

DOCUMENT 00530

**AGREEMENT**

THIS AGREEMENT IS MADE AND ENTERED INTO THIS 15<sup>th</sup> Day of June, 2017 by and between the Milpitas Unified School District ("District" or "Owner") and - Dolan Concrete Construction ("Contractor") ("Agreement").

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

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

PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1- INCREMENT #1

PROJECT/CONTRACT NO.: 16-20-07-04 between the Milpitas Unified School District and Contractor ("Contract").

It is understood and agreed that the Work shall be performed and completed as required in the Contract Documents including, without limitation, the Drawings and Specifications, under the direction and supervision of, and subject to, the approval of the District or its authorized representative.

2. **The Contract Documents:** The complete Contract consists of all Contract Documents as defined in the General Conditions and incorporated herein by this reference. Any and all obligations of the District and Contractor are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.
3. **Interpretation of Contract Documents:** Should any question arise concerning the intent or meaning of Contract Documents, including the Drawings or Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, this Agreement shall control over the Special Conditions, which shall control over any Supplemental Conditions, which shall control over the General Conditions, which shall control over the remaining Division 0 documents, which shall control over Division 1 Documents which shall control over Division 2 through Division 18 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

4. **Time For Completion:** It is hereby understood and agreed that the work under this contract shall be completed as per the schedules attached in Section 01010. See the schedules for durations, milestones, and completion dates associated with each Bid Package.
5. **Completion-Extension Of Time:** Should the Contractor fail to complete this Contract, and the Work provided herein, within the time fixed for completion, due allowance being made for the contingencies provided for herein, the Contractor shall become liable to the District for all loss and damage that the District may suffer on account thereof. The Contractor shall coordinate its work with the Work of all other contractors. The District shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that will allow timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.
6. **Liquidated Damages:** Time is of the essence for all work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of One Thousand (\$1,000) per day as liquidated damages for each and every day's delay beyond the time herein prescribed in finishing the Work. Liquidated damages of \$500 per day will be assessed if the punch list is not completed within 14 days after issuance. It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages are not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement. The District's right to assess liquidated damages is as indicated herein and in the General Conditions.

The time during which the Contract is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

7. **Loss Or Damage:** The District and its authorized representatives shall not in any way or manner be answerable or suffer loss, damage, expense, or liability for any loss or damage that may happen to the Work, or any part thereof, or in or about the same during its construction and before acceptance, and the Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold the District and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever.
8. **Insurance and Bonds:** Contractor shall provide all required certificates of insurance, and payment and performance bonds as evidence thereof.

9. **Prosecution Of Work:** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this contract, the District, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
10. **Authority of Architect, Project Inspector, and DSA:** Contractor hereby acknowledges that the Architect(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. The Contractor shall be liable for any delay caused by its non-compliant Work.
11. **Assignment Of Contract:** Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by the Contractor without the written approval of the District, nor without the written consent of the Surety on the Contractor's Performance Bond (the "Surety"), unless the Surety has waived in writing its right to notice of assignment.
12. **Classification Of Contractor's License:** Contractor hereby acknowledges that it currently holds valid required Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
13. **Payment of Prevailing Wages:** The Contractor and all Subcontractors under the Contractor shall pay all workers on all Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code.
14. **Labor Compliance Program:** If the District has adopted a labor compliance program which is applicable to the Project, Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the District's labor compliance program, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate certified payroll records with each application for payment, or the District cannot issue payment. This provision is only applicable if the Project is subject to a Labor Compliance Program funded in whole or in part with State bond funds.
15. **Project Stabilization Agreement:** The Project documents include the Project Stabilization Agreement, the contents of which are incorporated herein by reference.

16. **Contract Price:** In consideration of the foregoing covenants, promises, and agreements on the part of the Contractor, and the strict and literal fulfillment of each and every covenant, promise, and agreement, and as compensation agreed upon for the Work and construction, erection, and completion as aforesaid, the District covenants, promises, and agrees that it will well and truly pay and cause to be paid to the Contractor in full, and as the full Contract Price and compensation for construction, erection, and completion of the Work hereinabove agreed to be performed by the Contractor, the following price:  
**\$ 2,131,400.00 for a total contract sum of** Two Million One Hundred Thirty One Thousand Four Hundred **and 00/100 Dollars (\$\_\_\_\_\_ .00).**

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

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

IN WITNESS WHEREOF, accepted and agreed on the date indicated above:

**CONTRACTOR**

**DISTRICT**

\_\_\_\_\_ Dolan Concrete Construction

\_\_\_\_\_ Milpitas Unified School District

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

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

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

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

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

END OF DOCUMENT

00557.00001/425967.1

## SCOPE STATEMENT

**Project Name: McCandless Site – Phase 1 – Increment #1**  
**Location: McCandless Drive, Milpitas CA 95035**  
**Owner: Milpitas Unified School District**

**Bid No.: #16-21-07-04**  
**Trade: Site Concrete**

**I SCOPE OVERVIEW** - Scope of work for **Site Concrete** Contractor generally includes, but is not limited to, providing all labor, material, tools and equipment to complete all elements of the project as indicated in the Contract Documents and as defined below.

**II SCOPE SPECIFIC SPECIFICATIONS** - This Scope of Work specifically includes, but is not limited to work included in the following specifications:

- ALL DOCUMENTS AS NOTED IN THE TABLE OF CONTENTS FOR THE FRONT END DOCUMENTS FOR THE MCCANDLESS SITE – PHASE 1 – INCREMENT#1 BID

MUSD – PROJECT STABILIZATION AGREEMENT (PSA)

PADRE – SOILS MANAGEMENT PLAN (SMP)

Division 01 – General Requirements

Division 03 – Concrete

Section 03 30 00	Cast-In-Place Concrete
Section 03 35 00	Concrete Finishes
Section 03 49 20	Glass Fiber Reinforced Concrete Bollards

Division 32 – Exterior Improvements

Section 32 05 23	Concrete for Exterior Improvements
Section 32 13 13	Concrete Paving
Section 32 16 13	Concrete Curbs and Gutters
Section 32 17 26	Tactile Warning Surfaces

**III DIVISION 1 - GENERAL REQUIREMENTS** – The following items require special attention **for ALL TRADES**. Reference the Project Manual for a comprehensive list of contract requirements.

