ylet, Principal

Gary Rogers, Assistant Principal

2/11/14

The Warrior Pride program has become a major part of the school culture at Yuba Gardens. Warrior Pride was designed to create a new school climate and culture at Yuba Gardens by encouraging and recognizing the achievements and contributions of students, staff, and community members.

Accelerated Reading was implemented at Yuba Gardens this school year. Many of our students choose not to read because they do not read as well as their peers, they are afraid that they will be made fun of, they do not want to fail the test, they are tired of feeling stupid, they feel that they are too far behind to ever catch up, or they are frustrated at always getting lost while reading or forgetting what they have read. The staff at Yuba Gardens believes that it is our responsibility to get our students to read. Reading will improve our student's concentration and vocabulary. Children who read do better at school.

ASES is a success at Yuba Gardens. Many of our students stay afterschool and participate in tutoring or the enrichment classes that are offered. Students are enjoying cooking, dancing, engineering, AR clubs, and many other fun activities after school.

Our teachers are working diligently to implement Common Core State Standards. Early release Fridays are used to work on curricular issues, share teaching strategies, and to participate in professional development.

The PBIS program at Yuba Gardens has helped us to decrease discipline issues. We now have a very structured discipline process that is reinforced during our advisory period each week. Our suspension days are the lowest they have been in the past five years. Expulsions are also the lowest they have been within the past five years.

We continue to try to improve our parental involvement. Our Holiday Dinner evening was a great success with more than 300 parents and students enjoying the holiday dinner and the holiday entertainment.

The staff at Yuba Gardens continues to work diligently to help students be academically successful and become successful individuals.

**MEMORANDUM OF UNDERSTANDING BETWEEN  
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT AND  
SACRAMENTO COUNTY OFFICE OF EDUCATION**

**1. PARTIES**

- a. This Memorandum of Understanding (MOU) is entered into between the Marysville Joint Unified School District (MJUSD) and Sacramento County Office of Education (SCOE), jointly referred to as Parties.

**2. BACKGROUND**

- a. SCOE operates the Capital Metro Region AVID (Advancement Via Individual Determination) program, a college-readiness program that is designed to increase the number of students who enroll and persist in postsecondary education. The goal of AVID is to educate the "whole student." This is achieved by unifying six important elements of education: students, curriculum, faculty, tutors, parents, and community.
- b. MJUSD wishes to receive training from SCOE on AVID strategies to support the district's implementation of the Common Core State Standards.

**3. OPERATIONAL AGREEMENT**

- a. SCOE agrees to do the following:
  - i. Provide one 2-day session of training for secondary (departmentalized middle and high school) teachers on the AVID strategies in Marysville at a location to be determined by MJUSD. Minimum aggregate registration for the session is 20 teachers. Maximum ratio of participants to presenter(s) shall be 60:1. The session of training comprises two successive days with a total of 12 hours of instruction (excluding meal times). The dates of the training shall be March 11-12, 2014 unless otherwise agreed to by the parties:
  - ii. Provide all materials necessary for the training.
  - iii. Provide certificates of completion for all participants who complete the 12-hour session.
  - iv. Be responsible for all travel, lodging, and meal expenses for trainers.
- b. MJUSD agrees to do the following:
  - i. Register a minimum of 20 teachers to attend the full training session. Participation is limited to departmentalized middle and high school certificated staff.
  - ii. Provide a suitable venue for the sessions with technology and projection capabilities.
  - iii. Provide SCOE by February 24, 2014 with a definitive list of session participants in order to guarantee timely ordering and delivery of adequate workshop text materials.
  - iv. Manage the registration process and provide SCOE with copies of completed sign-in sheets listing participant names, content areas, school site, and district.

- v. Provide food for program participants.

#### **4. TERM**

- a. This MOU is entered into and effective from the latter of the date of execution of the MOU or January 28, 2014 through December 15, 2014. It may continue thereafter with written agreement of the parties. Either party may terminate the agreement by providing 15 days written notice to the other party.

#### **5. FINANCIAL**

- a. MJUSD shall pay SCOE \$375/per MJUSD registered participant. SCOE will invoice MJUSD for the number of participants the district registers for the training session within 15 days after the completion of the session. MJUSD will submit payment to SCOE within 30 days of receipt of the invoice.

#### **6. MODIFICATION**

- a. This MOU constitutes the entire agreement and understanding of the Parties. All prior understandings, terms or conditions are deemed merged into this MOU. Any changes to this MOU must be agreed to in writing by all Parties.

#### **7. INDEMNIFICATION**

- a. All Parties agree to defend, indemnify, and hold harmless the other Parties (including their directors, agents, officers and employees), from any claim, action, or proceeding arising from any actual or alleged acts or omissions of the indemnifying party, its director, agents, officers, or employees arising from the indemnifying party's duties and obligations described in this agreement or imposed by law. The Parties intend that principles of comparative fault shall apply to this agreement if applicable.

#### **8. INSURANCE**

- a. Both Parties shall maintain during the entire term of this agreement and any extension or modification thereof, liability insurance, including coverage of owned and non-owned vehicles used in relation to the performance of service(s) under this MOU, of at least one million dollars (\$1,000,000.00) for each person; and one million dollars (\$1,000,000.00) for all accidents or occurrences and for all damages arising out of death, bodily injury, sickness or disease from any one accident or occurrence; and one million dollars (\$1,000,000.00) for all damages and liability arising out of injury to or destruction of property for each accident or occurrence.

#### **9. INDEPENDENT AGENTS**

- a. This MOU is by and between independent agents, and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture and/or association between the Parties. The Parties shall be expected to independently comply with all relevant laws.

## 10. PUBLIC RECORD

- a. The parties recognize that, once final, this MOU is a public record and must be made available to the public upon request.

## 11. EXECUTION/ SIGNATURES

- a. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose. IN WITNESS WHEREOF, the Parties hereto execute this Memorandum of Understanding:

### Capital Metro Area AVID



\_\_\_\_\_  
Signature

Christopher Scott, Director  
Printed Name and Title

January 28, 2014  
Date

### Marysville Joint Unified School District

\_\_\_\_\_  
Signature

Gay Todd, Ed.D, Superintendent  
Printed Name and Title

\_\_\_\_\_  
Date

January 28, 2014

Jill Segner  
Linda, CA

MJUSD  
Personnel Dept.  
JAN 30 2014

**RECEIVED**

Dear Jill Segner:

I am writing to advise you that I will be resigning from my position as a Para Educator from Cedar Lane Elementary, effective January 31, 2014. Being a graduate from Cambridge Jr. College, I plan to pursue my career as a Medical Assistant.

The opportunity for a full-time Medical Assistant job presented itself and this was not an easy decision to make on my part. I've enjoyed working for Cedar Lane and will miss you all dearly.

Thank you for the opportunity, and support you have given me.

I wish you and the company the very best and hope we can keep in touch in the future.

Sincerely,

  
Lucero Martinez

MJUSD  
Personnel Dept.

JAN 21 2014

RECEIVED

1/21/2014

Dear Ms. Vette,

Please accept this letter as my resignation, effective January 31<sup>st</sup>, 2014. I will be starting school full time at Sacramento State University and will be moving out of the area. I regret leaving Linda School and especially the students. I have acquired so many skills that will be beneficial as I continue my career in education. I appreciate the opportunity to work for the STARS program. I hope to return to Marysville Joint Unified School District as a certificated teacher in the very near future.

I couldn't have done it without you.

Respectfully,

David Usvat

David Usvat

6

**Valenzuela/CAHSEE Lawsuit Settlement**  
**Quarterly Report on Williams Uniform Complaints**  
 [Education Code § 35186(d)]  
**2013-2014**

District: MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT

Person completing this form: Ramiro G. Carreón Title: Asst. Supt/Personnel Services

Quarterly Report Submission Date:  
 (check one)

- ☐ October 2013-1<sup>st</sup> quarter-(7/1-9/30/13)  
☒ January 2014-2<sup>nd</sup> quarter (10/1-12/31/13)  
☐ April 2014-3<sup>rd</sup> quarter (1/1-3/31/14)  
☐ July 2014-4<sup>th</sup> quarter (4/1-6/30/14)

Date for information to be reported publicly at governing board meeting: February 11, 2014

Please check the box that applies:

- ☒ No complaints were filed with any school in the district during the quarter indicated above.
- ☐ Complaints were filed with schools in the district during the quarter indicated above. The following chart summarizes the nature and resolution of these complaints.

General Subject Area	Total # of Complaints	# Resolved	# Unresolved
Textbooks and Instructional Materials	0		
Teacher Vacancy or Misassignment	0		
Facilities Conditions	0		
CAHSEE Intensive Instruction and Services	0		
<b>TOTALS</b>	0		

Dr. Gay Todd  
 Print Name of District Superintendent

Gay Todd  
 Signature of District Superintendent

January 17, 2014  
 Date

Road Seventh Avenue  
Road No. 345  
APN No. 013-120-010 & 011  
Parcel Map Book 2, Page 5

Recorded at the Request of and  
When Recorded Return To:

Yuba County Surveyor  
CDSA Department of Public Works  
915 8<sup>th</sup> Street  
Marysville, CA 95901

The undersigned grantor(s) declare(s):  
Documentary transfer tax is \$ None  
(R&T Code 11922)

Exempt from recording fees  
pursuant to Gov't Code § 27389

## **GRANT DEED EASEMENT FOR PUBLIC UTILITIES**

For value received

Marysville Joint Unified School District

**GRANTS (s) to the COUNTY OF YUBA,  
Marysville Joint Unified School District**

**All that real property situated in the unincorporated area of the County of Yuba, State of  
California, described as follows:**

**See attached exhibits:**

**Exhibit A – "Legal Description of Subject Property"**  
**Exhibit B – "Plat of Subject Property"**

**The undersigned, hereby warranting the constitute all of the owners thereof, hereby grant an easement for public utilities, storm and sanitary sewer pipelines and appurtenances, water pipelines and appurtenances, and all other public utilities, to include utilities provided by public utility districts operating in the County of Yuba as their operation shall require, in, on, over and across the undersigned's real property, situated in the County of Yuba more clearly described herein.**

**The owner, and or operator of said public utilities shall have the right to trim or to cut down and clean away any trees within the strip or parcel of land or described herein as necessary for the full enjoyment of the rights hereby granted by the undersigned.**

**The provisions hereof shall inure to the benefit of, and be binding upon, successors, assigns and personal representatives of respective parties hereto.**

*(Continued on following page)*



Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_

**Grantor(s)**

(Signature must be notarized)

\_\_\_\_\_  
**Signed Name**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

**Marysville Joint Unified School District**

**Approved by Marysville Joint Unified School District Board of Trustees**

On this \_\_\_\_\_ Day of \_\_\_\_\_, in the year \_\_\_\_\_

*(See following page(s) for Notary Acknowledgements and/or Certificates)*

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, notary public,  
date name of notary officer

personally appeared \_\_\_\_\_  
name(s) of signer(s)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

## -----OPTIONAL SECTION-----

### CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER(S)

Title(s)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
Name of Person(s) or entity(ies)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### OPTIONAL SECTION:

DATA REQUESTED HERE IS  
NOT REQUIRED BY LAW.

