



Revised: 7/25/2019

Bid No. 21-48, Sections A and B Playground Equipment Replacement at Various Sites

FRESNO UNIFIED SCHOOL DISTRICT
PURCHASING SERVICES
4498 N. BRAWLEY
FRESNO, CALIFORNIA 93722
559-457-3588

FRESNO UNIFIED SCHOOL DISTRICT
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BIDDERS REGISTRATION FORM

Bid No. 21-48, Sections A and B - PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES

ATTN: Toni Jorge
Email: toni.jorge@fresnounified.org
Phone: (559) 457-3463

Fresno Unified School District Bids and Proposals are available online for this project. If you downloaded a Bid or Proposal, fax or email a completed form so that you may be added to the Plan Holders List and notified of any addenda to this solicitation.

Name _____

Title _____

Organization _____

Street Address _____

Address (cont.) _____

City _____

State/Province _____

Zip/Postal Code _____

Contractor's License
Number (if applicable) _____

Work Phone _____

Fax _____

E-mail _____

**FRESNO UNIFIED SCHOOL DISTRICT
NOTICE TO BIDDERS**

NOTICE INVITING BIDS PURSUANT TO PUBLIC CONTRACT CODE 22000, ET SEQ.
(THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT)

Notice is hereby given that the Fresno Unified School District (“DISTRICT”) will receive sealed bids for **Bid No. 21-48, Sections A and B, Playground Equipment Replacement at Various Sites**, installation of owner-provided play equipment, including demolition of existing, concrete work, rubber tile surfacing, and related work.

Notice is hereby given pursuant to the provisions of Section 1770 et seq of the California Labor Code, each worker of the contractor and any of its subcontractors engaged in work on the Project shall be paid not less than the prevailing wage rate. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR).

Pursuant to Labor Code Section 1725.5, the DIR established a Contractor Registration Program, in which no contractor or subcontractor shall bid on, be listed in a bid, or engage in the performance of any public work contract without being registered.

Prime Contractor must have a valid **Class “A” or “B” Contractor’s License**.

A MANDATORY pre-bid conference has been scheduled at **10:00 AM, April 15, 2021**, in front of the Administration Office at **Winchell Elementary School, 3722 E Lowe Ave, Fresno, CA 93702**. **Immediately following contractors will meet at Webster Elementary School, 2600 E Tyler Ave, Fresno, CA 93701**. Contractors bidding as a Prime Contractor for the project must attend in order for their bid to be “responsive”. Immediately following the pre-bid conference will be a mandatory job-walk of two of the site(s), Winchell and Webster.

This bid consists of 2 projects to be awarded by Section. Sealed bids must be received on **May 6, 2021** at the DISTRICT Purchasing Department, 4498 N. Brawley, Fresno CA 93722. Each bid section will be opened and read aloud immediately following its designated due time:

- Section A Prior to 2:01 P.M.
- Section B Prior to 2:31 P.M.

Bids shall be accompanied by a certified check, cashier’s check, or a bidder’s bond in an amount not less than ten percent (10%) of total bids made payable to Fresno Unified.

The substitution of appropriate securities in lieu of retention amounts from progress payments in accordance with Public Contract Code Section 22300 is permitted.

The Bid documents are on file at Fresno and Tulare Builders Exchanges, and Fresno Reprographics.

Pursuant to Public Contract Code 3400(c)(2), Fresno Unified School District finds that it is in the best interest of the DISTRICT to standardize the products, equipment, and materials listed in Exhibit A-1 and Exhibit A-2 in order to match other products/equipment in use on a particular work of improvement either completed or in the course of completion. Where a specific brand, trade name, material, or product identified in the bid documents is also listed in Exhibit A-1 or Exhibit A-2, it shall be deemed to be followed by the words “No Substitutions,” and CONTRACTOR shall not make or request substitutions regarding any such product, equipment or material. Exhibit A-1 and Exhibit A-2 may be obtained from DISTRICT Purchasing Department web page under public works CUPCCAA menu: <https://purchasing.fresnounified.org/cupccaa/>.

Copies of the bid documents may be downloaded at no charge: <https://purchasing.fresnounified.org/bid-opportunities> or obtained from DISTRICT Purchasing Department. Refer questions to Toni Jorge (559) 457-3463.

Published: April 9, 2021

INFORMATION TO BIDDERS

General. This instruction to bidders is in addition to any instructions, conditions, terms and/or requirements stated elsewhere in the Contract Documents. It is imperative that you review all of the Bid/Contract documents in order to be fully apprised of all the terms, conditions and other requirements comprising the contract.

Report Fraud, Waste or Abuse. Call the Anti-Fraud Hotline, (559) 325-3200, or by completing the fraud, waste or abuse reporting form online at: <http://www.ppcpas.com/fresno-unified-fraud-alert> The anti-fraud waste or abuse reporting hotline is available to report alleged fraud in the DISTRICT. The responsibility for monitoring the hotline rests with the internal auditor for Fresno Unified School District, Price, Page & Company. A report may be made anonymously.

Anti-discrimination. Fresno Unified School District prohibits discrimination, harassment, intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age, creed, religion, political affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, medical information, military veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment. If you believe you, or your student, have been subjected to discrimination, harassment, intimidation, or bullying you should contact your school site principal and/or the District's Chief Compliance and Title IX Officer Paul Idsvoog, by phone at 559-457-3730, by email at Paul.Idsvoog@fresnounified.org, or in person at 2309 Tulare Street Fresno, CA 93721.

Securing Contract Documents.

Copies of the bid documents may be downloaded at no charge at:

<https://purchasing.fresnounified.org/bid-opportunities> or obtained from DISTRICT Purchasing Department. Refer any questions to **Toni Jorge (559) 457-3463**.