1. Site Concrete Contractor will provide a debris box on site excluding those required for demolition or clearing, scrap-out of drywall, concrete spoils, or removal and disposal of hazardous waste materials. On a daily basis, all contractors are required to remove and dispose of any trash or other waste material generated by the performance of their work. Project site cleanup will be at the direction of the Construction Manager and may require each sub without compensation to participate in a composite cleanup until site is clean and safe.
2. Trade Contractors are responsible to provide power generator ~~200A temporary power~~, distribution boxes, and general area lighting to the project work area as related to their scope. There is NO power on site. All Trade contractors are responsible to provide their own temporary power cords and task lighting.
3. Site Concrete Contractor will provide on-site crew with fire extinguishers per Cal OSHA requirements.
4. Contractors are NOT permitted to use potable water for any construction purpose including dust control and compaction.
5. Provide own shipping, hoisting, lifting, loading and unloading, safety equipment and scaffolding as necessary to perform its work. The Construction Manager and General Trades Contractor will not provide a forklift for general use. All deliveries requiring street lane shutdown or special requirements must be coordinated with the Construction Manager within 24 hours of delivery. After hour deliveries, or deliveries with no company representative on site will be sent away at the expense of the recipient Contractor.
6. Maintain safety compliance and holding weekly safety meetings for their own workers. Reports of these meetings (tool box talks) shall be submitted to the Construction Manager **each week**. \*\*\* Please note: payment applications are subject to rejection if safety meeting documentation is not current.\*\*\*
7. The project manager or field superintendent (of each trade contractor) are expected to attend weekly project meetings (date and time TBD, Block off Minimum 1 Hour.) when there is ongoing work being performed by that trade contractor, or when requested by the Construction Manager.
8. Coordinate with other trades to create an efficient work environment and to minimize re-work and waste in the field. Field supervisors will be asked to attend separate field coordination meetings which will be at the discretion of the Construction Manager.
9. Responsible for their own phone service and drinking water.
10. Ensuring employees park in designated parking areas.
11. All trade contractors shall provide reports, daily to the Construction Manager.
12. On a weekly basis, All trade contractors shall update record drawings (as-built) for their scope of work herein. Progress payments will be withheld until record drawings are updated to the satisfaction of the Construction Manager. These drawings will be in the

- Construction Manager's office and are to be updated weekly and reviewed with the Construction Manager. Upon completion of the project, all trade contractors shall submit a final, full size record set of drawings both in hard copy and electronic format. Final set shall have record information shown in colored ink and shall be neat and legible. Final payment will be withheld until these requirements have been met.
13. Submit updated scheduling information to the Construction Manager on a weekly basis, or upon request. If notified by the Construction Manager through a Notice to Comply letter stating schedule deficiency, all trade contractors are required to increase manpower accordingly or as decided by the Construction Manager to meet the Master Bid Schedule.
  14. Required to employ, at their own expense, professional underground utility locating services for their onsite excavations.
  15. Responsible for any dewatering and other methods of water intrusion as required to complete scope of work.
  16. Before any trade contractor or subcontractor creates an onsite storage area (or trailer parking), approval must be granted from the Construction Manager. Storage of onsite materials to be coordinated with other contractors to not interfere with their scheduled work or access.
  17. Responsible to protect their work from inclement weather and moisture.
  18. Protect their own work from damage from other trades. Costs for temporary protection measures to protect work in place should be carried in cost of work. Costs of undocumented damaged work that is unprotected shall be the responsible of the installing Contractor.
  19. Responsible for reviewing all drawing sheets and specification sections, not just those specific to their work. All trade contractors are responsible for the scope of work described herein as it appears on any and all drawing sheets and specification sections. All trade contractors are required and expected to be conscious of other trades' work, and coordinate their work with other trade contractors and their subcontractors.
  20. All trades are responsible for providing their own surveying and staking for the site as required to complete their scope of work. All trades are to coordinate with the Construction Manager to ensure the same control points are being used. Construction Manager is to be notified within 48 hours any scheduled surveying & staking on site.
  21. All trade contractors including but not limited to, General Trades Contractor, Mechanical & Plumbing Trade Contractor, Electrical Trade Contractor and Fire Sprinkler Trade Contractor shall provide staff for days of footing and slab pours to confirm their work is not damaged or moved during the pour.
  22. Job must be manned properly at all times. Field foreman and/or lead men must not change throughout project even if schedule required demobilization and remobilization.
  23. Comply with SWPPP and Erosion Control plans. SWPPP and erosion control measures will be provided by the District SWPPP Manager. All contractors are responsible for the costs to replace any and all erosion control measures they disturb.
  24. The Owner shall pay all City of Milpitas Public Works, City of Milpitas Utilities and PG&E design and permit fees relating to the project. All trade contractors are responsible

for any and all other permits or fees required to perform their work. Contractors performing work in the city right-of-way will be required to pay for and obtain necessary encroachment permit and provide their insurance certificate to the City of San Jose.