TITLE OR TYPE OF DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF SUBJECT PROPERTY**

#### **ELLA ELEMENTARY SCHOOL MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT EASEMENT FOR PUBLIC UTILITIES**

An easement for public utilities, being a portion of Lot 27 as shown on that certain map entitled "Olivehurst Tract", as filed in Book 2 of Maps, at Page 5, Official records of Yuba County, being a portion of Section 5, Township 14 North, Range 4 East, M.D.M., County of Yuba, State of California, the boundary of said easement is more clearly described as follows:

**BEGINNING** at a point on the Westerly Right-of-Way of Olivehurst Avenue as described in deed to the County of Yuba, filed as Document No. 20005296, Official Records of Yuba County, said point which bears the following two (2) courses from the South East corner of aforesaid Lot 27:

1. North  $01^{\circ}19'00''$  East, 47.00 feet along the Centerline of Olivehurst Avenue.
2. Leaving the centerline of Olivehurst Avenue, North  $88^{\circ}41'00''$  West, 35.00 feet, to the **POINT OF BEGINNING.**

Thence from said **POINT OF BEGINNING**, the boundary of said easement consist of the following eight (8) courses:

1. Along the Westerly line of said Right-of-Way of Olivehurst Avenue, along a curve concave to the Northwest, having a radius of 27.00 feet, a central angle of  $57^{\circ}31'04''$ , and being subtended by a chord bearing South  $30^{\circ}04'32''$  West, 25.98 feet;
2. Leaving said Right-of-Way, Parallel with and 47.50 feet distant from the centerline of Olivehurst Avenue, North  $01^{\circ}19'00''$  East, 586.99 feet;
3. Along a curve concave to the Southwest, having a radius of 12.50 feet, a central angle of  $90^{\circ}00'00''$ , being subtended by a chord bearing North  $43^{\circ}41'00''$  West, 17.68 feet, to a point 36.50 feet distant from the centerline of 7th Avenue measured at right angles, also

being 2.50 feet distant, measured at right angles, from the Southerly Right-of-Way line of 7<sup>th</sup> Avenue as described in Deed to the County of Yuba, filed as Document No. 2009R-005092, Official Records of Yuba County;

4. Thence Parallel with and 36.50 feet distant from the centerline of 7<sup>th</sup> Avenue, North 88°41'00" West, 600.00 feet, to the Easterly boundary of the parcel of land described in that certain deed filed as Document No. 97007011, Official Records of Yuba County;
5. Along said Easterly line, North 01°19'00" East, 2.50 feet to a point 34.00 feet distant from the Centerline of 7<sup>th</sup> Avenue, measured at right angles, also being the Southerly line of the Right-of-Way of 7<sup>th</sup> Avenue as described in said Right-of-Way deed;
6. Along the Southerly line of said Right-of-Way of 7<sup>th</sup> Avenue, South 88°41'00" East, 598.00 feet;
7. Along a curve concave to the Southwest, having a radius of 27.00 feet, a central angle of 90°00'00", being subtended by a chord bearing South 43°41'00" East, 38.18 feet, to a point 35.00 feet distant from the Centerline of Olivehurst Avenue, measured at right angles;
8. Thence parallel with and 35.00 feet distant from said centerline of Olivehurst Avenue, South 01°19'00" West, 552.22 feet, to the **POINT OF BEGINNING**.

The described boundary consists of 8849.23 square feet (0.203 acres) more or less.

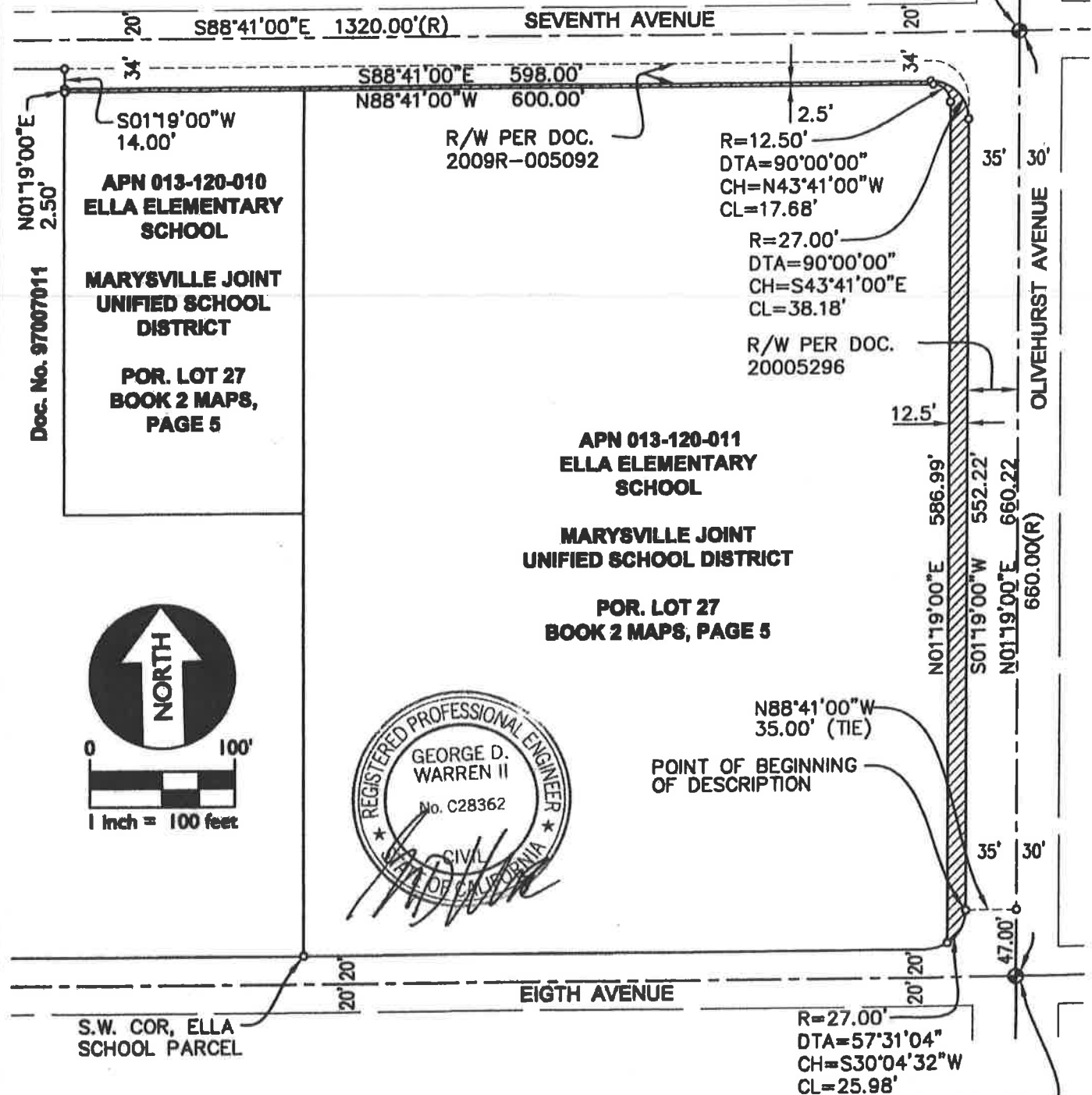
The basis of bearing of this plat is identical to that of "Olivehurst Tract", as filed in Book 2 of Subdivision Maps, at Page 5, Official Records of Yuba County.

Prepared by: Warren Consulting Engineers, Inc.  
1117 Windfield Way, Suite 110  
El Dorado Hills, CA 95762

October 31, 2013



N.E. COR LOT  
27, 2 R.M. 5



**BASIS OF BEARING:**

THE BASIS OF BEARING OF THIS PLAT IS IDENTICAL TO THAT OF "OLIVEHURST TRACT", BOOK 2 OF SUBDIVISION MAPS, PAGE 5, OFFICIAL RECORDS OF YUBA COUNTY.

# PLAT OF SUBJECT PROPERTY

# GRANT OF EASEMENT TO THE COUNTY OF YUBA



**WARREN CONSULTING ENGINEERS, INC.**  
1117 WINDFIELD WAY, SUITE 110  
EL DORADO HILLS, CA 95782 (916) 985-1870

**ELLA ELEMENTARY SCHOOL**

4850 Olivehurst Drive  
Olivehurst, CA 95961

MARYSVILLE JOINT UNIFIED  
SCHOOL DISTRICT

**JOB NO.**

2334.1

DATE \_\_\_\_\_

10-31-2013

SHEET

1 OF 1

SCALE

 $1'' = 100'$



## **FORM OF CONTRACT**

### **AGREEMENT FOR CONSTRUCTION:**

THIS AGREEMENT is made and entered into as of this 19 day of December, 2013, by and between the Marysville Joint Unified School District (hereinafter referred to as "District" or "Owner"), and Contractor: BRCO Constructors, Inc.  
Address: PO Box 367, Loomis, CA 95650  
Phone/Fax: 916-652-3868 / 916-652-3922  
an independent contractor (hereinafter referred to as "Contractor").