Deposit. A refundable deposit of n/a made payable to the Fresno Unified School District, is required for each set of drawings and specifications obtained. This deposit is a guarantee that the drawings and specifications will be returned in good condition. The deposit will be refunded to each bidder who returns the plans, specifications and other documents in good condition within ten (10) days of Bid award.

Bid Proposals. To receive consideration, bid proposals shall be made in accordance with the following instructions.

1. **Contact with District Personnel during Bid Process.** From the time the bid packets are released until an award recommendation or rejection of all bids is made, no direct contact shall be made with DISTRICT personnel except Purchasing Division without the Buyer's specific authorization. All requests for information shall be referred to the DISTRICT's ARCHITECT/ENGINEER or BUYER as identified on the Notice to Bidders. Interpretations, clarifications, changes, or deletions verbally expressed by DISTRICT's staff other than ARCHITECT/ENGINEER or BUYER are not binding and shall not be used in determining BIDDER'S response to invitation to bid.

2. **Architect/Engineers' Estimates.** Any Architect/Engineers' estimate(s) provided by the DISTRICT or its Representatives is intended only to aid with prequalification and bid bond requirements. Any amount provided is an estimated range and may not reflect recent scope changes, addenda, and/or alternate bid items; nor does it reflect an approved

or not approved budget for this project. The Architect/Engineers' estimate for project: Section A's is around \$225,000, and Section B is around \$170,000.

3. **Bid Limit Thresholds.** On January 8, 2014, DISTRICT elected to become subject to the California Uniform Public Construction Cost Account Act (CUPCAA) which provides for alternative bidding thresholds and procedures pursuant to public contract codes 22000 through 22045 when an agency performs construction work by contract. Public projects of \$200,000 or less may be let to contract by the informal procedures set forth in the Act PCC220329(b); and Public project of more than \$200,000 shall be let to contract by formal bidding procedures set forth in the Act PCC22032(c).

Informally Bid Projects: If all bids received under the informal bid process are in excess of \$200,000, the governing board may by adoption of a resolution by a four-fifths vote award the contract at \$212,500 or less to the lowest responsible bidders as set forth in the Act PCC22034(d). Fresno Unified may also choose to reject all bids and rebid; whichever is in the best interest of the DISTRICT as determined solely by the DISTRICT.

4. **Mandatory Pre-Bid Conference/Job-Walk.** A Mandatory Pre-bid conference is only applicable to this bid if the "Notice to Bidders" section identifies the pre-bid as mandatory. MANDATORY pre-bid conferences must be attended by Prime Contractors to be eligible to bid the project. A Sign-In Sheet will be circulated at the pre-bid conference to verify attendance. The Sign-In Sheet will be posted on DISTRICT Purchasing Web Site and distributed by Addenda for mandatory pre-bid conferences. Failure to sign-in and attend will result in the rejection of prime contractor's bid as "non-responsive".

Immediately following a pre-bid conference will be a job-walk of the site(s) to provide an opportunity for bidders to view the project site and become familiar with existing conditions. Changes, clarifications, additions, and deletions discussed at the pre-bid conference and job-walk are only binding when incorporated by written addenda. **As part of pre-bid/job-walk CONTRACTOR shall be responsible for inspection and verification of all dimensions and measurements identified in drawings; submitted proposal shall be inclusive of actual measurements required to deliver a turn-key project.**

Interpretations, clarifications, changes, or deletions verbally expressed by DISTRICT's Staff or Representatives at pre-bid/job-walk are not binding and shall not be used in determining BIDDER'S response unless followed by written addenda.

The Pre-bid conference is scheduled at **10:00 AM, April 15, 2021** in front of the **Administration Office at Winchell Elementary School, 3722 E Lowe Ave, Fresno, CA 93702.** **Immediately following contractors will meet at Webster Elementary School, 2600 E Tyler Ave, Fresno, CA 93701.**

5. **Prequalification Requirement.** Prequalification is only applicable if the "Notice to Bidders" section identifies this project as a prequalification bid. In accordance with Public Contract Code 20111.6, contractors submitting bids to perform as both **Prime Contractor and General Contractor (A or B license) or Electrical, Mechanical, and Plumbing Subcontractor** must be pre-qualified prior to bidding on the project. **Prime Contractors must list prequalified mechanical, electrical and plumbing subcontractors in their bid to be "responsive"; non-compliance will result in DISTRICT rejection of prime contractor's bid as "non-responsive".** For purposes of this prequalification, Electrical, Mechanical, and Plumbing subcontractors are contractors holding either: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and C-46 California State Contractors license pursuant to Section 7058 of the Business and Professions Code. Prequalification Applications may be obtained from DISTRICT Purchasing Web Site: <https://purchasing.fresnounified.org/prequalification-for-public-works> or picked-up at DISTRICT Purchasing Department. Contractor Questionnaire and Financial Statement shall be submitted directly to DISTRICT Purchasing Department no later than **N/A** for prequalification on the project. Prequalification status is valid for one (1) calendar year for any subsequent projects requiring prequalification.

Prime Contractor and Subcontractor for prequalification purpose are defined in accordance with PCC Section 4113: the word "subcontractor" shall mean a contractor, who contracts directly with the prime contractor. "Prime contractor" shall mean the contractor who contracts directly with the awarding authority.

6. **Deadline for Receipt of Bid Proposals.** Sealed Bids must be received **prior to May 6, 2021** in the DISTRICT's Purchasing Department after which time they will be opened and read aloud. Envelopes containing BIDS must be sealed, prominently marked with bid number, bid title, respective due date and time for each, name of bidder and submitted to the Purchasing Department of the DISTRICT, 4498 N. Brawley, Fresno, California 93722. BIDS received later than the designated time and date will not be accepted. Facsimile (FAX) copies of the bid will not be accepted.