25. The removal and disposal of soil spoils from their work.
26. Coordinating traffic control and confirming haul routes with the local authorities for any large deliveries related to their work. Pay any permit fees as required.
27. Responsible for any street sweeping that their work may cause.
28. Any Owner & End User training sessions as indicated in Contract Documents and the Master Bid Schedule. A PowerPoint presentation must be submitted to the Construction Manager (10) business days prior to the training session to ensure content is appropriate. Power point shall include but is not limited to color coded zone maps, drawings, Operation & Maintenance Manuals. Handouts are to be provided by All Trade Contractors. Sessions will cover maintenance and repair for all systems installed by Trade Contractors scope of work. Session shall be taught by Project Manager and Site Supervisor or Maintenance Manager from each company. For Bidding purposes assume (1) full day of training for each Trade Contractor.
29. Providing Operation & Maintenance Manuals & Closeout Submittals as indicated in the contract documents. All closeout materials shall be submitted in digital format PDF first to the Construction Manager within (30) days of request. *(hard copies to be submitted after approval)* All PDF documents shall be color scanned and blurry free. All PDF documents shall be book marked in PDF format as directed by the Construction Manager. *Please note: If closeout documents are not received in this timeline by the Construction Manager application for payments may be reduced or rejected until all documents have been received and approved.*
30. Producing Asbuilt documents as indicated in the contract documents. All Asbuilt drawings shall be submitted in digital format PDF first to the Construction Manager within (30) days of request. *(Hard copies to be transmitted after approval.) Final Asbuilts to be completed in CAD format, No exceptions. CAD drawings to be distributed by the Construction Manager.*
31. Updating the Asbuilt set in the Construction Manager's office WEEKLY, no exceptions. If Asbuilt documents are not updated the Construction Manager reserves the right to reduce or reject Applications for Payment until the requirements have been fulfilled.

**IV SPECIFIC SCOPE** - provide all labor, material, equipment, supervision, submittals, shop drawings, engineering, coordination, and all related work necessary for the completion of the *Scope of Work* in accordance with Contract Documents and all applicable codes and authorities including, but not limited to, the following:

1. Provide all concrete as shown in the contract documents per plans, specifications and City or Governing jurisdiction's standards. This work includes but is not limited to; sidewalks, stairs, ramps, curbs (flush, rolling and vertical) gutters, vehicular concrete paving, driveways, planters, etc.

2. Coordinate with underground utilities contractor regarding inverts and routing of underground utilities and possible conflicts with footings.
3. Responsible for excavating and off-haul own spoils off-site based on the Padre & Cornerstone Soils Reports.
4. Comply with Padre Soil Management report for handling excavation soil with oversight by District Representative.
5. Provide thickened edges, including layout and adjustments where new concrete is adjacent to new or existing asphalt or irrigated landscaping.
6. Include all formwork, supply & placement of reinforcing steel, slip dowels, mesh, supply, pump place and finish of concrete material, vapor retarder, vapor/moisture barrier, waterproofing membranes, bracing, finishing, grouting, sealants, caulking and sack and patch as necessary.
7. For bidding purposes include a total of **three** mobilization for the duration of the project. Provide unit cost of additional mobilizations.
8. Include integral color and finish as required.
  - a) Provide mock up to be approved by District and Construction Manager **prior** to installation.
9. Provide control and expansion joints with joint sealants.
  - a) Submit layout plan to be reviewed with Construction Manager prior to saw-cutting for approval.
  - b) Furnish and install all expansion joint material and pre-molded expansion joint filler: include caulking/sealant of joints.
  - c) Include all grooved and tooled borders and expansion joints around fence posts.
10. Provide all tactile warning surfaces and nosing per the contract documents and as required by City or governing jurisdiction.
11. Provide sacking of all work and skim coat to all exposed surfaces above 6” after stripped and cleaned.
12. Install steel sleeves for handrails and misc. embedded metals (misc metals and sleeves to be provided by others). Coordinate with Misc Metals contractor for layout and installation. Sleeves shall be plum and straight.
13. Subcontractor is responsible for concrete washout & removal of any excess concrete from job site. Location of washout to be determined by Construction Manager.
  - a) The washout area must be maintained on a regular basis to prevent any concrete waste from escaping the washout area/container.
  - b) The area must also be covered during inclement weather to prevent spills into the storm drain system.
14. Coordinate with underground utilities before final trimming and setting of drain fixtures prior to concrete pour and after paving.

15. Installation of transformer and trash enclosure pad, fencing to be installed by others. Coordinate with Fence Contractor to set any sleeves prior to install.
16. Installation of bioswales per contract details referenced on sheet C7.4 details 1A, 1 & 12.
17. Furnish and install basketball hoop assemblies, pole ball and concrete bollards complete per the project front end documents.
18. Installation of removable concrete bollards per detail 7/ C7.1
19. Provide and install sign wall complete, including excavation, form stripping, cast in place letters, skim coating, etc as shown on Sheet A1.13 details 25 & 30.
20. Provide and install ball wall, tetherball poles and flagpole complete including but not limited to, excavation, rebar cages, concrete forms and etc.
21. Responsible for installation of light poles including setting bolt templates, rebar cages, sonitube, place & finish, concrete forms and etc.
22. Provide detailed traffic control plan to Construction Manager for City review prior to start of work.
23. Responsible for full compliance with the SWPPP and erosion control plan as applicable to the scope of work herein, including covering all spoils before a weather event occurs and for mitigating all dust resulting from their own operations.
24. Shall temporary fencing need to be removed or modified, contractor will reinstall and secure fencing to maintain a secure and safe jobsite.
25. Change in work for which compensation is agreed to be actual cost of labor and material (T&M) must be documented by daily T&M Tags signed by a representative of the Construction Manager. Change Costs not supported by daily signed T&M tags will not be considered.

## **V SCHEDULE**

1. Reference Master Bid/Construction Schedule attached. Estimated Construction Start Date is 06/05/17
2. Contractors are responsible to follow the Master Bid Schedule as a minimum expectation and submit activity start, finish, and projected completion dates monthly.
3. Working hours begin at 7:00 a.m. – 4:00 p.m.