District and Contractor hereby mutually agree as follows:

#### **Section 1** **SCOPE OF WORK**

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and materials and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of District, all work called for and in the manner designated in, and in strict accordance with, the Contract Documents as defined in Section 2 hereof, the Work for:

(Project Name) Portable Demolition, Asbestos Removal & Related Sitework (Site) Dobbins

#### **Section 2** **CONTRACT DOCUMENTS**

The Contract Documents, sometimes also referred to as "the Contract", consist of the Notice to Bidders, Proposal Form, Bid Proposal Form, Agreement Form, Request for Authorization to Receive State Summary Criminal History, Independent Contractor Certification of Employee Clearance, Subsequent Arrest Notification, this Form of Contract, Payment Bond, Performance Bond, Contractor's Guarantee Form, Badge and Key Guideline Forms, General Conditions, Technical Specifications, Special Provisions, Hazardous Materials Requirements, Preliminary Construction Schedule, the Contract Drawings and Plans, all duly issued Addenda, Interpretations, Change Orders, Supplemental Drawings, and the approved Contract Schedule.

#### **Section 3** **RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION**

The Contractor shall take and assume all responsibility for the work. The Contractor shall bear all losses and damages directly resulting to him, to the District, or to others on account of the performance or character of the work, unforeseen difficulties, accidents or any other causes whatsoever. The Contractor shall assume the defense of and indemnify and save harmless to the District, and its officers and employees, from all claim, loss, damage, injury and liability of every kind, nature and description including costs and attorneys' fees, directly or indirectly arising from the performance of the contract or work; and from any and all claims, loss, damage, injury and liability including costs and attorney's fees, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract.

#### **Section 4** **CONTRACT AMOUNT**

District agrees to pay and Contractor agrees to accept, for the full and complete performance of this Agreement in full payment for the Work performed the sum of:

DOLLARS, (\$14,999 Fourteen Thousand, Nine Hundred Ninety Nine), subject to adjustment as provided in the Contract Documents.

#### **Section 5** **PROGRESS PAYMENTS**

The price to be paid said Contractor as hereinafter provided shall be paid in legally executed and regularly issued warrants of said District, drawn on the appropriate fund or funds as required by law and the order of said District. The payment of the progress payments by the District shall not be construed as acceptance of the work done up to the time of such payments. Progress payments shall only be made according to a schedule attached hereto. Lack of such schedule indicates that the District will make payment only after satisfactory completion of this agreement. Neither the contract, nor any party thereof, nor any monies due to or to become due there under may be assigned by the Contractor without the approval of the District, nor without the consent of the surety unless the surety has waived its right to notice of assignment.

### Section 6      LABOR CODE COMPLIANCE

Contractor and its subcontractors shall fully comply with all provisions of the California Labor Code and California Code of Regulations governing the performance of public works contracts, including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprentice requirements, maintenance of payroll records and prohibition against discrimination. In addition, Contractor will be insured against liability for workers' compensation. Complete and submit labor code certification form, Section 7.

### Section 7      LABOR CODE CERTIFICATION

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.

Dated: 2/4/2014

(Corporate Seal)

Company BRCO Constructors, Inc.

Print Name Tod Burres

Signature Tod Burres

Title Operations Manager

### Section 8      PENALTIES: LABOR CODE

In accordance with Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, particularly Sections 1775, 1776, 1777.7 and 1813, the Contractor shall forfeit to District as a penalty the sum specified below, over and above any retention or withholds otherwise authorized by the agreement, as follows:

- A. Not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wages for any work done by him/her under this Contract or under any subcontract on the Project. If a worker employed by a subcontractor on the Project is paid less than the prevailing wages by the subcontractor, the Contractor is not subject to this penalty assessment if the Contractor can demonstrate that it did not have knowledge of that failure of the subcontractor to pay the prevailing wages and that it strictly complied with the requirements of Labor Code Section 1775(b).
- B. Twenty-five dollars (\$25) for each worker employed in the execution of this agreement by the Contractor or by any subcontractor on the Project for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3.
- C. Failure to provide CPR's to the District at times designated in the Contract Documents, or within ten (10) calendar days of a request, shall, in addition to resulting in a withholding of progress payments, result in a penalty in the amount of twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. The Contractor is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if the Contractor can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.
- D. Violation of Labor Code Section 1777.5 shall yield a penalty in an amount not exceeding one hundred dollars (\$100) for each full calendar day of non-compliance. A Contractor or subcontractor who knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty the sum of no more than three hundred dollars (\$300) for each full calendar day of noncompliance.

### Section 9      HOURS OF WORK; APPROVAL OF SCHEDULES

Eight (8) hours of labor constitutes a legal day's work, and forty (40) hours constitutes a legal work week. No worker employed at any time by the Contractor, or by any subcontractor upon the Project, shall be required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one week, except as provided in Labor Code Sections 1810 through 1815.

Holiday and overtime work, when permitted by law and approved by the District, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays

shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed.

The District reserves the right to approve or disapprove the days scheduled for work, and the hours during which work is in progress.

#### Section 10      EXTRA AND/OR ADDITIONAL WORK AND CHANGES

Should said District at any time during the progress of said work request any alteration, deviations, additions, or omissions from the said contract, it shall be at the liberty to do so, and the same shall in no way affect or make void the Contract, but the fair and reasonable value of such alterations, deviations, additions, or omissions will be added to or deducted from the amount of said contract price as the case may be. All Change Orders shall be signed for by the District. The value of any such extra work or change shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum;
2. By unit prices named in the contract or subsequently agreed upon;
3. By the District Representative's estimate of the value of the change; or
4. By Time and Material (T&M).

If none of the above methods are agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case, he shall keep and present in such form as the District may direct, a correct account of the net cost of labor and materials, together with vouchers.

In such case, the District shall certify to the amount, including reasonable allowance for overhead and profit due to the Contractor. Overhead and profit shall not exceed fifteen percent (15%) of the actual cost of the work. Should the work be performed by a subcontractor, the subcontractor shall receive fifteen percent (15%) overhead and profit, while the General Contractor receives ten percent (10%) overhead and profit. The fee shall be compensation to cover the cost of supervision, preparation of related documentation, field and office coordination, overhead, bond, profit and any other general expenses. Pending final determination of value, payments on account of change shall be made.

#### Section 11      CONCEALED OR UNKNOWN CONDITIONS

If conditions are encountered at the site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Project Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Project Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) calendar days after first observance of the conditions. The District and/or Architect will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in Contractor's cost of, time required for, or performance of any part of the work, will recommend an equitable adjustment in the contract sum, contract time, or both. If Architect determines that the conditions at the site are not materially different from those indicated in the Project Documents and that no change in the terms of the Agreement is justified, the District and/or Architect shall so notify Contractor in writing, stating the reasons. The District and/or Architect's response to the claim must be made within ten (10) calendar days of receipt of the claim. Claims by either party in opposition to such determination must be made within ten (10) calendar days after the District and/or Architect has given notice of the decision. If the District and Contractor cannot agree on an adjustment in the contract sum or the contract time, the adjustment shall be referred to the District and/or Architect for initial determination, subject to other proceedings pursuant to the resolution provisions in this Form of Contract.

#### Section 12      UTILITIES

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

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.



### Section 13      EXISTING UTILITY LINES: REMOVAL, RESTORATION

Pursuant to Government Code Section 4215, the District assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the District to provide for removal or relocation of such utility facilities. If the Contractor, while performing work under this Agreement, discovers utility facilities not identified by the District in the plans or specifications, Contractor shall immediately notify the District and the utility in writing. Contractor shall be compensated according to the provisions governing changes in the work.

This Section shall not be construed to preclude assessment against Contractor for any other delays in completion of the work. Nothing in this Section shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the construction site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the site of the construction.

As part of the work to be performed, Contractor shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4, and pay all fees charged pursuant to Government Code Section 4216, et seq.

### Section 14      FINAL PAYMENT

When the Contractor determines that all of the Work on the Project is complete, that all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, and that all contractual close out documents have been submitted, the Contractor shall submit an application for final payment on the form provided.

### Section 15      RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under this provisions of the Contract Documents, District shall charge any sum of money against Contractor, District shall deduct and retain the amount of such charge from the amount of the next succeeding progress payment, or from any other monies due or that may become due to Contractor from District. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay District's charges against Contractor, District shall have the right to recover the balance from Contractor or its sureties.

### Section 16      POSTING SECURITIES IN LIEU OF WITHHOLDS

Pursuant to the requirements of Public Contract Code Section 22300, upon Contractor's request, District will make payment to Contractor of any earned retention funds withheld from payments under this Agreement if Contractor deposits with the District or in escrow with a California or federally chartered bank acceptable to District, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

- A. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
- B. All expenses relating to the substitution of securities under said Section 22300 and under this Section, including, but not limited to District's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the Contractor.
- C. If Contractor shall choose to enter into an escrow agreement, such agreement shall be satisfactory to District, which agreement shall be in the form attached hereto as part of the Project documents and which shall allow for the conversion to cash to provide funds to meet defaults by Contractor including, but not limited to, termination of Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Project documents.
- D. Securities, if any, shall be returned to Contractor only upon satisfactory completion of the Agreement.

To minimize the expense caused by such substitution of securities, Contractor shall, prior to or at the time Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the District determines to withhold, Contractor shall immediately and at Contractor's expense deposit additional security

qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.

In the alternative, under Section 22300, Contractor, at its own expense, may request District to make payment of earned retention funds directly to the escrow agent. Also at the expense of Contractor, Contractor may direct investment of the payments into securities, and Contractor shall receive the interest earned on the investment upon the same conditions as shown in paragraph (a) for securities deposited by Contractor. Upon satisfactory completion of the Agreement, Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from District, pursuant to the terms of Section 22300. Contractor shall pay to each subcontractor, not later than twenty (20) days after receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld from each subcontractor on the amount withheld to insure performance of Contractor.

Either alternative under this Section may be exercised only if requested in writing by the Contractor within five (5) days after receipt of Notice of Intent to Award. The Contractor shall notify its subcontractor in writing within fifteen (15) days of exercising this option.

If any provision of this Section shall be found to be illegal or unenforceable, then, notwithstanding, this Section shall remain in full force and effect, and such provision shall be deemed stricken.

#### Section 17 TIME OF COMPLETION

The Work shall be commenced on the date specified in the District's "Notice to Proceed," and shall be fully completed as described in the Contract Documents, including, without limitation, all document requirements within this Agreement package, together with such additional time as may be provided by any change order issued pursuant to the Contract Documents.