7. **License.** Bidder may bid only on work of a kind for which it is properly licensed by the California Contractor's State License Board and Registered by the DIR. Joint venture bidders must possess a joint venture license. The bidder and all subcontractors must be properly licensed, as required by law, at the time of bid and all licenses must remain current for the duration of the Project. All bids shall state the contractor's license number and its expiration date. Failure to supply complete contractor's license information and appropriate signatures on the bid form may result in the bid being considered non-responsive. It is the bidder's responsibility to ensure that the DISTRICT can verify licensure before bid awards are made.

8. **License Required.** To perform the work required by this bid, PRIME CONTRACTOR must possess the following type of contractor's license: **Class "A or B"** California State Contractors license.

9. **Preparation of Bid Form.** The DISTRICT invites bids on the enclosed form to be submitted at the time and place stated in the Notice to Bidders calling for bids. All blanks in the bid form must be appropriately filled in, and all prices must be stated in both words and figures. All bids must be submitted in sealed envelopes bearing, on the outside, the name and address of the bidder and the name of the project for which the bid is submitted. It is the sole responsibility of the bidder to ensure that the bid is received at the proper place and time. Any bid received after the scheduled closing time for receipt of bids will be returned to the bidder unopened. The completed form should be without interlineations, alterations, or erasures.

10. **Bid Security.** Each bid shall be accompanied by a certified or cashier's check payable to the DISTRICT, or a satisfactory bid bond in favor of the DISTRICT executed by the bidder, as principal, and an admitted surety insurer in an amount not less than Ten Percent (10%) of the maximum amount of the bid to cover all sections bidder is bidding made payable to Fresno Unified School District. The original bid security shall be included in the bidder's 1st submitted bid section to cover all sections intended to bid. Bidder may enclose a copy of the security in each subsequent bid section submitted for bid. Personal sureties and unregistered surety companies are unacceptable. The check or bid bond shall be given as a guarantee that the bidder will execute the contract, if it is awarded to him, in conformity with the Contract Documents, and shall provide the surety bond(s) and other required contract documents, as specified, within ten (10) calendar days after notification of award of the Contract to the bidder. The security shall be forfeited to the DISTRICT should the bidder to whom the Contract is awarded fail to execute the Agreement and provide the bonds and other documents within ten (10) calendar days of award.

11. **Execution of Forms.** Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the state of the incorporation and by the signature and designation of the president, secretary, or other person authorized to

bind it in the matter. The name of each person signing shall also be typed or printed below the signature. When requested by the DISTRICT, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.

12. **Bid Proposal Negotiations.** A bid response to any specific item of this bid with terms such as “negotiable”, “will negotiate” or similar counter proposal will result in the bid being rejected as non-responsive.

13. **Pricing.** If required, unit prices on all classes of work, as specified or required, shall be submitted. Additions to or deductions from the contract sum shall be based on these unit prices. Unit pricing on additions and deductions will remain firm throughout the contract term.

14. **Taxes.** Taxes shall be included in the amount bid. Federal excise taxes are generally not applicable to school districts.

15. **Bid Exceptions.** All exceptions which are taken in response to this bid must be stated clearly. The taking of bid exceptions or providing false, incomplete or unresponsive statements may result in the disqualification of the bid. Allowance of exceptions will be determined by the governing board, whose decisions shall be final. Any bid exceptions or additional conditions requested after bid closure, which are not detailed within the bid response, may result in disqualification of the bid. No oral or telephonic modification of any bid submitted will be considered.

16. **Withdrawal of Bids.** Bids may be withdrawn by the bidder prior to the time fixed for the opening of bids. A successful bidder may not be relieved of his bid unless by consent of the governing board of DISTRICT and in conformity with the provisions of Public Contract Code Sections 5100-5107, or other applicable law

17. **Opening of Bids.** Opening of bids shall be as soon after the hour set as practicable; opening to be as set forth in the Notice to Bidders. Any and all bidders will be permitted to attend. All bids submitted shall be considered binding contractual offers to perform the work in accordance with the Contract Documents for **90** calendar days from the date of the bid opening.

18. **Examination of Site and Contract Documents.** Each bidder shall visit the site of the proposed work and fully acquaint himself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any bidder to receive and/or examine any Contract Document, form, instrument, addendum, or other document, or to visit the site and acquaint himself with the conditions attendant thereto shall not relieve any bidder from any duties and/or obligations with respect to his bid or to the Contract. The submission of a bid shall be incontrovertible evidence that the bidder has complied with this section.

19. **Modifications.** Changes in or additions to any bid document, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the Contract Documents may result in the DISTRICT’s rejection of the bid as not being responsive to the invitation to bid. No oral, telephonic, or telegraphic modification of any bid submitted will be considered.

20. **Agreements and Bonds.** The Agreement form which the successful bidder, as CONTRACTOR, will be required to execute, and the form of the payment and performance bonds which he will be required to furnish prior to execution of the Agreement, are included in the Contract Documents and said bonds shall each be in the amount of One Hundred Percent (100%) of the amount of the Contract.

The performance and payment bonds shall be issued by an admitted surety insurer as defined by and in conformity with California law. Furthermore, at the time required for submission of the foregoing bonds, each bond should have attached to it the following documentation:

- a. A certified copy of the power of attorney of the person who executed the bond;
- b. A certified copy of the certificate of authority of the surety;
- c. A certificate of the county clerk stating that the surety's certificate of authority is still in force; and
- d. Copies of the surety's most recent annual and quarterly statements filed with the California Insurance Commissioner.

21. **Interpretation of Plans and Documents.** If any bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies in, or omissions from the drawings and specifications, a written request for an interpretation or correction thereof may be submitted to the DISTRICT. The bidder submitting the written request shall be responsible for its prompt delivery. Any interpretation or correction of the Contract Documents will be made only by addendum duly issued by the DISTRICT, and a copy of such addendum will be hand delivered or mailed or faxed to each bidder known to have received a set of the Contract Documents. No person is authorized to make any oral interpretation of any provision in the Contract Documents, nor shall any oral interpretation be binding on the DISTRICT. If discrepancies on drawings, or in the plans or specifications, or conflicts between drawings, plans, specifications, terms or conditions exist, the interpretation of the DISTRICT shall prevail. Bidder shall become familiar with the plans, specifications and drawings.