## **VI BIDDING**

### **1. Owner Allowances:**

- a. **Allowance #1** - Contractor to include \$10,000.00 Concrete Repair allowance in the base bid to be used only under direction from the Construction Manager. Any unused portion of the allowance to be returned to the owner.

### **2. Unit Prices: N/A**

### **3. Alternates: N/A**

END OF SCOPE STATEMENT

**ESCROW OF BID DOCUMENTATION**

**For Contracts with a Contract Price Over  
Seven Hundred and Fifty Thousand Dollars (\$750,000)**

**1. Requirement to Escrow Bid Documentation**

- a. Contractor shall submit, within **SEVEN (7)** calendar days after the date of the Letter of Intent, one copy of all documentary information received or generated by Contractor in preparation of bid prices for this Contract, as specified herein. This material is referred to herein as "Escrow Bid Documentation." The Escrow Bid Documentation of the Contractor will be held in escrow for the duration of the Contract.
- b. Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documentation constitutes all written information used in the preparation of its bid, and that no other written bid preparation information shall be considered in resolving disputes or claims. Contractor also agrees that nothing in the Escrow Bid Documentation shall change or modify the terms or conditions of the Contract Documents.
- c. The Escrow Bid Documentation will not be opened by District except as indicated herein. The Escrow Bid Documentation will be used only for the resolution of change orders and claims disputes.
- d. Contractor's submission of the Escrow Bid Documentation, as with the bonds and insurance documents required, is considered an essential part of the Contract award. Should the Contractor fail to make the submission within the allowed time specified above, District may deem the Contractor to have failed to enter into the Contract, and the Contractor shall forfeit the amount of its bid security, accompanying the Contractor's bid, and District may award the Contract to the next lowest responsive responsible bidder.
- e. NO PAYMENTS WILL BE MADE, NOR WILL DISTRICT ACCEPT PROPOSED CHANGE ORDERS UNTIL THE ABOVE REQUIRED INFORMATION IS SUBMITTED AND APPROVED.
- f. The Escrow Bid Documentation shall be submitted in person by an authorized representative of the Contractor to the District.

**2. Ownership of Escrow Bid Documentation**

- a. The Escrow Bid Documentation is, and shall always remain, the property of Contractor, subject to review by District, as provided herein.

- b. Escrow Bid Documentation constitute trade secrets, not known outside Contractor's business, known only to a limited extent and only by a limited number of employees of Contractor, safeguarded while in Contractor's possession, extremely valuable to Contractor, and could be extremely valuable to Contractor's competitors by virtue of it reflecting Contractor's contemplated techniques of construction. Subject to the provisions herein, District agrees to safeguard the Escrow Bid Documentation, and all information contained therein, against disclosure to the fullest extent permitted by law.

### **3. Format and Contents of Escrow Bid Documentation**

- a. Contractor may submit Escrow Bid Documentation in its usual cost-estimating format; a standard format is not required. The Escrow Bid Documentation shall be submitted in the language (e.g., English) of the specification.
- b. Escrow Bid Documentation must clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule, separating bid items into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documentation shall include all subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the bid proposal. Estimated costs should be broken down into Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's allocation of indirect costs, contingencies, markup, and other items to each bid item shall be identified.
- c. All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- d. Bid Documentation provided by District should not be included in the Escrow Bid Documentation unless needed to comply with the following requirements.

### **4. Submittal of Escrow Bid Documentation**

- a. The Escrow Bid Documentation shall be submitted by the Contractor in a sealed container within SEVEN (7) calendar days after the date of the Letter of Intent. The container shall be clearly marked on the outside with the Contractor's name, date of submittal, project name and the words "Escrow Bid Documentation - Intended to be opened in the presence of Authorized Representatives of Both District and Contractor".

- b. By submitting Escrow Bid Documentation, Contractor represents that the material in the Escrow Bid Documentation constitutes all the documentary information used in preparation of the bid and that the Contractor has personally examined the contents of the Escrow Bid Documentation container and has found that the documents in the container are complete.
- c. If Contractor's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds 5 percent of the total contract price proposed by Contractor, shall provide separate Escrow Documents to be included with those of Contractor. Those documents shall be opened and examined in the same manner and at the same time as the examination described above for Contractor.
- d. If Contractor wishes to subcontract any portion of the Work after award, District retains the right to require Contractor to submit Escrow Documents for the Subcontractor before the subcontract is approved.

## **5. Storage, Examination and Final Disposition of Escrow Bid Documentation**

- a. The Escrow Bid Documentation will be placed in escrow, for the life of the Contract, in a mutually agreeable institution. The cost of storage will be paid by Contractor for the duration of the project until final Contract payment. The storage facilities shall be the appropriate size for all the Escrow Bid Documentation and located conveniently to both District's and Contractor's offices.
- b. The Escrow Bid Documentation shall be examined by both District and Contractor, at any time deemed necessary by either District or Contractor, to assist in the negotiation of price adjustments and change orders or the settlement of disputes and claims. In the case of legal proceedings, Escrow Bid Documentation shall be used subject to the terms of an appropriate protective order if requested by Contractor and ordered by a court of competent jurisdiction. Examination of the Escrow Bid Documentation is subject to the following conditions:
  - (1) As trade secrets, the Escrow Bid Documentation is proprietary and confidential to the extent allowed by law.
  - (2) District and Contractor shall each designate, in writing to the other party **SEVEN (7)** calendar days prior to any examination, the names of representatives who are authorized to examine the Escrow Bid Documentation. No other person shall have access to the Escrow Bid Documentation.
  - (3) Access to the documents may take place only in the presence of duly designated representatives of the District and Contractor. If Contractor fails to designate a representative or appear for joint examination on

SEVEN (7) calendar days notice, then the District representative may examine the Escrow Bid Documents alone upon an additional THREE (3) calendar days notice if a representative of the Contractor does not appear at the time set.