Time is of the essence in this Agreement and the Contract Documents. Failure of Contractor to complete the Work by the completion date and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages as hereinafter provided in this Agreement and the Contract Documents.

#### Section 18 PAYMENT WITHHELD

The District, may withhold, or on account of subsequently discovered evidence, nullify, the whole or part of any payment as to such extent as may be necessary to protect the District from loss on account of:

- (1) Defective work not completed.
- (2) Claims filed or reasonable evidence indicating probable filing of claims.
- (3) Failure of Contractor to make payments properly to subcontractors, or for materials or labor.
- (4) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (5) Damage to another contractor.

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

#### Section 19 NO WAIVER OF REMEDIES

Neither the inspection by District or its agents, nor any order or certificate for payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by District, nor any extensions of time, nor any position taken by District or its agents shall operate as a waiver of any provision of this Agreement or the Contract Documents or of any power herein reserved to District or any right to damages herein provided, nor shall any waiver of any breach of this Agreement or of the Contract Documents be held to be a waiver of any other or subsequent breach. All remedies provided in this Agreement and in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy provided in this Agreement and/or the Contract Documents, and District shall have any and all equitable and legal remedies, which it would in any case have.

#### Section 20 LIQUIDATED DAMAGES

Liquidated damages will be assessed against Contractor in the amount of \$1000 per day, plus additional inspection costs, or actual damages to the District if Contractor fails to substantially complete the Work within the required Contract Time, including any required milestone completion dates. The provision for liquidated damages in the Contract Documents shall not be applicable nor act as a limitation upon District if Contractor abandons the Work. In such event, Contractor shall be liable to District for all losses incurred.

#### Section 21      COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall keep itself fully informed of and shall observe and comply with, and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all federal and state laws, and county or municipal ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the Work, or the materials used in the Work, or in any way affect the conduct of the Work.

All work shall be performed in accordance with the rules and regulations, Title 24, Parts 1-5 and 9, California Code of Regulations, and Division of the State Architect, and a copy shall be kept on the job at all times during construction.

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the work as indicated and specified.

If Contractor observes that plans, drawings or specifications are at variance therewith, Contractor shall promptly notify Architect in writing and any changes deemed necessary by the Architect shall be adjusted as provided for changes in work. If Contractor performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to Architect, Contractor shall bear all costs arising therefrom. Where plans, drawings or specifications state that materials, processes, or procedures must be approved by the Division of State Architect, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 USC § 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

#### Section 22      ATTORNEY'S FEES

In any legal or equitable action or proceeding, including arbitration and mediation, and other litigation, brought either to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred therein, including expert witness fees and costs.

#### Section 23      INSURANCE

Contractor shall maintain policies of public liability bodily injury insurance (including automobile liability) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for injury or death to any one person and not less than One Million Dollars (\$1,000,000.00) for injury or death arising out of any one occurrence and property damage liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) against any liability arising directly or indirectly out of any activity, performance, or operation under the Contract. The hereinabove mentioned policies shall include the District, Officers and Employees as additional insureds and the coverage of said policies shall be expressly made primary insurance with respect to any other similar coverage carried by the District. Copies of such policies or certificates evidencing such policies shall be first approved by the Owner and filed with the Board of Trustees of the District. Said policies of public liability insurance shall contain a contractual liability endorsement recognizing the contractual obligation of Contractor to District contained in this paragraph. All policies shall contain a provision requiring thirty (30) days written notice to be given to the District prior to cancellation, modification or reduction of limits. Upon request of Contractor, the District may, in its sole discretion, approve lower levels of coverage than specified above.

Contractor shall obtain and pay for fire insurance upon all work to be done under this Contract; and upon all materials in or adjacent to said work and intended for use therein; and for full value of any building in which any part is to be remodeled. The policy shall be written for 100% of insurable value thereof, under either a Builders' Risk Reporting Form or Completed Value Builders' Risk Form, and shall include extended coverage and vandalism and malicious mischief endorsement.

Contractor shall file a copy of Contractor Workers' Compensation Insurance policy with District prior to start of construction, liability with a limit of not less than One Million Dollars (\$1,000,000.00).

Owner shall be named as an additional named insured on Contract(s) and a certified copy of policy delivered to Owner. Notify Owner at least ten (10) calendar days prior to deletion of construction coverage, so Owner can effect necessary insurance coverage at Contractor expense.

#### Section 24      PERFORMANCE AND PAYMENT BONDS

Intentionally omitted. No bonds were required for this project.

## Section 25      QUALITY OF MATERIALS AND PRODUCTS

The Contractor shall, if required by the Architect, Project Inspector, or District Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The District Representative may require, and the Contractor shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Work nor installed therein until after the District Representative has approved the list.

Contractor shall certify that the materials and equipment installed comply with the Contract Documents and to the best of the Contractor's knowledge, no installed materials or equipment contain asbestos.

In the event of a specification that allows Contractor to select one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items Contractor has furnished. Contractor will update the Record Drawings and annotate specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and annotated specifications shall be kept at the work site and available for inspection by the District and the Architect.

## Section 26      NON-UTILIZATION OF ASBESTOS MATERIAL

The Contractor will be required to execute and submit the Certificate Regarding Non-Asbestos Containing Materials.

Should asbestos containing materials be installed by Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria:

1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
3. The asbestos consultant shall be chosen and approved by the District who shall have sole discretion and final determination in this matter.
4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

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 as may be incurred by the District shall be borne entirely by Contractor.

Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by 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 Agreement, Contractor acknowledges the above and agrees to hold harmless the District, its Governing Board, employees, agents, and Architect and assigns for all asbestos liability which may be associated with this work. Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risks and liabilities.

## Section 27      ASSIGNMENT OF ANTITRUST ACTIONS

The following provision is included in this Agreement pursuant to California Public Contract Code section 7103.5.

"In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties."

Contractor, for itself and all subcontractors, agrees to assign to District all rights, title, and interest in and to all such causes of action Contractor and all subcontractors may have under the Agreement. This assignment shall become effective at the time District tenders final payment to Contractor, and Contractor shall require assignments from all subcontractors to comply herewith.

#### **Section 28 CLAIMS IN EXCESS OF \$375,000**

For all claims in excess of \$375,000, Contractor shall give written notice of claim to the District Representative within thirty (30) days of the date of the District Representative's estimate of sums due, stating in detail all grounds alleged by the Contractor to justify an adjustment to the District Representative's estimate. Thereafter, Contractor must comply with the requirements of the California Government Code regarding claims against public entities (Government Code Sections 900 and following).

The Contractor's notice of claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 29, below. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with these notices and/or time requirements shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

#### **Section 29 CLAIMS OF \$375,000 OR LESS**

All claims under this Contract of \$375,000 or less shall be resolved in accordance with Section 20104 et seq. of the Public Contract Code, except that the claim must be submitted no later than thirty (30) days of the date of the District Representative's estimate of sums due. The Contractor's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 29, below. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with the time requirements set forth above shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Pursuant to Public Contract Code sections 20104-20104.8, in addition to the notice and claim provisions set forth throughout the Contract Documents, the following terms and conditions shall apply.

#### **§ 20104. Application of article; Inclusion of article in plans and specifications**

- (a)
  - (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
  - (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b)
  - (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
  - (2) "Claim" means a separate demand by Contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

**§ 20104.2. Claims; requirements; tort claims not covered by this article**

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

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b)
  - (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
  - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
  - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- (c)
  - (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
  - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
  - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**§ 20104.4 Civil actions; mediation and arbitration; qualifications and expenses of mediators and arbitrators; trial de novo; witnesses**

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

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and

22

shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to a court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act 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 subdivision consistent with the rules pertaining to judicial arbitration.
- (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in mediation or arbitration process.

**§ 20104.6. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment**

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

**Section 30 CLAIM CERTIFICATION**

Contractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code §12650 et seq.). Submission by Contractor of any claim (as the term "claim" is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a subcontractor or material supplier, shall constitute a representation by Contractor to the District that submission of the claim does not in any respect, violate the False Claims Act. Any party with an interest in the claim, including Contractor and any subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim and failure to provide such certification shall constitute a waiver of the claim. See Section 30, below for Claim Certification Form.



**Section 31 CLAIM CERTIFICATION FORM**

The claim certification required by this section shall provide as follows:

**CLAIM CERTIFICATION**

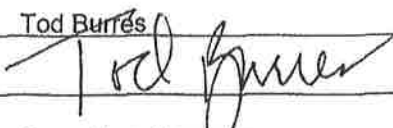
Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650, et seq. I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: 2/4/2014

Company BRCO Constructors, Inc.

Print Name Tod Burrés

(Corporate Seal)

Signature 

Title Operations Manager

**Section 32 TERMINATION BY THE DISTRICT FOR BREACH, ETC**

If the Contractor or any of his Subcontractors should violate any of the provisions of the contract, or if he should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the District, then the District may, when sufficient cause exists to justify such action, serve written notice upon the Contractor and his surety of its intention to terminate the contract. Such notice to terminate the Contract shall contain the reasons for such intention and, unless within five (5) days after the serving of such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, the contract shall, upon expiration of said five (5) days, cease and terminate.

In the event of any such termination, the District shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety within ten (10) days after the serving upon it of notice of termination does not give the District written notice of its intention to take over and perform the contract and does not commence performance thereof within ten (10) days stated above from the date of the serving of such notice, the District may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the District for any excess cost occasioned in completing the work. The District may utilize such materials, appliances, plant and other property belonging to the Contractor as may be on the site of the work and necessary thereof for completion. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the District

**Section 33 ASSIGNMENT**

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of District first obtained.

**Section 34 NO THIRD PARTY BENEFICIARIES**

This Agreement is entered into solely between District and Contractor. There are no third party beneficiaries, intended, unintended, or otherwise to this Agreement.



### Section 35      AGREEMENT BINDING

This Agreement shall bind and insure to the heirs, devisees, assignees and successors in interest of Contractor and to the successors in interest of District in the same manner as if such parties had been expressly named herein.

### Section 36      AGREEMENT CONTROLS

In the event of a conflict between the terms and conditions set forth in this Agreement and the terms and conditions set forth in the other Contract Documents, the terms and conditions set forth in this Agreement shall prevail.

### Section 37      TRENCHES

The Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.