Submittal of a bid without clarifications shall be incontrovertible evidence that the bidder has determined that the plans, specifications and drawings are sufficient for bidding and completing the Project; that bidder is capable of reading, following and completing the Project in accordance with the plans, specifications and drawings; and that the plans, specifications and drawings fall within an acceptable standard for plans, specifications and drawings; and that bidder agrees that the Project can and will be completed according to the DISTRICT's time lines and according to the progress schedule to be submitted by the successful bidder incorporating the DISTRICT's time lines for completion of the Project.

22. **Order of Precedence.** Contractor acknowledges that the bid documents are the combined efforts of multiple parties and in the event of inconsistency between the provisions, the order of precedence shall be: (1) DISTRICT's Special Conditions (if any); (2) DISTRICT's General Conditions and General Requirements; (3) DISTRICT's specifications; (4) DISTRICT's drawings. Without limiting Contractor's obligation to identify conflicts for resolution by the ARCHITECT, it is intended that the more stringent, higher quality, more costly or expensive interpretation and greater quantity of Work shall apply. Drawings and specifications are intended to be fully cooperative and to agree.

23. **Addenda or Bulletins.** Any addenda or bulletins issued during the time of bidding, upon approval of ARCHITECT/ENGINEER and/or Division of the State Architect, for part of the drawings and specifications loaned to the bidder for the preparation of his proposal, shall be covered in the proposal and shall be made a part of the Contract.

24. **Award of Contract(s)/Rejection of Bids.** Upon notice of award, the successful bidder shall post all required bonds and submit proper evidence of insurance coverage as called for by the Contract Documents. If this is not accomplished within ten (10) calendar days, the DISTRICT reserves the right to retain/cash CONTRACTOR'S bid security to cover any and all expenses, costs and damages, and award the bid to the next lowest bidder or otherwise proceed as allowed by law. Rejection of any or all proposals, to contract work with whomever and in whatever manner, to abandon the work entirely, or to waive any informality/irregularity in the bids received or the bidding process is reserved as the right of the DISTRICT.

25. **Bid Protest Procedure.** This DISTRICT review procedure must be followed by any bidder who believes that a bid award recommendation is not consistent with DISTRICT regulations, the bid specifications, or in compliance with law:

- a. Protest on a bid must be filed in writing with the Executive Director of Purchasing within two working days after receipt of the bid summary and its recommendations are sent to the bidders. Failure to file a timely bid protest shall constitute a bidder's waiver of the right to have the bid award reviewed.
- b. The Executive Director of Purchasing will convene a meeting with the review requestor to attempt to resolve the problem.
- c. In the event the protest is not resolved, the protest will be referred to the Superintendent or his designee, normally the Chief Financial Officer.
- d. Should the protest not be resolved at this level, it shall be referred to the Board along with all documentation regarding the protest and the responses at each level.
- e. The Board will not act upon a protest until each of the proceeding steps has been exhausted.

26. **Definitions.**

- a. **Responsible Bidder** – A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform a public works contract.
- b. **Responsive Bid** – A bid which meets all of the requirements and specifications provided in the applicable Contract Documents.

27. **Evidence of Responsibility.** Upon the request of the DISTRICT, a bidder whose bid is under consideration for the award of the Contract shall submit promptly to the DISTRICT satisfactory evidence showing the bidder's financial resources, construction experience and organization.

28. **Listing Subcontractors.** Each bidder shall submit a list of the proposed subcontractors on the project as required by the Subletting and Subcontracting Fair Practice Act (Public Contract Code Sections 4100 et seq.). Forms for this purpose are furnished with the Contract Documents.

29. **Alternates.** Pursuant to the provisions of Public Contract Code Section 20103.8, the DISTRICT may require that a bid include prices for items that may be added to, or deducted from, the scope of work of the Contract for which the bid is submitted. In accordance with Assembly Bill 2182 and Public Contract Code 10126 (c) (2) the contract may be awarded at the election of the governing board to the lowest cost, responsible bidder. This section does not preclude the DISTRICT from adding to or deducting from the Contract any of the additive or deductive items after the lowest responsible bidder has been determined.

The Method for determining the lowest bid will be price total of all Section A Base Bid items and Section B Base Bid items. Bid Sections A and B will be awarded separately.

30. **Execution of Contract.** The Contract shall be awarded to the lowest responsible bidder submitting a responsive bid and shall be executed by the successful bidder within ten (10) calendar days after the date so notified by the DISTRICT. The award, if made, will be made within ninety (90) days after the opening of the bids. If the bidder(s) to whom an award is made, fails or refuses to execute the Contract and provide the required bonds and other documents within ten (10) calendar days from the date of receiving notification that the Contract has been awarded to the bidder, the DISTRICT may declare the bidder's bid deposit or bond forfeited and may award the work to the next lowest responsible bidder, reject all bids and call for new bids, or abandon the work entirely.

31. **Bidders Interested in More than One Bid.** No person, firm, or corporation shall be allowed to make, file, or be interested in more than one bid for the same work/Project unless alternate bids are specifically called for by the DISTRICT.

A person, firm, or corporation that has submitted a sub-proposal to a bidder, or quoted prices for materials to a bidder, is not disqualified for that reason from submitting a sub-proposal or quoting prices to other bidders or making a prime bid.

32. Instruction for Insurance.

A. CONTRACTOR, at CONTRACTOR'S expense, shall obtain and maintain insurance at all times during the prosecution of the Contract, in companies and through agencies approved by the DISTRICT and with limits not less than those stated hereinafter.