- (4) If a subcontractor has submitted sealed information to be included in the Escrow Bid Documents, access to those documents may take place only in the presence of a duly designated representative of the District, Contractor and that subcontractor. If that subcontractor fails to designate a representative or appear for joint examination on SEVEN (7) calendar days notice, then the District representative and/or the Contractor may examine the Escrow Bid Documentation without that subcontractor present upon an additional THREE (3) calendar days notice if a representative of that subcontractor does not appear at the time set.
- c. The Escrow Bid Documentation will be returned to Contractor at such time as the Contract has been completed and final settlement has been achieved.

END OF DOCUMENT

00557.00001/426077.1

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**  
Public Contract Code Section 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this 15 day of June, 2017, by and between:

Milpitas Unified School District, whose address is 1331 East Calaveras Boulevard, Milpitas, California ("District" or "Owner"); and

Dolan Concrete Construction whose place of business is located at \_\_\_\_\_ ("Contractor"); and

\_\_\_\_\_ a state or federally chartered bank in the state of California, whose place of business is located at \_\_\_\_\_ ("Escrow Agent").

For the consideration hereinafter set forth, District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. 16-21-07-04 entered into between District and Contractor for the McCandless Elementary School Project #16-21-07-00 in the amount of \$ 2,131,400.00, dated 06/15/2017, 2017 (the "Contract"). Alternatively, on written request of Contractor, District shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Contractor.

Securities shall be held in name of Milpitas Unified School District, and shall designate Contractor as beneficial owner.

2. District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the

payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Contractor \$ \_\_\_\_\_ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Contractor.
7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in event of default by Contractor as determined solely by District. Upon seven (7) days written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

1331 East Calaveras Boulevard  
Milpitas, CA 95035

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address

At the time of Escrow Account is opened, District and Contractor shall deliver to Escrow Agent a fully executed of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
1331 East Calaveras Boulevard  
\_\_\_\_\_  
Milpitas, CA 95035

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address

END OF DOCUMENT

00557.00001/426104.1

**PERFORMANCE BOND**  
**(100% of Contract Price)**

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

KNOW ALL PERSONS BY THESE PRESENTS:

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

**PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1 – INCREMENT #1**

PROJECT/CONTRACT NO.: \_\_\_\_\_ 16-21-07-04 \_\_\_\_\_ between the Milpitas Unified School District and Contractor ("Contract");

Which Contract dated June 15, 2017, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of \$ \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to perform all the work required to complete the Project and to pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the intent and meaning, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

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

and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and

Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

(Affix Corporate Seal)

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

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

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

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

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

END OF DOCUMENT

**PAYMENT BOND**  
**Contractor's Labor & Material Bond**  
**(100% of Contract Price)**

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

KNOW ALL PERSONS BY THESE PRESENTS:

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

**PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1 – INCREMENT #1**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Milpitas Unified School District and Contractor ("Contract").

Which Contract dated June 15, 2017, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

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

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded

and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and

Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

(Affix Corporate Seal)

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

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

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

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

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

END OF DOCUMENT

**SPECIAL CONDITIONS**

1. **Mitigation Measures**

Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.)

2. **Modernization Projects**

- a. Access. Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only the Construction Manager will be allowed to unlock and lock doors in existing building(s). If Construction Manager is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Contractor's Work, Construction Manager will be paid by the Contractor, unless, at the discretion of the District, other arrangements are made in advance.
- b. **Master Key.** Upon request, the District may, at is own discretion, provide a master key to the school site for the convenience of the Contractor. The Contractor agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the master key is lost or stolen or if any unauthorized party obtains a copy of the key or access to the school.
- c. **Maintaining Services.** The Contractor is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Contractor shall provide temporary services to all facilities interrupted by Contractor's Work.
- d. **Maintaining Utilities.** The Contractor shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
- e. **Confidentiality.** Contractor shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Contractor encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes,

without limitation, all student, parent, and employee disciplinary information and health information.

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

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

- a. Requests for substitutions prior to award of the Contract shall be done within the time period indicated in the Instructions to Bidders.
- b. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35)** days of the date of the Letter of Intent.
- c. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
  - (1) If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.
  - (2) This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- d. A request for a substitution shall be in writing and shall include:
  - (1) All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
  - (2) Available maintenance, repair or replacement services;
  - (3) Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

- (4) Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and
  - (5) The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- e. No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:
- (1) The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;
  - (2) The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
  - (3) The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
  - (4) The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
  - (5) The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- f. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.
- g. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

**4. Fingerprinting**

Not required for work performed behind fenced area.

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

**5. Weather Days (To be filled in)**

Delays due to Adverse Weather conditions will only be permitted in compliance with the provisions in the General Conditions and only if the number of days of Adverse Weather exceeds the following parameters: **(FILL IN DATES BELOW)**

January	11	July	0
February	10	August	0
March	10	September	1
April	6	October	4
May	3	November	7
June	1	December	10

See contract schedule. Rain days will be included as realized.

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

<b>Commercial General Liability</b>	Each Occurrence	\$2,000,000
	General Aggregate	\$2,000,000
	Product Liability and Completed Operations	\$1,000,000
<b>Automobile Liability — Any Auto</b>	Combined Single Limit	\$2,000,000
<b>Excess Liability</b>		\$4,000,000

<b>Workers Compensation</b>		Statutory limits pursuant to state law
<b>Employers' Liability</b>		\$1,000,000
<b>Builders Risk (Course Of Construction)</b>		Provided by MUSD

7. **Permits, Certificates, Licenses, Fees, Approval**

- a. **Payment for Permits, Certificates, Licenses, and Fees.** As required in the General Conditions, the Contractor shall secure and pay for all permits, licenses and certificates necessary for the prosecution of the Work with the exception of the following:

(1) n/a

**With respect to the** above listed items, Contractor shall be responsible for securing such items, however, District will be responsible for payment of these charges or fees. Contractor shall notify the District of the amount due with respect to such items and to whom the amount is payable. Contractor shall provide the District with an invoice and receipt with respect to such charges or fees.