If this Agreement involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall, in advance of excavation, submit to the District or to whomever District designates, a detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefore shall be included in the price named in the Agreement for completion of the work as set forth in the Project Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such plan delivered to the District. Labor Code Sections 6500 and 6705; Health and Safety Code Section 17922.5.

Pursuant to Labor Code Section 6705, nothing in this Section shall impose tort liability upon the District of any of its employees.

If this Agreement involves the digging of trenches or excavations that extend deeper than four feet below the surface, the following shall apply:

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
  - 1. Material that 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 different 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 Agreement.
- B. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so 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 Project Documents.
- C. In the event a dispute arises between the District and Contractor, whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the Project Documents, but shall proceed with all the work to be performed under the Project Documents. 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 contracting parties. (Public Contract Code section 7104)

### Section 38      OWNERSHIP AND USE OF DOCUMENTS

All original drawings, specifications and other incidental architectural and engineering work or materials and other project documents prepared by the Architect and furnished by the District are and shall remain the property of the District. They are not to be used in other work and are to be returned to District on request at completion of work, and may be used by District as it may require, without any additional costs to District.

**Section 39 FINGERPRINTING**

Education Code sections 45125.1 and 45125.2 apply to this Agreement. Contractor shall, prior to commencement of Work, comply with either of the methods of ensuring safety set forth in Education Code section 45125.2(a)(1) (installation of a physical barrier) or 45125.2(a)(2) (continual supervision by an employee of Contractor who has not been convicted of a serious or violent felony). If Contractor elects to provide continual supervision pursuant to Education Code section 45125.2(a)(2), Contractor shall require the person(s) who will provide that continual supervision to be fingerprinted by the Department of Justice ("DOJ"). Upon verification from DOJ that those persons fingerprinted have no record of a serious or violent felony, Contractor will so certify by signing and submitting to District, through the District Representative, the certification form attached as part of this Agreement and incorporated by reference. In addition, Contractor shall submit the names of those persons who have received clearance on a form as provided in this Agreement. Any person whose name is not on the cleared list may not have such access. In that case, Contractor must make arrangements with District for appropriate access. No person with a violent or serious felony as reported by DOJ may have access to the school campus.

Failure to comply with this Section of this Agreement at all times, or permitting unsupervised access by an employee whose name has not been cleared by DOJ as certified by Contractor, shall constitute grounds for termination of this Agreement.

**Section 40 SITE ACCESS**

Contractor will submit forms included in this Agreement to obtain badges for site access and site keys, when necessary.

**Section 41 GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**Contractors are required by law to be licensed and regulated by the Contractor's State License Board, which has jurisdiction to investigate complaints against Contractors if a complaint is filed within three years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractor's State License Board, P.O. Box 28000, Sacramento, California 95826.**

**Section 42. RELEASE**

This agreement supersedes and voids all prior written and oral agreements between BRCO and the District and its agents and employees regarding the Work to be performed under this agreement. BRCO expressly releases the District, its employees and agents from any and all liability arising under any prior agreement.

Marysville Joint Unified School District

\_\_\_\_\_  
Gay Todd, Superintendent

\_\_\_\_\_  
Board Approval Date

**BRCO Constructors, Inc.**

Contractor

By \_\_\_\_\_  


(Corporate Seal)

\_\_\_\_\_  
Lts

**PO Box 367**

\_\_\_\_\_  
Business Address

**Loomis, CA 95650**

511602

License Number

Federal ID Number

**CORPORATE CERTIFICATE**

I, KATHIE ROTH, certify that I am the Secretary of the corporation named as Contractor in the foregoing contract; that JOE BIERES, who signed said contract on behalf of said corporation is authorized to fully bind the corporation to this Agreement; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers. I acknowledge that any false, deceptive, misleading or non-disclosed information related to this certification may result in tort liability for my company.

(Corporate Seal)

KATHIE ROTH  
Secretary



## **FORM OF CONTRACT**

### **AGREEMENT FOR CONSTRUCTION:**

THIS AGREEMENT is made and entered into as of this 19 day of December, 2013, by and between the Marysville Joint Unified School District (hereinafter referred to as "District" or "Owner"), and Contractor: BRCO Constructors, Inc.

Address: PO Box 367, Loomis, CA 95650

Phone/Fax: 916-652-3868 / 916-652-3922  
an independent contractor (hereinafter referred to as "Contractor").

District and Contractor hereby mutually agree as follows:

#### **Section 1** **SCOPE OF WORK**

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and materials and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of District, all work called for and in the manner designated in, and in strict accordance with, the Contract Documents as defined in Section 2 hereof, the Work for:

(Project Name) Portable Demolition, Asbestos Removal & Related Sitework (Site) Yuba Gardens Intermediate

#### **Section 2** **CONTRACT DOCUMENTS**

The Contract Documents, sometimes also referred to as "the Contract", consist of the Notice to Bidders, Proposal Form, Bid Proposal Form, Agreement Form, Request for Authorization to Receive State Summary Criminal History, Independent Contractor Certification of Employee Clearance, Subsequent Arrest Notification, this Form of Contract, Payment Bond, Performance Bond, Contractor's Guarantee Form, Badge and Key Guideline Forms, General Conditions, Technical Specifications, Special Provisions, Hazardous Materials Requirements, Preliminary Construction Schedule, the Contract Drawings and Plans, all duly issued Addenda, Interpretations, Change Orders, Supplemental Drawings, and the approved Contract Schedule.

#### **Section 3** **RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION**

The Contractor shall take and assume all responsibility for the work. The Contractor shall bear all losses and damages directly resulting to him, to the District, or to others on account of the performance or character of the work, unforeseen difficulties, accidents or any other causes whatsoever. The Contractor shall assume the defense of and indemnify and save harmless to the District, and its officers and employees, from all claim, loss, damage, injury and liability of every kind, nature and description including costs and attorneys' fees, directly or indirectly arising from the performance of the contract or work; and from any and all claims, loss, damage, injury and liability including costs and attorney' fees, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract.

#### **Section 4** **CONTRACT AMOUNT**

District agrees to pay and Contractor agrees to accept, for the full and complete performance of this Agreement in full payment for the Work performed the sum of:

**DOLLARS, (\$12,190 Twelve Thousand, One Hundred Ninety)**, subject to adjustment as provided in the Contract Documents.

#### **Section 5** **PROGRESS PAYMENTS**

The price to be paid said Contractor as hereinafter provided shall be paid in legally executed and regularly issued warrants of said District, drawn on the appropriate fund or funds as required by law and the order of said District. The payment of the progress payments by the District shall not be construed as acceptance of the work done up to the time of such payments. Progress payments shall only be made according to a schedule attached hereto. Lack of such schedule indicates that the District will make payment only after satisfactory completion of this agreement. Neither the contract, nor any party thereof, nor any monies due to or to become due there under may be assigned by the Contractor without the approval of the District, nor without the consent of the surety unless the surety has waived its right to notice of assignment.

**Section 6**      **LABOR CODE COMPLIANCE**

Contractor and its subcontractors shall fully comply with all provisions of the California Labor Code and California Code of Regulations governing the performance of public works contracts, including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprentice requirements, maintenance of payroll records and prohibition against discrimination. In addition, Contractor will be insured against liability for workers' compensation. Complete and submit labor code certification form, Section 7.

**Section 7**      **LABOR CODE CERTIFICATION**

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.

Dated: 2/4/2014

(Corporate Seal)

Company BRCO Constructors, Inc.

Print Name Tod Bures

Signature Tod Bures

Title Operations Manager

**Section 8**      **PENALTIES: LABOR CODE**

In accordance with Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, particularly Sections 1775, 1776, 1777.7 and 1813, the Contractor shall forfeit to District as a penalty the sum specified below, over and above any retention or withholds otherwise authorized by the agreement, as follows:

- A. Not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wages for any work done by him/her under this Contract or under any subcontract on the Project. If a worker employed by a subcontractor on the Project is paid less than the prevailing wages by the subcontractor, the Contractor is not subject to this penalty assessment if the Contractor can demonstrate that it did not have knowledge of that failure of the subcontractor to pay the prevailing wages and that it strictly complied with the requirements of Labor Code Section 1775(b).
- B. Twenty-five dollars (\$25) for each worker employed in the execution of this agreement by the Contractor or by any subcontractor on the Project for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3.
- C. Failure to provide CPR's to the District at times designated in the Contract Documents, or within ten (10) calendar days of a request, shall, in addition to resulting in a withholding of progress payments, result in a penalty in the amount of twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. The Contractor is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if the Contractor can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.
- D. Violation of Labor Code Section 1777.5 shall yield a penalty in an amount not exceeding one hundred dollars (\$100) for each full calendar day of non-compliance. A Contractor or subcontractor who knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty the sum of no more than three hundred dollars (\$300) for each full calendar day of noncompliance.

**Section 9**      **HOURS OF WORK; APPROVAL OF SCHEDULES**

Eight (8) hours of labor constitutes a legal day's work, and forty (40) hours constitutes a legal work week. No worker employed at any time by the Contractor, or by any subcontractor upon the Project, shall be required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one week, except as provided in Labor Code Sections 1810 through 1815.

Holiday and overtime work, when permitted by law and approved by the District, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed.

The District reserves the right to approve or disapprove the days scheduled for work, and the hours during which work is in progress.

#### Section 10      EXTRA AND/OR ADDITIONAL WORK AND CHANGES

Should said District at any time during the progress of said work request any alteration, deviations, additions, or omissions from the said contract, it shall be at the liberty to do so, and the same shall in no way affect or make void the Contract, but the fair and reasonable value of such alterations, deviations, additions, or omissions will be added to or deducted from the amount of said contract price as the case may be. All Change Orders shall be signed for by the District. The value of any such extra work or change shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum;
2. By unit prices named in the contract or subsequently agreed upon;
3. By the District Representative's estimate of the value of the change; or
4. By Time and Material (T&M).

If none of the above methods are agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case, he shall keep and present in such form as the District may direct, a correct account of the net cost of labor and materials, together with vouchers.