B. Acceptance of the Certificates of Insurance shall not relieve or decrease the liability of the CONTRACTOR.

C. Certificates of Insurance shall be originally signed by an authorized representative and shall be submitted in duplicate and shall contain transcripts from the policies authenticated by the proper office of the insurer evidencing, in particular, those insured, the extent of the insurance, the location of and the operation to which the insurance applies and thirty (30) days' NOTICE OF CANCELLATION of the policy. Policy shall read "SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED".

D. All of CONTRACTOR'S **insurance policies shall name the Fresno Unified School District, and the Architect/Engineer, and its officers, employees, agents, and governing board members as additional insured.** Certificates of Insurance *must have attached Additional Insured Endorsement* (Insurance Services Officer form CG2010). Such policy(ies) of insurance shall be endorsed so that the CONTRACTOR'S insurance shall be primary and no contribution shall be required of the DISTRICT.

E. Insurance coverages shall not be less than the following:

- 1) Workers' Compensation in accordance with the provisions of Section 3700 of the Labor Code. CONTRACTOR shall sign and file with DISTRICT the following certificate prior to performing the work under this contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with those provisions before commencing the performance of the work of this contract." The form for this certificate is included as a part of the Contract Documents.
- 2) Comprehensive General Liability coverage must be written on an occurrence, as opposed to claims made basis, with policy limits of no less than **\$2,000,000 CSL** (combined single limit), **BI** (bodily injury) and **PD** (property damage) and include coverage for the following:
 1. Premises – operations
 2. Contractual liability
 3. Products
 4. Completed operations
 5. Broad form PD and including X, C and U coverage, if applicable to the work
- 3) Comprehensive Auto Liability insurance with limits of not less than **\$1,000,000 CSL, BI and PD**
- 4) Builder's Risk Insurance. Prior to commencement of work, CONTRACTOR shall submit certificates evidencing that it has obtained, for the period of the Contract, Builder's Risk Completed Value insurance coverage upon the entire project which is the subject of this Contract, including work completed or in progress.

33. Prevailing Law. In the event of any conflict or ambiguity between these instructions and state or federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or services to be performed shall conform to all applicable requirements of local, state and federal law.

34. **General Prevailing Rates of Wages and Apprenticeship Training Requirements.** Notice is hereby given pursuant to the provisions of sections 1770 et seq of the California Labor Code, the Director of the Department of Industrial Relations has determined the general prevailing rates of per diem wages in the locality in which this work is to be performed for each craft or type of workman or mechanic needed to execute the contract which will be awarded to the successful bidder, and the prevailing rates are as set forth in the web address www.dir.ca.gov/DIRdatabases.html and are incorporated herein by reference.

35. **Contractor Registration Program (SB 854).** Pursuant to Labor Code Section 1725.5, the Department of Industrial Relations (DIR) established a public works contractor registration program for prevailing wage compliance monitoring and enforcement on all public works projects. The cost to register for the program is currently \$300 and is non-refundable. This is a DIR fee paid to the State by the CONTRACTOR; the DISTRICT will not register a contractor, nor collect funds. Pursuant to Labor Code Section 1725.5; Starting March 1st, 2015 no contractor or subcontractor may be listed in a bid proposal unless registered with the DIR. Starting April 1st, 2015 no contractor or subcontractor may be awarded a contract, nor employed on a Public Work project unless registered with the DIR. The project is subject to compliance monitoring and enforcement by the DIR and will require prime contractors and subcontractors to upload ALL payroll records on the DIR website: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

36. **Drawings and Specifications.** The successful bidder shall be exempt from the foregoing requirements and its deposit returned. All drawings, specifications and other documents used or prepared during the Project shall be the exclusive property of DISTRICT, Section 00 72 00.02 of the "General Requirements" section notwithstanding.

37. **Substitution of Materials.** Substitution of materials shall be in accordance with Section 01 25 13. 01, of the "General Requirements" section.

38. **Payments.** Payments to the CONTRACTOR on account of the Contract shall be made in accordance with terms of the Contract.

39. **Performance Retention Agreement.** In accordance with Public Contract Code Section 22300, CONTRACTOR shall be permitted to substitute securities for any monies withheld by the DISTRICT to insure performance under the contract with a financial institution satisfactory to the DISTRICT. No escrow retention agreement shall be accepted unless it complies with all requirements of Public Contract Code Section 22300. A sample agreement is included herein as "Escrow Agreement".

40. **Governing Law and Venue.** In the event of litigation, the bid documents, specifications, Contract Documents and all matters related to the bid, Contract and performance of the Contract shall be governed by and construed only in accordance with the laws of the State of California. Venue shall only be with the appropriate state or federal court located in Fresno County, California.

41. **Early Termination.** Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the DISTRICT fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, DISTRICT will not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and either party hereto may terminate the agreement upon thirty (30) days written notice. Upon such notice, the DISTRICT shall be released of its obligations to make all further installment payments to the CONTRACTOR.

42. **Liquidated Damages.** In accordance with Government Code Section 53069.85, for each calendar day completion is delayed beyond the time specified in the Notice to Proceed, Contractor agrees to forfeit and pay to DISTRICT the Sum of **Five Hundred dollars (\$500) for each calendar day per Section.**

All liquidated damages shall be deducted from any payments due to or to become due to CONTRACTOR. Notwithstanding any provisions of the Contract Documents to the contrary, liquidated damages shall be imposed until final completion of the entire project in conformity with all the terms, conditions, and requirements of the Contract Documents.

43. **Time of Completion.** The time allowed for completion for the project shall be **60 calendar days for Section A, 45 calendar days for Section B** Calendar days from Notice to Proceed date. All work to be done concurrently and subject to all phasing and milestone dates. CONTRACTOR shall not commence Work on the Project site before the effective date of the accepted insurance and bonds. The anticipated start date for this project is June 28, 2021.

In accordance with General Conditions Section 00 73 16 (F), CONTRACTOR shall not commence Work on the Project site before the effective date of the insurance and bonds. The Notice to proceed and duration will not be altered for issuance of insurance and bonds.