- b. **Storm Water Permits.** Contract will implement the following Storm Water Pollution Prevention Plan:

IN ORDER TO ENROLL IN THE CONSTRUCTION STORM WATER PERMIT AND BEFORE CONSTRUCTION ACTIVITIES BEGIN, THE DISTRICT WILL FILE CERTAIN SUBMITTALS REFERRED TO AS PERMIT REGISTRATION DOCUMENTS (PRDS) WITH THE REGIONAL WATER QUALITY CONTROL BOARD.

THE STATUS OF THE DISTRICT'S PRDS (THE RISK ASSESSMENT, SITE MAP(S), AND STORM WATER POLLUTION PREVENTION PLAN (SWPPP)) ARE AS FURTHER INDICATED IN THE SPECIAL CONDITIONS.

IF THE SPECIAL CONDITIONS INDICATE THAT CONTRACTOR SHALL BE RESPONSIBLE FOR PREPARING SOME OR ALL OF THE PRDS, CONTRACTOR SHALL FOLLOW THE REQUIREMENTS HEREIN.

1. GENERAL

1.1. RELATED DOCUMENTS AND PROVISION

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

- 1.1.1. General Conditions;
  - 1.1.2. Special Conditions;
  - 1.1.3. Site Standards; and
  - 1.1.4. Collaborative For High Performance Schools (CHPS) -- Special Environmental Requirements.
- 1.2. The Clean Water Act and Porter Cologne Water Quality Act prohibit the discharge of any water containing pollutants from certain construction sites unless a National Pollutant Discharge Elimination System permit is first obtained and followed. The National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ( Construction Storm Water Permit) Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ (NPDES No. CAS000002) issued by the California State Water Resources Control Board (State Water Board) authorizes the discharge of storm water and certain non-storm water from construction sites if certain conditions and measures are taken. The District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit.

## 2. SUBMITTALS

### 2.1. GENERAL

All submittals shall be made in a form conducive for the District to electronically upload the approved submittals to the Storm water Multi-Application Reporting and Tracking System (SMARTS).

### 2.2. RISK ASSESSMENT

- 2.2.1. Concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit a proposed “Risk Assessment” as set forth in the Construction Storm Water Permit.
- 2.2.2. The District’s Qualified SWPPP Developer (“QSD”) will review the Contractor’s proposed Risk Assessment for compliance with the Construction Storm Water Permit. If changes to the proposed Risk Assessment are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.

2.2.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised Risk Assessment to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the Risk Assessment and provide the Contract with a copy within seven (7) days of receipt of the revised Risk Assessment.

## 2.3. SITE MAPS

2.3.1. Concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit proposed "Site Maps" as described in Attachment B of the Construction Storm Water Permit.

2.3.2. The District's QSD will review the Contractor's proposed Site Maps for compliance with the Construction Storm Water Permit. If changes to the proposed Site Maps are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.

2.3.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised Site Maps to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the Site Maps and provide the Contract with a copy within seven (7) days of receipt of the revised SWPPP.

## 2.4. SWPPP

2.4.1. Concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit to the District a proposed SWPPP for the Work.

2.4.2. The District's Qualified SWPPP Developer ("QSD") will review the Contractor's proposed SWPPP for compliance with the Construction Storm Water Permit. If changes to the proposed SWPPP are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.

2.4.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised SWPPP to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the SWPPP and provide the Contract with a copy within seven (7) days of receipt of the revised SWPPP.

## 2.5. RAIN EVENT ACTION PLAN (REAP)

- 2.5.1. If Contractor determines that Site is a Risk Level 1, concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit to the District a proposed REAP for the Work.
- 2.5.2. The District's QSD will review the Contractor's proposed REAP for compliance with the Construction Storm Water Permit. If changes to the proposed REAP are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.
- 2.5.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised REAP to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the REAP and provide the Contract with a copy within seven (7) days of receipt of the revised REAP.

## 2.6. ACTIVE TREATMENT SYSTEM (ATS)

- 2.6.1. If Contractor determines that Site requires an ATS under the Construction Storm Water Permit, concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit to the District a proposed ATS for the Work.
- 2.6.2. The District's QSD will review the Contractor's proposed ATS for compliance with the Construction Storm Water Permit. If changes to the proposed ATS are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.
- 2.6.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised ATS to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the ATS and provide the Contract with a copy within seven (7) days of receipt of the revised ATS.

## 2.7. RECORDS

All electronic and hardcopy records required by the Construction Storm Water Permit shall be submitted to the District within seven (7) days of Completion of the Project.

## 3. PERMIT REGISTRATION DOCUMENTS

Prior to any activities on Site that disturb the Site's surface, the Permit Registration Documents (PRDs) required by the Construction Storm Water Permit must be filed with the Regional Water Quality Control Board. The District shall file the PRDs with the Regional Water Quality Control Board to activate coverage under the Construction Storm Water Permit.