In such case, the District shall certify to the amount, including reasonable allowance for overhead and profit due to the Contractor. Overhead and profit shall not exceed fifteen percent (15%) of the actual cost of the work. Should the work be performed by a subcontractor, the subcontractor shall receive fifteen percent (15%) overhead and profit, while the General Contractor receives ten percent (10%) overhead and profit. The fee shall be compensation to cover the cost of supervision, preparation of related documentation, field and office coordination, overhead, bond, profit and any other general expenses. Pending final determination of value, payments on account of change shall be made.

#### Section 11      CONCEALED OR UNKNOWN CONDITIONS

If conditions are encountered at the site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Project Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Project Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) calendar days after first observance of the conditions. The District and/or Architect will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in Contractor's cost of, time required for, or performance of any part of the work, will recommend an equitable adjustment in the contract sum, contract time, or both. If Architect determines that the conditions at the site are not materially different from those indicated in the Project Documents and that no change in the terms of the Agreement is justified, the District and/or Architect shall so notify Contractor in writing, stating the reasons. The District and/or Architect's response to the claim must be made within ten (10) calendar days of receipt of the claim. Claims by either party in opposition to such determination must be made within ten (10) calendar days after the District and/or Architect has given notice of the decision. If the District and Contractor cannot agree on an adjustment in the contract sum or the contract time, the adjustment shall be referred to the District and/or Architect for initial determination, subject to other proceedings pursuant to the resolution provisions in this Form of Contract.

#### Section 12      UTILITIES

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

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.



### Section 13      EXISTING UTILITY LINES; REMOVAL, RESTORATION

Pursuant to Government Code Section 4215, the District assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the District to provide for removal or relocation of such utility facilities. If the Contractor, while performing work under this Agreement, discovers utility facilities not identified by the District in the plans or specifications, Contractor shall immediately notify the District and the utility in writing. Contractor shall be compensated according to the provisions governing changes in the work.

This Section shall not be construed to preclude assessment against Contractor for any other delays in completion of the work. Nothing in this Section shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the construction site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the site of the construction.

As part of the work to be performed, Contractor shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4, and pay all fees charged pursuant to Government Code Section 4216, et seq.

### Section 14      FINAL PAYMENT

When the Contractor determines that all of the Work on the Project is complete, that all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, and that all contractual close out documents have been submitted, the Contractor shall submit an application for final payment on the form provided.

### Section 15      RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under this provisions of the Contract Documents, District shall charge any sum of money against Contractor, District shall deduct and retain the amount of such charge from the amount of the next succeeding progress payment, or from any other monies due or that may become due to Contractor from District. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay District's charges against Contractor, District shall have the right to recover the balance from Contractor or its sureties.

### Section 16      POSTING SECURITIES IN LIEU OF WITHHOLDS

Pursuant to the requirements of Public Contract Code Section 22300, upon Contractor's request, District will make payment to Contractor of any earned retention funds withheld from payments under this Agreement if Contractor deposits with the District or in escrow with a California or federally chartered bank acceptable to District, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

- A. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
- B. All expenses relating to the substitution of securities under said Section 22300 and under this Section, including, but not limited to District's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the Contractor.
- C. If Contractor shall choose to enter into an escrow agreement, such agreement shall be satisfactory to District, which agreement shall be in the form attached hereto as part of the Project documents and which shall allow for the conversion to cash to provide funds to meet defaults by Contractor including, but not limited to, termination of Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Project documents.
- D. Securities, if any, shall be returned to Contractor only upon satisfactory completion of the Agreement.

To minimize the expense caused by such substitution of securities, Contractor shall, prior to or at the time Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the District determines to withhold, Contractor shall immediately and at Contractor's expense deposit additional security

qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.

In the alternative, under Section 22300, Contractor, at its own expense, may request District to make payment of earned retention funds directly to the escrow agent. Also at the expense of Contractor, Contractor may direct investment of the payments into securities, and Contractor shall receive the interest earned on the investment upon the same conditions as shown in paragraph (a) for securities deposited by Contractor. Upon satisfactory completion of the Agreement, Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from District, pursuant to the terms of Section 22300. Contractor shall pay to each subcontractor, not later than twenty (20) days after receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld from each subcontractor on the amount withheld to insure performance of Contractor.

Either alternative under this Section may be exercised only if requested in writing by the Contractor within five (5) days after receipt of Notice of Intent to Award. The Contractor shall notify its subcontractor in writing within fifteen (15) days of exercising this option.

If any provision of this Section shall be found to be illegal or unenforceable, then, notwithstanding, this Section shall remain in full force and effect, and such provision shall be deemed stricken.

#### Section 17 TIME OF COMPLETION

The Work shall be commenced on the date specified in the District's "Notice to Proceed," and shall be fully completed as described in the Contract Documents, including, without limitation, all document requirements within this Agreement package, together with such additional time as may be provided by any change order issued pursuant to the Contract Documents.

Time is of the essence in this Agreement and the Contract Documents. Failure of Contractor to complete the Work by the completion date and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages as hereinafter provided in this Agreement and the Contract Documents.

#### Section 18 PAYMENT WITHHELD

The District, may withhold, or on account of subsequently discovered evidence, nullify, the whole or part of any payment as to such extent as may be necessary to protect the District from loss on account of:

- (1) Defective work not completed.
- (2) Claims filed or reasonable evidence indicating probable filing of claims.
- (3) Failure of Contractor to make payments properly to subcontractors, or for materials or labor.
- (4) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (5) Damage to another contractor.

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

#### Section 19 NO WAIVER OF REMEDIES

Neither the inspection by District or its agents, nor any order or certificate for payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by District, nor any extensions of time, nor any position taken by District or its agents shall operate as a waiver of any provision of this Agreement or the Contract Documents or of any power herein reserved to District or any right to damages herein provided, nor shall any waiver of any breach of this Agreement or of the Contract Documents be held to be a waiver of any other or subsequent breach. All remedies provided in this Agreement and in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy provided in this Agreement and/or the Contract Documents, and District shall have any and all equitable and legal remedies, which it would in any case have.

#### Section 20 LIQUIDATED DAMAGES

Liquidated damages will be assessed against Contractor in the amount of \$1000 per day, plus additional inspection costs, or actual damages to the District if Contractor fails to substantially complete the Work within the required Contract Time, including any required milestone completion dates. The provision for liquidated damages in the Contract Documents shall not be applicable nor act as a limitation upon District if Contractor abandons the Work. In such event, Contractor shall be liable to District for all losses incurred.



## Section 21 COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall keep itself fully informed of and shall observe and comply with, and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all federal and state laws, and county or municipal ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the Work, or the materials used in the Work, or in any way affect the conduct of the Work.

All work shall be performed in accordance with the rules and regulations, Title 24, Parts 1-5 and 9, California Code of Regulations, and Division of the State Architect, and a copy shall be kept on the job at all times during construction.

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the work as indicated and specified.

If Contractor observes that plans, drawings or specifications are at variance therewith, Contractor shall promptly notify Architect in writing and any changes deemed necessary by the Architect shall be adjusted as provided for changes in work. If Contractor performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to Architect, Contractor shall bear all costs arising therefrom. Where plans, drawings or specifications state that materials, processes, or procedures must be approved by the Division of State Architect, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 USC § 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

## Section 22 ATTORNEY'S FEES

In any legal or equitable action or proceeding, including arbitration and mediation, and other litigation, brought either to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred therein, including expert witness fees and costs.

## Section 23 INSURANCE

Contractor shall maintain policies of public liability bodily injury insurance (including automobile liability) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for injury or death to any one person and not less than One Million Dollars (\$1,000,000.00) for injury or death arising out of any one occurrence and property damage liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) against any liability arising directly or indirectly out of any activity, performance, or operation under the Contract. The hereinabove mentioned policies shall include the District, Officers and Employees as additional insureds and the coverage of said policies shall be expressly made primary insurance with respect to any other similar coverage carried by the District. Copies of such policies or certificates evidencing such policies shall be first approved by the Owner and filed with the Board of Trustees of the District. Said policies of public liability insurance shall contain a contractual liability endorsement recognizing the contractual obligation of Contractor to District contained in this paragraph. All policies shall contain a provision requiring thirty (30) days written notice to be given to the District prior to cancellation, modification or reduction of limits. Upon request of Contractor, the District may, in its sole discretion, approve lower levels of coverage than specified above.

Contractor shall obtain and pay for fire insurance upon all work to be done under this Contract; and upon all materials in or adjacent to said work and intended for use therein; and for full value of any building in which any part is to be remodeled. The policy shall be written for 100% of insurable value thereof, under either a Builders' Risk Reporting Form or Completed Value Builders' Risk Form, and shall include extended coverage and vandalism and malicious mischief endorsement.

Contractor shall file a copy of Contractor Workers' Compensation Insurance policy with District prior to start of construction, liability with a limit of not less than One Million Dollars (\$1,000,000.00).

Owner shall be named as an additional named insured on Contract(s) and a certified copy of policy delivered to Owner. Notify Owner at least ten (10) calendar days prior to deletion of construction coverage, so Owner can effect necessary insurance coverage at Contractor expense.

## Section 24 PERFORMANCE AND PAYMENT BONDS

Intentionally omitted. No bonds were required for this project

## Section 25      QUALITY OF MATERIALS AND PRODUCTS

The Contractor shall, if required by the Architect, Project Inspector, or District Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The District Representative may require, and the Contractor shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Work nor installed therein until after the District Representative has approved the list.

Contractor shall certify that the materials and equipment installed comply with the Contract Documents and to the best of the Contractor's knowledge, no installed materials or equipment contain asbestos.

In the event of a specification that allows Contractor to select one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items Contractor has furnished. Contractor will update the Record Drawings and annotate specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and annotated specifications shall be kept at the work site and available for inspection by the District and the Architect.

## Section 26      NON-UTILIZATION OF ASBESTOS MATERIAL

The Contractor will be required to execute and submit the Certificate Regarding Non-Asbestos Containing Materials.

Should asbestos containing materials be installed by Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria:

1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
3. The asbestos consultant shall be chosen and approved by the District who shall have sole discretion and final determination in this matter.
4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

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 as may be incurred by the District shall be borne entirely by Contractor.

Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by 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 Agreement, Contractor acknowledges the above and agrees to hold harmless the District, its Governing Board, employees, agents, and Architect and assigns for all asbestos liability which may be associated with this work. Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risks and liabilities.

## Section 27      ASSIGNMENT OF ANTITRUST ACTIONS

The following provision is included in this Agreement pursuant to California Public Contract Code section 7103.5.