44. **Forms Required to be Submitted with Bid.** Notwithstanding any provisions to the contrary, all proposals shall include the following completed documents/forms. Failure to submit the documents/forms may render the bid non-responsive.

FORMS:

- Bid Bond
- Bid Proposal Form – 1 per Section
- Noncollusion Declaration
- Designation of Subcontractors (final due within 24hrs. of bid opening) – 1 per Section
- Workers' Compensation Certification
- Student Safety Declaration Form (fingerprinting)
- Iran Contracting Act Certification (over \$1 million)
- No Prohibited Interest/Conflicts of Interest Declaration

45. **Asbestos and/or Hazardous Substance.** In accordance with the California Health and Safety Code, Section 25914.2, in the event a contractor encounters, on the site, a substance or material he or she reasonably believes to be asbestos or a hazardous substance they shall immediately cease work on the area affected and report the condition to the owner, the owner's representative or the ARCHITECT/ENGINEER in writing. Work will not resume in the area affected until approved by the owner or owner's representative.

46. **Noncollusion Declaration.** In accordance with Public Contract Code Section 7106, each bidder shall be required to complete the Noncollusion Declaration form which is included in and part of the bid documents.

47. **Reject Any or All Proposals.** The DISTRICT reserves the right to accept or reject any or all proposals or bids or any combination thereof and to waive any informality in the bidding process.

48. **Prohibited Interests/Conflict of Interest.** BIDDER is responsible for understanding and ensuring adherence to California Government Code section 1090 et seq., with respect to the Project. Pursuant to Government Code section 1090, no DISTRICT officers or employees shall be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall DISTRICT officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. No official or employee of DISTRICT who is authorized in such capacity and on behalf of DISTRICT to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving, any architectural, engineering, inspection, construction or material supply contract or any

subcontract in connection with construction of the Project, shall become, directly or indirectly, financially interested in the Project or in any part thereof.

An officer shall not be deemed to be interested in a contract entered into by the Board if the officer has only a “remote interest” in the contract (as "remote interest" is defined in Government Code section 1091(b)) and if the fact of that interest is disclosed to the Board and noted in its official records, and thereafter the Board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the officer’s vote with the remote interest per Government Code 1091.

By way of non-exclusive example relating to whether a financial interest is a “remote interest” or not:

- 1) If the date upon which BIDDERS first started doing business with a DISTRICT Officer/Board Member (i.e., the date BIDDERS first received goods or services supplied by the Board Member) was at least 5 years prior to Board Member’s election or appointment, then the Board Member has a remote interest and BIDDERS is not prohibited from submitting a bid on this Project.
- 2) If the date upon which BIDDERS first started doing business with the Officer/Board Member (i.e., the date CONTRACTOR first received goods or services supplied by a Board Member) is less than five years before Board Member’s election or appointment, then the Board Member has a prohibited conflict of interest and BIDDERS cannot bid on this project.
- 3) The provision of a bid/quote to BIDDERS over 5 years prior to Board Member’s election or appointment, without the goods or services included in the bid actually being furnished to BIDDERS, i.e., an unaccepted bid/quote, does not qualify to cause a financial interest to be a “remote interest” as that term is defined in California Government Code section 1091(b)(8).

In accordance with Government Code section 1092, every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the Officer (Board Member) interested therein. No such contract may be avoided because of the interest of an Officer (Board Member) therein unless such contract is made in the official capacity of such Officer, or by the Board. In the event any such contract is avoided due to a violation of California Government Code section 1090, BIDDERS shall receive no compensation and shall repay DISTRICT any compensation received by BIDDERS hereunder. BIDDERS shall not aid, abet or knowingly participate in a violation of Government Code Section 1090, et seq.

00 25 13 PRE-BID MEETING & JOB WALK

Reserved

00 31 13. 13 PRELIMINARY PROJECT SCHEDULE
Reserved

00 31 13. 16 PRELIMINARY CONSTRUCTION SCHEDULE
Reserved

00 31 13. 23 PRELIMINARY PROJECT PHASES
Reserved

00 31 13. 33 PRELIMINARY PROJECT MILESTONES
Reserved

00 31 16 ARCHITECT/ENGINEER'S CONSTRUCTION ESTIMATE
Reserved

FRESNO UNIFIED SCHOOL DISTRICT
Bid No. 21-48 / Sections A and B

SEE APPENDIX “1”
SECTIONS A and B
FOR
BID FORMS & DESIGNATION
OF SUBCONTRACTORS FORMS

Bid Bond # _____

BID BOND

(TO BE EXECUTED AND SUBMITTED WITH BID)

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned _____ as Principal, and _____ as Surety, are hereby held and firmly bound unto the Fresno Unified School District, hereinafter called the "District" in the sum of equal to **ten percent of the total bid (10%)** for payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to District a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for the PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES , BID NO. 21-48, SECTIONS A AND B in strict accordance with Contract Documents.

NOW, THEREFORE,

- a. If said bid shall be rejected, or, in the alternative,
- b. If said bid shall be accepted and the Principal shall execute and deliver a contract in the form of Agreement attached hereto and shall execute and deliver the required insurance certificates, Performance Bond and Payment Bond in the forms attached hereto (all properly completed in accordance with said bid), and shall in all other respects perform the Contract created by the acceptance of said bid;

Then this obligation shall be void, otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of the obligation as herein stated.

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

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including reasonable attorney fees to be fixed by the court.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this ____ day of _____. The name and corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

(Principal Seal)

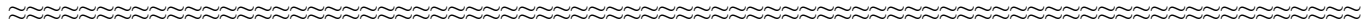
PRINCIPAL

BY: _____

Title: _____

Address

/ _____
Telephone No. / Fax No.



(Surety Seal)

SURETY

By: _____

Title: _____

Agent's Address

Telephone No. / Fax No

Surety's Address

Surety (Claim) Telephone No. / Fax No.