#### 4. IMPLEMENTATION REQUIREMENTS

- 4.1. Contractor shall not conduct any activities that may affect the Site's construction runoff water quality until the District provides Contractor with the Waste Discharger Identification Number (WDID) assigned to this Project by the State Water Board.
- 4.2. Contractor shall keep a copy of the approved SWPPP at the job site. The SWPPP shall be made available when requested by a representative of the Regional Water Quality Control Board, State Water Resources Control Board, United States Environmental Protection Agency, or the local storm water management agency. Requests from the public shall be directed to the District for response.
- 4.3. Contractor shall designate in writing to the District a Qualified SWPPP Practitioner (QSP) who shall be responsible for implementing the SWPPP, REAP (if applicable), ATS (if applicable), conducting non-storm water and storm water visual observations, and for ensuring that all best management practices (BMPs) required by the SWPPP and General Permit are properly implemented and maintained.
- 4.4. All measures required by the SWPPP shall be implemented concurrent with the commencement of construction. Pollution practices and devices shall be followed or installed as early in the construction schedule as possible with frequent upgrading of devices as construction progresses.
- 4.5. Contractor shall ensure that all measures are properly maintained and repaired to protect the water quality of discharges.

#### 5. INSPECTION, SAMPLING, ANALYSIS, AND RECORD KEEPING REQUIREMENTS

The Contractor's QSP shall conduct all required visual observations, sampling, analysis, reporting, and record keeping required by the SWPPP and the Construction Storm Water Permit.

#### 6. REPORTING REQUIREMENTS

Contractor shall prepare and provide all the reports, which include, but are not limited to the Annual Report and any NEL Violation Reports or NAL Exceedance Reports, all of which are required by the SWPPP and the Construction Storm Water Permit.

## 7. ANNUAL REPORT

By August 1 of each year (defined as July 1 to June 30) that had at least one continuous three (3) month period coverage under the General Permit, Contractor shall complete and submit to the District an Annual Report, as required by the General Permit. If the Project is complete prior to August 1, Contractor shall submit the report prior to acceptance of the Project.

## 8. COMPLETION OF WORK

- 8.1. Clean-up shall be performed as each portion of the work progresses. All refuse, excess material, and possible pollutants shall be disposed of in a legal manner off-site and all temporary and permanent SWPPP devices shall be in place and maintained in good condition.
- 8.2. At Completion of Work, Contractor shall inspect installed SWPPP devices, and present the currently implemented SWPPP with all backup records to the District.

## 9. NOTICE OF TERMINATION (NOT)

A Notice of Termination (NOT) must be submitted by the Contractor to the District for electronic submittal by the Legally Responsible Person via SMARTS to terminate coverage under the General Permit. The NOT must include a final Site Map and representative photographs of the Project site that demonstrate final stabilization has been achieved. The NOT shall be submitted to the District on or before the Contractor submits its final application for payment. If the Regional Water Board rejects the NOT for any reason, the Contractor shall revise the NOT as many times as necessary to get the Regional Water Board's approval. The Regional Water Board will consider a construction site complete when the conditions of the General Permit, Section II.D have been met.

## 10. QUALITY ASSURANCE

- 10.1. Before performing any of the obligations indicated herein, the Contractor's QSP shall meet the training and certification requirements in the Construction Storm Water Permit.
- 10.2. Contractor shall perform the Work in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit.
- 10.3. Contractor shall conduct at least a one-hour training session on the requirements of the SWPPP for each employee before an employee conducts any construction on the Site. Contractor shall maintain documentation of this employee training at the site for review by the District or any regulatory agency.

## 11. PERFORMANCE REQUIREMENTS

- 11.1. The Storm Water Pollution Prevention Plan is a minimum requirement. Revisions and modifications to the SWPPP are acceptable only if they maintain levels of protection equal to or greater than originally specified.
- 11.2. Read and be thoroughly familiar with all of the requirements of the SWPPP.
- 11.3. Inspect and monitor all work and storage areas for compliance with the SWPPP prior to any anticipated rain.
- 11.4. Complete any and all corrective measures as may be directed by the regulatory agency.
- 11.5. Penalties: Contractor shall pay any fees and any penalties that may be imposed by the regulatory agency for non-compliance with SWPPP during the course of Work.
- 11.6. Costs: Contractor to pay all costs associated with the implementation of the requirements of the SWPPP in order to maintain compliance with the Permit. This includes installation of all Housekeeping BMPs, General Site and Material Management BMPs, Inspection requirements, maintenance requirements, and all other requirements specified in the SWPPP.

## 12. MATERIALS

All temporary and permanent storm water pollution prevention facilities, equipment, and materials as required by or as necessary to comply with the SWPPP as described in the BMP Handbook.

END OF DOCUMENT

00557.00001/426252.1

DOCUMENT 00805

**LABOR COMPLIANCE PROGRAM**  
**INFORMATION AND FORMS**

**Contractor is responsible for documenting its own certified payroll available only upon District request.**

END OF DOCUMENT

00557.00001/426282.1

**HAZARDOUS MATERIALS**  
**PROCEDURES & REQUIREMENTS**

**1. Summary**

This document includes information applicable to hazardous materials and hazard waste abatement.

**2. Notice of Hazardous Waste or Materials Conditions**

a. Contractor shall give notice in writing to the District, the Construction Manager, and the Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

- (1) Material that Contractor believes may be material that is hazardous waste or hazardous material, 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) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.

b. Contractor's written notice shall indicate whether the hazardous waste or material as shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

c. In response to Contractor's written notice, the District shall investigate the identified conditions.

d. If the District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the District shall so notify Contractor in writing, stating reasons. If the District and Contractor cannot agree on whether conditions justify an adjustment in Contract Price or Contract Times, or on the extent of any adjustment, Contractor shall proceed with the Work as directed by the District.

e. If after receipt of notice from the District, Contractor does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part.

District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of Work, or performing the Work by others.

f. If Contractor stops Work in connection with any hazardous condition and in any area affected thereby, Contractor shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

### **3. Additional Warranties and Representations**

- a. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).
- b. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
- c. Contractor represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

### **4. Monitoring and Testing**

- a. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.
- b. Contractor acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-

abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event District elects to perform these activities and tests, Contractor shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

- c. Notwithstanding District's rights granted by this paragraph, Contractor may retain its own industrial hygiene consultant at Contractor's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work and Contractor shall immediately provide that documentation upon request.