"In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties."

Contractor, for itself and all subcontractors, agrees to assign to District all rights, title, and interest in and to all such causes of action Contractor and all subcontractors may have under the Agreement. This assignment shall become effective at the time District tenders final payment to Contractor, and Contractor shall require assignments from all subcontractors to comply herewith.

**Section 28 CLAIMS IN EXCESS OF \$375,000**

For all claims in excess of \$375,000, Contractor shall give written notice of claim to the District Representative within thirty (30) days of the date of the District Representative's estimate of sums due, stating in detail all grounds alleged by the Contractor to justify an adjustment to the District Representative's estimate. Thereafter, Contractor must comply with the requirements of the California Government Code regarding claims against public entities (Government Code Sections 900 and following).

The Contractor's notice of claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 29, below. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with these notices and/or time requirements shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

**Section 29 CLAIMS OF \$375,000 OR LESS**

All claims under this Contract of \$375,000 or less shall be resolved in accordance with Section 20104 et seq. of the Public Contract Code, except that the claim must be submitted no later than thirty (30) days of the date of the District Representative's estimate of sums due. The Contractor's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 29, below. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with the time requirements set forth above shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Pursuant to Public Contract Code sections 20104-20104.8, in addition to the notice and claim provisions set forth throughout the Contract Documents, the following terms and conditions shall apply.

**§ 20104. Application of article; inclusion of article in plans and specifications**

- (a)
  - (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
  - (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b)
  - (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
  - (2) "Claim" means a separate demand by Contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

**§ 20104.2. Claims; requirements; tort claims not covered by this article**

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

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b)
  - (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
  - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
  - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- (c)
  - (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
  - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
  - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**§ 20104.4 Civil actions; mediation and arbitration; qualifications and expenses of mediators and arbitrators; trial de novo; witnesses**

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

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a

disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to a court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act 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 subdivision consistent with the rules pertaining to judicial arbitration.
- (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in mediation or arbitration process.

**§ 20104.6. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment**

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

**Section 30 CLAIM CERTIFICATION**

Contractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code §12650 et seq.). Submission by Contractor of any claim (as the term "claim" is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a subcontractor or material supplier, shall constitute a representation by Contractor to the District that submission of the claim does not in any respect, violate the False Claims Act. Any party with an interest in the claim, including Contractor and any subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim and failure to provide such certification shall constitute a waiver of the claim. See Section 30, below for Claim Certification Form.

**Section 31 CLAIM CERTIFICATION FORM**

The claim certification required by this section shall provide as follows:

**CLAIM CERTIFICATION**

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650, et seq. I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: 2/4/2014

Company BRCO Constructors, Inc.

Print Name Tod Builes

(Corporate Seal)

Signature Tod Builes

Title Operations Manager

**Section 32 TERMINATION BY THE DISTRICT FOR BREACH, ETC**

If the Contractor or any of his Subcontractors should violate any of the provisions of the contract, or if he should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the District, then the District may, when sufficient cause exists to justify such action, serve written notice upon the Contractor and his surety of its intention to terminate the contract. Such notice to terminate the Contract shall contain the reasons for such intention and, unless within five (5) days after the serving of such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, the contract shall, upon expiration of said five (5) days, cease and terminate.

In the event of any such termination, the District shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety within ten (10) days after the serving upon it of notice of termination does not give the District written notice of its intention to take over and perform the contract and does not commence performance thereof within ten (10) days stated above from the date of the serving of such notice, the District may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the District for any excess cost occasioned in completing the work. The District may utilize such materials, appliances, plant and other property belonging to the Contractor as may be on the site of the work and necessary thereof for completion. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the District

**Section 33 ASSIGNMENT**

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of District first obtained.

**Section 34 NO THIRD PARTY BENEFICIARIES**

This Agreement is entered into solely between District and Contractor. There are no third party beneficiaries, intended, unintended, or otherwise to this Agreement.



Section 35      AGREEMENT BINDING

This Agreement shall bind and insure to the heirs, devisees, assignees and successors in interest of Contractor and to the successors in interest of District in the same manner as if such parties had been expressly named herein.

Section 36      AGREEMENT CONTROLS

In the event of a conflict between the terms and conditions set forth in this Agreement and the terms and conditions set forth in the other Contract Documents, the terms and conditions set forth in this Agreement shall prevail.

Section 37      TRENCHES

The Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.

If this Agreement involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall, in advance of excavation, submit to the District or to whomever District designates, a detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefore shall be included in the price named in the Agreement for completion of the work as set forth in the Project Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such plan delivered to the District. Labor Code Sections 6500 and 6705; Health and Safety Code Section 17922.5.

Pursuant to Labor Code Section 6705, nothing in this Section shall impose tort liability upon the District of any of its employees.

If this Agreement involves the digging of trenches or excavations that extend deeper than four feet below the surface, the following shall apply:

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
  - 1. Material that 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 different 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 Agreement.
- B. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so 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 Project Documents.
- C. In the event a dispute arises between the District and Contractor, whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the Project Documents, but shall proceed with all the work to be performed under the Project Documents. 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 contracting parties. (Public Contract Code section 7104)

Section 38      OWNERSHIP AND USE OF DOCUMENTS

All original drawings, specifications and other incidental architectural and engineering work or materials and other project documents prepared by the Architect and furnished by the District are and shall remain the property of the District. They are not to be used in other work and are to be returned to District on request at completion of work, and may be used by District as it may require, without any additional costs to District.

**Section 39 FINGERPRINTING**

Education Code sections 45125.1 and 45125.2 apply to this Agreement. Contractor shall, prior to commencement of Work, comply with either of the methods of ensuring safety set forth in Education Code section 45125.2(a)(1) (Installation of a physical barrier) or 45125.2(a)(2) (continual supervision by an employee of Contractor who has not been convicted of a serious or violent felony). If Contractor elects to provide continual supervision pursuant to Education Code section 45125.2(a)(2), Contractor shall require the person(s) who will provide that continual supervision to be fingerprinted by the Department of Justice ("DOJ"). Upon verification from DOJ that those persons fingerprinted have no record of a serious or violent felony, Contractor will so certify by signing and submitting to District, through the District Representative, the certification form attached as part of this Agreement and incorporated by reference. In addition, Contractor shall submit the names of those persons who have received clearance on a form as provided in this Agreement. Any person whose name is not on the cleared list may not have such access. In that case, Contractor must make arrangements with District for appropriate access. No person with a violent or serious felony as reported by DOJ may have access to the school campus.

Failure to comply with this Section of this Agreement at all times, or permitting unsupervised access by an employee whose name has not been cleared by DOJ as certified by Contractor, shall constitute grounds for termination of this Agreement.

**Section 40 SITE ACCESS**

Contractor will submit forms included in this Agreement to obtain badges for site access and site keys, when necessary.

**Section 41 GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board, which has jurisdiction to investigate complaints against Contractors if a complaint is filed within three years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractor's State License Board, P.O. Box 26000, Sacramento, California 95826.

**Section 42. RELEASE**

This agreement supersedes and voids all prior written and oral agreements between BRCO and the District and its agents and employees regarding the Work to be performed under this agreement. BRCO expressly releases the District, its employees and agents from any and all liability arising under any prior agreement.

Marysville Joint Unified School District

\_\_\_\_\_  
Gay Todd, Superintendent

\_\_\_\_\_  
Board Approval Date

\_\_\_\_\_  
**BRCO Constructors, Inc.**

Contractor

By  \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Lts

\_\_\_\_\_  
**PO Box 367**

Business Address



Loomis, CA 95650

511602


License Number

Federal ID Number

**CORPORATE CERTIFICATE**

I, Katie Rom, certify that I am the Secretary of the corporation named as Contractor in the foregoing contract; that Tir Buerke, who signed said contract on behalf of said corporation is authorized to fully bind the corporation to this Agreement; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers. I acknowledge that any false, deceptive, misleading or non-disclosed information related to this certification may result in tort liability for my company.

(Corporate Seal)

  
Secretary

Marysville Joint Unified School District

**Resolution 2013-14/21**

**PROCUREMENT – SCHOOL BUS**

**WHEREAS**, the Governing Board has the authority to authorize the Marysville Joint Unified School District (“District”) to purchase through another public agency if it is in the best interest of the district.

**BE IT RESOLVED** that the Governing Board of the Marysville Joint Unified School District does declare it to be in the best interest of the district to purchase one (1) or more school buses based on bid number 2009/10-0720 awarded by Hemet Unified School District on August 18, 2009 to BusWest.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Governing Board authorizes the district to accept and award purchase orders as needed for the procurement of one (1) or more school buses in accordance with the bid awarded by Hemet Unified School District to BusWest, through the term of the contract including any extensions if the district so chooses.

**APPROVED, PASSED, AND ADOPTED** by the Board of Trustees of the Marysville Joint Unified School District, Yuba County, State of California, on this 11<sup>th</sup> day of February 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
Gay S. Todd, Superintendent  
*Secretary - Board of Trustees*

\_\_\_\_\_  
Frank J. Crawford  
*President - Board of Trustees*

42

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT

Resolution 2013-14/22

**READ ACROSS AMERICA**

**WHEREAS**, the citizens of the Marysville Joint Unified School District (MJUSD) communities stand firmly committed to promoting reading as the catalyst for our students' future academic success, their preparation for America's jobs of the future, and their ability to compete in a global economy;

**WHEREAS**, the MJUSD has provided significant leadership in the area of community involvement in the education of our youth, grounded in the principle that educational investment is key to the community's well being, and long-term quality of life;

**WHEREAS**, "Read Across America," a national celebration of Dr. Seuss's birthday on Sunday, March 2, 2014, promotes reading and adult involvement in the education of our community's students;

**THEREFORE, BE IT RESOLVED**, the MJUSD will celebrate Read Across America in the district on Friday, February 28, 2014; and

**BE IT FURTHER RESOLVED**, the MJUSD Board of Trustees enthusiastically endorses "Read Across America" and recommits our community to engage in programs and activities to make America's children the best readers in the world.

**PASSED AND ADOPTED** by the Board of Trustees of the Marysville Joint Unified School District on this 11<sup>th</sup> day of February 2014.