NONCOLLUSION DECLARATION

(TO BE EXECUTED AND SUBMITTED WITH BID)

Public Contract Code section 7106

The undersigned declares:

I am the _____ [name/title] of
_____ [company], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at
_____ [city], _____ [state].

Signature

Print Name

**CONTRACTOR'S CERTIFICATE
REGARDING WORKERS COMPENSATION**
(TO BE EXECUTED BY AND SUBMITTED WITH BID)

Labor Code Section 3700 Provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers Compensation or to undertake self-insurance in accordance with the provisions of that Code and I will comply with those provisions before commencing the performance of the work of this Contract.

CONTRACTOR:

By:

Type/Print Name

Title

Date

(In accordance with Labor Code section 1860, this certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)

STUDENT SAFETY DECLARATION
Education Code Section 45125.2
(TO BE EXECUTED BY AND SUBMITTED WITH BID)

I, _____ [name/title], declare as follows:

1. I am a representative of _____ [company], and am authorized to make this declaration on its behalf;
2. Pursuant to Education Code section 45125.2, I shall not permit any employee, agent or subcontractor to have more than limited contact with pupils without taking protective steps as set forth in that section and this declaration.
3. I declare that I have taken one or more of the following protective measures pursuant to Education Code section 45125.2 and General Conditions Section 00 73 19:
 - a. Neither I, my employees, agents nor subcontractors will have more than limited contact with students.
 - b. I have installed or will install a physical barrier at the worksite such that no employee, agent or subcontractor will have more than limited contact with students.
 - c. An employee, agent or subcontractor will continually monitor and supervise all employee(s), agent(s) and subcontractor(s) who will have more than limited student contact. I will **have individual(s) processed through the DISTRICT** to submit fingerprints to the Department of Justice (DOJ) for the monitoring and supervisory of employee(s), agent(s) or subcontractor(s). I will not begin work on the job site until a DOJ cleared supervisor submitted through the DISTRICT is provided on the job site, and I certify that none of these supervisory employees, agents or subcontractors will have been convicted of a felony as defined in Education Code section 45122.1.

I know the above of my own personal knowledge and if called as a witness could competently testify thereto. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____ [month/year], _____ [day], at _____ [city], California.

Name of Contractor

By: _____

Refer to Attachment "C" for fingerprinting and I.D. Badge Procedure.

NO PROHIBITED INTEREST/CONFLICTS OF INTEREST DECLARATION

(TO BE EXECUTED AND SUBMITTED WITH BID)

I hereby certify and declare that the undersigned Bidder has reviewed and understands Article 47 of the Information to Bidders, Prohibited Interests/Conflicts of Interest, and that Bidder has no business relationship with any member of the Board of Education (“BOE”) that gives any BOE member a financial interest in any contract between Bidder and the District, other than a financial interest that qualifies as a “remote interest” or a “noninterest,” and that no Prohibited Interests/Conflicts of Interest exist which violate Article 47 of the Information to Bidders and thereby preclude Bidder from contracting with the Fresno Unified School District. Bidder further understands that the provision of a bid/quote to Bidder over 5 years prior to a BOE member’s election or appointment, without the goods or services included in the bid actually being furnished to Bidder, i.e., an unaccepted bid/quote, does not qualify to cause a financial interest to be a “remote interest” as that term is defined in California Government Code section 1091(b)(8).

Consistent with the foregoing and with Article 47 of the Information to Bidders relating to Prohibited Interests/Conflicts of Interest, Bidder understands that if Bidder is awarded the contract for this Project and a Prohibited Interests/Conflict of Interest is thereafter discovered which violates Article 47 of the Information to Bidders, Prohibited Interests/Conflicts of Interest, the contract between Bidder and Fresno Unified School District may be void, and in such event Bidder may be required to disgorge all monies received pursuant to such void contract.

I declare under penalty of perjury under the laws of the State of California that 1) Bidder has reviewed all necessary documents and exercised all due diligence in determining that no Prohibited Interests/Conflicts of Interest exist as set forth above and as described in Article 47 of the Information to Bidders relating to Prohibited Interests/Conflicts of Interest, with respect to the undersigned Bidder, 2) I am authorized by Bidder to execute this form on Bidder’s behalf and to make the certifications contained herein, and 3) the representations and certifications set forth herein are true and correct.

Dated: _____,

[Company Name]

[Name and Title of Bidder’s Representative]

[Signature]

Footnote - Pursuant to:
Article 47 of Information to Bidders
Section 00 72 00.16 of General Conditions

IRAN CONTRACTING ACT CERTIFICATION

(TO BE EXECUTED BY AND SUBMITTED WITH BID)

Public Contract Code sections 2202-2208

Pursuant to Public Contract Code 2204. (a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable.

To comply with this requirement, please insert your company/entity and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts in accordance with Public Contract Code section 2205.

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the company/entity identified below, and the company/entity identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or entity, for 45 days or more, if that other person or company/entity will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS in accordance with subdivision (b) of Public Contract Code 2203.

<i>Company Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

**CONTRACTOR'S CERTIFICATION OF
NON-USE OF ASBESTOS OR ASBESTOS CONTAINING
PRODUCTS OR MATERIALS**

To be Executed and Submitted upon Completion of Project

To: Fresno Unified School District

Project: Bid No. 21-48, Sections A and B - PLAYGROUND EQUIPMENT REPLACEMENT AT
VARIOUS SITES

I, _____, declare that I am the party responsible for performing the Work required by the foregoing bid and, by my signature I certify that no asbestos or asbestos-containing products or materials were used in the construction of the above referenced project.

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

CONTRACTOR:

Date

Signature

Type/Print Name

Title

SAMPLE AGREEMENT

THIS AGREEMENT dated as of _____ (“Effective Date”), is made and entered into by and between the Fresno Unified School District (“DISTRICT”), and _____ (“CONTRACTOR”).