## **5. Compliance with Laws**

- a. Contractor shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.
- b. Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:
  - (1) The protection of the public health, welfare and environment;
  - (2) Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;
  - (3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and
  - (4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

## **6. Disposal**

- a. Contractor has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.
- b. Contractor shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.
- c. Contractor shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which District has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

## **7. Permits**

a. Before performing any of the Work, and at such other times as may be required by applicable law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to District that it and any disposal facility

- (1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and
- (2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Contractor shall not conduct any Work involving asbestos-containing materials or PCBs unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of

the Work, shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Contractor performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

b. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Contractor in securing the permit or giving the notice, but the Contractor shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

## **8. Indemnification**

a. To the extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 9601 et seq.).

## **9. Termination**

a. District shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

00557.00001/426290.1

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS**

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS 15 DAY OF June, 2017 by and between the MILPITAS UNIFIED SCHOOL DISTRICT ("District") and ("Contractor"), whose place of business is \_\_\_\_\_.

RECITALS:

1. District and Contractor entered into PROJECT/CONTRACT NO. 16-21-07-04 ("Contract" or "Project") in the County of Santa Clara, California.
2. The Work under the Contract has been completed.

NOW, THEREFORE, it is mutually agreed between District and Contractor as follows:

**AGREEMENT**

3. Contractor will only be assessed liquidated damages as detailed below:

Original Contract Sum

Modified Contract Sum

Payment to Date

Liquidated Damages

Payment Due Contractor \$ \_\_\_\_\_

4. Subject to the provisions hereof, District shall forthwith pay to Contractor the undisputed sum of \$ \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) under the Contract, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.
5. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 6 and continuing obligations described in Paragraph 8. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against District, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claim is set forth in Paragraph 6 and continuing obligations described in Paragraph 8 hereof.

6. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
------------------	-----------------------------	------------------------	-----------------------------

**[Insert information, including attachment if necessary]**

7. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 4 hereof, Contractor hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
8. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
9. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
10. Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the

remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

12. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

MILPITAS UNIFIED SCHOOL DISTRICT

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

CONTRACTOR

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

END OF DOCUMENT

DOCUMENT 00890

**GUARANTEE FORM**

Dolan Concrete Construction ("Contractor") hereby agrees that the      ("Work" of Contractor) which Contractor has installed for the Milpitas Unified School District ("District") for the following project:

PROJECT: (Identify Project)

PROJECT/CONTRACT NO.: 16-21-07-04 between the Milpitas Unified School District and Contractor ("Contract") has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of      year(s) from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is August 1, 2018.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

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

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

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

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

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

Representatives to be contacted for service subject to terms of Contract:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

END OF DOCUMENT



**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: 16-21-07-04 between Milpitas Unified School District (the "District" or the "Owner") and Dolan Concrete Construction \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, the District's labor compliance program, if in use on this Project.

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

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

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

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

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

END OF DOCUMENT

**DISABLED VETERAN BUSINESS  
ENTERPRISE PARTICIPATION CERTIFICATION**

PROJECT/CONTRACT NO.: 16-21-07-04 between Milpitas Unified School District (the "District") and Dolan Concrete Construction (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

**GENERAL INSTRUCTIONS**

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

**NOTE:** *Architectural, engineering, environmental, land surveying, or construction management firms must indicate their method of compliance by completing this form after selection by the District and before the contract is signed.*

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

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

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

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

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

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

<b>CATEGORY</b>	<b>TELEPHONE NUMBER</b>	<b>DATE CONTACTED</b>	<b>PERSON CONTACTED</b>
1. The District			*
2. OSB, which publishes a list of DVBE's; Internet Address: <a href="http://www.dgs.ca.gov/osbcr">Http://www.dgs.ca.gov/osbcr</a>	(916) 323-5478 (916) 322-5060		*
3. DVBE Organization (List)			*

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

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

<b>FOCUS/TRADE PAPER NAME</b>	<b>CHECK ONE</b>		<b>DATE OF ADVERTISEMENT</b>
	<b>TRADE</b>	<b>FOCUS</b>	







**SMOKE-FREE ENVIRONMENT CERTIFICATION**

PROJECT/CONTRACT NO.: 16-21-07-04 between Milpitas Unified School District (the "District" or the "Owner") and Dolan Concrete Construction (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

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

Per District Board Policy and consistent with Education Code section 48901 and Health and Safety Code section 39002 the Milpitas Unified School District and all District sites, including the Project site are Tobacco Free Environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes; school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

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

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

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

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

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

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

END OF DOCUMENT

**HAZARDOUS MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: 16-21-07-04 between Milpitas Unified School District ("District" or "Owner") and Dolan Concrete Construction ("Contractor" or "Bidder") ("Contract" or "Project").

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

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

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

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

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

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

END OF DOCUMENT

**LEAD-BASED MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: 16-21-07-04 between Milpitas Unified School District ("District" or "Owner") and Dolan Concrete Construction ("Contractor" or "Bidder") ("Contract" or "Project").

This certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

**1. Lead as a Health Hazard**

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

**2. Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 3224 1.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

**The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed**

**copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.**

**3. Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

THE CONTRACTOR HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;
2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

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

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

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

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

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

END OF DOCUMENT



and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

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

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

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

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

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

END OF DOCUMENT

**CRIMINAL BACKGROUND  
INVESTIGATION/ FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: 16-21-07-04 between the Milpitas Unified School District ("District") and Dolan Concrete Construction ("Contractor" or "Bidder") ("Contract" or "Project").

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

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

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

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

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

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

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

         The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

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

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

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

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

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

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

END OF DOCUMENT

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