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Frank J. Crawford, President  
Board of Trustees

---

Bernard P. Rechs, Vice President  
Board of Trustees

---

Anthony J. Dannible, Clerk  
Board of Trustees

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Jim C. Flurry, Representative  
Board of Trustees

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Jeff D. Boom, Member  
Board of Trustees

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Glen E. Harris, Member  
Board of Trustees

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Philip R. Miller, Member  
Board of Trustees



California School Boards Association

***TIME SENSITIVE, REQUIRES BOARD ACTION  
DEADLINE MONDAY, MARCH 17, 2014***

January 31, 2014

**TRANSMITTAL**

To: All Board Presidents and Superintendents  
CSBA Member Boards of Education

From: Charlyn Tuter, Sr. Administrative Assistant

Re: 2014 CSBA Delegate Assembly Election  
U.S. Postmark Deadline – Monday, March 17, 2014

MJUSD SUPT OFFICE  
JAN 31 2014  
RECEIVED/lm

Enclosed in this mailing you will find the following:

- Memo from CSBA President Josephine Lucey
- Return envelope U.S. Postmark Deadline – Monday, March 17, 2014
- Red ballot to be signed by Superintendent or Board Clerk
- List of the current Delegates in your region (reverse side of ballot)
- Copy on white paper of the red ballot for insertion in board packets
- Copies of each candidate's biographical sketch and optional résumé, if provided

Please do not hesitate to contact me at (800) 266-3382 ext. 3281 should you have any questions.

Thank you.

Enclosures



California School Boards Association

**TIME SENSITIVE, REQUIRES BOARD ACTION  
DEADLINE MONDAY, MARCH 17, 2014**

January 31, 2014

## MEMORANDUM

**To:** All Board Presidents and Superintendents  
CSBA Member Boards of Education

**From:** Josephine Lucey, President

**Re:** 2014 CSBA Delegate Assembly Election  
U.S. Postmark Deadline – Monday, March 17, 2014

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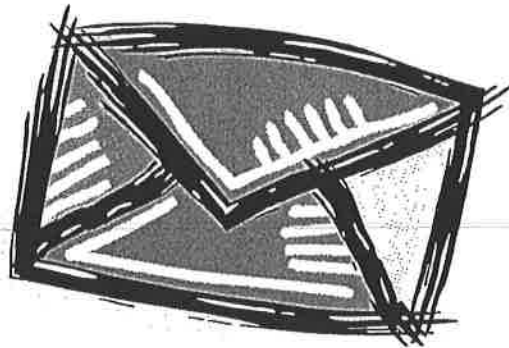
Enclosed is the ballot material for election of a representative to the CSBA Delegate Assembly from your region or subregion. The material consists of the ballot (on red paper), required candidate biographical sketch form, and if submitted, résumé for each candidate. In addition, we are including a “copy” of the ballot on white paper so that it may be included in board agenda packets, if you choose to do so. **Only the ballot on red paper is to be completed and returned.**

The board as a whole may vote for up to the number of vacancies in the region or subregion as indicated on the ballot. For example, if there are three vacancies in the region or subregion, the board may vote for up to three individuals. Regardless of the number of vacancies, each board may cast no more than one vote for any one candidate. (The ballot also contains a provision for write-in candidates; their name and district must be clearly printed in the space provided.)

The ballot must be signed by the Superintendent or Board Clerk and returned in the enclosed envelope; if the envelope is misplaced, you may use your district's stationery; please write **DELEGATE ELECTION** prominently on the envelope with the region or subregion number on the bottom left corner. **Ballots must be postmarked by the U.S. Post Office on or before Monday, March 17. No exceptions are allowed.**

Election results will be available no later than Tuesday, April 1. If there is a tie vote, a run-off election will be held. All re-elected and newly elected Delegates will serve two-year terms beginning April 1, 2014 – March 31, 2016. The next meeting of the Delegate Assembly is on Saturday, May 17 – Sunday, May 18 at the Hyatt Regency in Sacramento.

The names of all Delegates will be available on CSBA's website no later than Tuesday, April 1. Please do not hesitate to contact Charlyn Tuter in the Leadership Services Department at (800) 266-3382 ext. 3281 should you have any questions. Thank you.



**BALLOTS SHOULD BE RETURNED IN THE  
ENCLOSED ENVELOPE; HOWEVER, SHOULD THE  
ENVELOPE BECOME MISPLACED; PLEASE USE  
YOUR STATIONERY AND RETURN TO:**

**CSBA  
DELEGATE ASSEMBLY ELECTIONS  
3251 BEACON BLVD.  
WEST SACRAMENTO, CA 95691**

**ON THE BOTTOM LEFT CORNER OF THE  
ENVELOPE, WRITE THE REGION OR SUBREGION  
NUMBER (THIS NUMBER APPEARS ON THE  
BALLOT AT THE TOP).**

# 2014 Delegate Assembly Candidate Biographical Sketch Form



**DUE: Tuesday, January 7, 2014 (U.S.P.S.)**

Mail to: CSBA | Attn: Leadership Services | 3251 Beacon Blvd., West Sacramento, CA 95691 | or fax 916.371.3407

Please complete, sign and date this **required one page** candidate biographical sketch form. An optional, one-page, single-sided, résumé may also be submitted; both will be copied exactly as received. Please do not state "see résumé" and please do not re-type this form. Any additional page(s) exceeding this **one page** candidate form will **not** be accepted. It is the candidate's responsibility to confirm that all nomination materials have been received by the CSBA Leadership Services department. Late submissions will not be accepted.

Name: <u>James C. Flurry</u>	CSBA Region: <u>Region 4/C</u>
District or COE: <u>Marysville Joint Unified School District</u>	Years on board: <u>9.5 year ADA 9500</u>
Contact Number: <u>530-741-0808</u>	E-mail: <u>JimFlurry@hotmail.com</u>
Are you a continuing Delegate? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, how long have you served as a Delegate? <u>4 years</u>	

**CSBA's Delegate Assembly sets the general education policy direction for the Association. As a member of the Delegate Assembly, please describe what your top three educational priorities would be, and why they are important to the Association.**

- 1.) To develop policies and leadership in political positions for the enhancement of our Boards and Districts for the top educational experiences and outcomes of our students and the facilitation of their thriving lives. This fosters the mission of CSBA.
- 2.) To develop improved communications between CSBA for collaborations between the association and the schools. This will yield more effective schools and a continued CSBA mission fulfilled.
- 3.) To explore the feasibility and implementation of CSBA becoming a grant-writing and administering agent for the Districts across California. Our smaller Districts are seldom able to afford grant writers, though vast sums are available. Modest administrative fees can be allocated in grant funding to cover the writer staff and operations team.

**Another responsibility of Delegates is to communicate the interests of local boards to CSBA's Board of Directors, Executive Committee and staff. Please describe your activities/involvement or interests in your local district or county office.**

In my work as an elected Trustee and citizen, I represent and convey CSBA values and services through these involvements: Among my civic services is my service on the District Budget Committee (6years with layoffs of teachers to zero); United Way allocations board; Life-Coach for youth at the request of school administrators; Serve in planning committee for county-wide health and wellness projects; local Exchange Club allocations board; ACE Award chairperson assisting youth with hardships; supports schools and law enforcement halting child abuse and bullying; serve a church community guiding a 2,000 person congregation and outreach which helps homeless people and under-privileged children; enjoy visiting all our 26 school sites and attend District-wide events from academic to sports gatherings.

**Why are you interested in becoming a Delegate and what contribution do you feel you would make as a member of the Delegate Assembly?**

I will function as a positive PR agent on behalf of CSBA among all possible entities in our region. I will convey updates of CSBA services and policy to my fellow Trustees through our region and express feedback from the public and the education professionals I work beside. My employment with our district began 50 years ago as a school bus driver on my 18th birthday.

Since that starting point some of the positions and duties held have been: teacher, activities director, assistant principal, principal, Operating Engineer for classified employees, and holding various positions in the teacher's union (including vice president and president). I retired from teaching and school administration in 2004 and won an elected position on the board along with another teacher. In 2006 and 2008 we made history by campaigning for and winning the votes for two bonds to renovate and build new schools. I have a genuine commitment to our district, students, and staff.

47

**Your signature indicates your consent to have your name placed on the ballot and to serve as a Delegate, if elected.**

Signature: James C. Flurry

Date: 12-29-2013

This complete, **ORIGINAL** Ballot must be **SIGNED** by the Superintendent or Board Clerk and returned in the enclosed envelope postmarked by the post office no later than **MONDAY, MARCH 17, 2014**. Only ONE Ballot per Board. Be sure to mark your vote "X" in the box.  
*A PARTIAL, UNSIGNED, PHOTOCOPIED, OR LATE BALLOT WILL NOT BE VALID.*

OFFICIAL 2014 DELEGATE ASSEMBLY BALLOT  
SUBREGION 4-C  
(Colusa, Sutter, Yuba Counties)

Number of vacancies: 1 (Vote for no more than 1 candidate)

*Delegates will serve two-year terms beginning April 1, 2014 – March 31, 2016*

*\*denotes incumbent*

☐

James C. Flurry (Marysville Joint USD)\*

COPY

*Provision for Write-in Candidate Name*

*School District*

*Signature of Superintendent or Board Clerk*

*Title*

*School District/COE Name*

*Date of Board Action*

48

*See reverse side for a current list of all Delegates in your Region.*



**Region 4 – Paige K. Stauss, Director (Roseville Joint Union HSD)**  
**8 Delegates (8 elected)**

**Below is a list of all the current Delegates from this Region**

**Subregion A**

Barbara McIver (Red Bluff Joint Union HSD), term expires 2014

**Subregion B**

Mary Ellen Garrahy, (Oroville City ESD), term expires 2015

**Subregion C**

Jim Flurry (Marysville Joint USD), term expires 2014

Sharman Kobayashi (Yuba City USD), term expires 2015

**Subregion D**

Trish Gerving (Nevada City USD), term expires 2015

Lynn MacDonald (Placer Union HSD), term expires 2014

Vacant, term expires 2015

**County Delegate**

Lynn M. Oliver (Placer COE), term expires 2014

**Counties**

Glenn, Tehama (Subregion A)

Butte (Subregion B)

Colusa, Sutter, Yuba (Subregion C)

Nevada, Placer, Sierra (Subregion D)