For the consideration stated below, DISTRICT and CONTRACTOR agree as follows:

1. The complete Contract includes and incorporates by reference herein all of the “Contract Documents” including: the Contract, Notice to Bidders, Information to Bidders, Bid Bond, Bid Form, Designation of Subcontractors, Certificate Regarding Workers’ Compensation, Noncollusion Declaration, No Prohibited Interest/Conflict of Interest Declaration, Student Safety Declaration, Iran Contracting Act Certification Form, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, DVBE Policy and related Forms (if applicable), Asbestos Certification, Insurance Policies, General Conditions, Supplementary General Conditions if any, General Requirements, Drawings, Plans, Specifications, the Contract, and all modifications, addenda, bulletins, and amendments issued hereto for and hereafter, Notice to Proceed, and any and all certifications, declarations, Guarantees and affidavits that are required by bid specifications as referenced in Section 00 72 00.01(k) of the General Conditions. The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all.

2. CONTRACTOR shall perform everything required to be performed and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services required for the PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES

All of said work to be performed and materials furnished shall be completed in a good, workmanlike manner in strict accordance with the plans, specification, drawings and all provisions of the complete Contract as herein defined. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, Division of the State Architect, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from complying with the requirements of the Contract Documents, and unless the CONTRACTOR protests, at the time of such alleged prevention, that the act or omission is preventing the CONTRACTOR from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within (3) working days of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Contract Documents. All work to be performed and materials furnished shall be in strict accordance with the Contract Documents.

3. As full consideration for the faithful performance of the contract, DISTRICT shall pay to CONTRACTOR, subject to any additions or deductions as provided in the Contract Documents, the sum of _____ (\$XX,XXX.XX) which is the total of the following amounts stated in the bid form for the price total of all Section A Base Bid items and Section B Base Bid items. Bid Sections A and B will be awarded separately.

4. The Contract Time shall commence on the date stated in the DISTRICT’s Notice to Proceed and shall be completed within **60 calendar days for Section A, 45 calendar days for Section B** Calendar days from Notice to Proceed date. All work to be done concurrently and subject to all phasing and milestone dates. CONTRACTOR shall not commence Work on the Project site before the effective date of the accepted insurance and bonds. The established date of

commencement of the Contract Time will not be changed/delayed due to any delay in the issuance or effective date of such insurance and/or bonds.

5. Payment of undisputed contract amounts is contingent upon CONTRACTOR furnishing DISTRICT with a release of all claims against the DISTRICT arising out of the contract payment. Any disputed contract claim must be specifically excluded from the operation of the release.

6. **Time is of the essence.** In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay to DISTRICT the sum of Five Hundred dollars (\$500) for each calendar day per Section completion is delayed beyond the time specified in paragraph 4 of this Agreement, which said amount shall be deducted from any payments due or to become due to CONTRACTOR. Notwithstanding any provision of the Contract Documents to the contrary, liquidated damages shall be imposed until final completion of the entire project in conformity with all the terms, conditions and requirements of the Contract Documents. Any use or occupancy of any portion of the project by DISTRICT prior to final completion thereof shall not obviate or extinguish said imposition of liquidated damages. Time extensions may be granted by the DISTRICT as provided in the General Conditions.

In addition to any liquidated damages which may be assessed, if the CONTRACTOR fails to complete the project within the time period provided in the contract documents and if as a result DISTRICT finds it necessary to acquire alternate facilities pending completion of the project, CONTRACTOR shall pay all costs and expenses related to the acquisition and use of the alternate facilities incurred by DISTRICT. The costs and expenses may include, but are not limited to such items as rental payments, inspection fees and additional architectural fees. These costs and expenses may be retained by DISTRICT from any payments otherwise due to CONTRACTOR.

“Liquidated Damages,” is expressly understood and agreed to by the parties hereto:

_____ **Contractor’s Initials**

_____ **District’s Initials**

7. During the life of this contract, CONTRACTOR shall take out and maintain insurance as required by the Contract Documents.

8. To perform the work required by this agreement, CONTRACTOR must possess the type of contractor’s license required by the Contract Documents.

9. Contractor acknowledges that he is an independent CONTRACTOR and not an employee, agent, or representative of DISTRICT. CONTRACTOR acknowledges that he shall be solely responsible for and shall indemnify and hold DISTRICT harmless from all matters relating to payment of CONTRACTOR’S employees, subcontractors and others, including compliance with Social Security, withholding and all other laws and regulations governing such matters.

The complete Contract, as set forth in paragraph 1. Herein above, constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the Project to be performed, exists between the parties. This Agreement/Contract can be modified only by an amendment in writing, signed by both parties.

The parties have executed this agreement by the signatures of their authorized representatives on the dates indicated.

GOVERNING BOARD,

FRESNO UNIFIED SCHOOL DISTRICT

CONTRACTOR _____

By _____

By _____

Santino Danisi, Interim CFO

Type Name

Type Name

PREVIOUSLY APPROVED AS TO FORM
BY GENERAL COUNSEL, FRESNO UNIFIED SCHOOL DISTRICT

(Corporate Seal)

Escrow Account No. _____

**ESCROW AGREEMENT FOR SECURITY DEPOSIT IN
LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Fresno Unified School District (hereinafter called the "DISTRICT"), whose address is 4498 N. Brawley, Fresno, California 93722, and _____ (hereinafter called "CONTRACTOR"), whose address is _____ and _____ (hereinafter called "Escrow Agent"), whose address is _____.

For the consideration described below, the DISTRICT, CONTRACTOR and Escrow Agent agree as follows for Bid No. 21-48, Sections A and B, PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES :

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, 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 ("Contract") entered into between the DISTRICT and CONTRACTOR for Bid No. 21-48, Sections A and B, PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES in the amount of _____ (\$XX,XXX.XX), dated _____. When CONTRACTOR deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the DISTRICT within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the DISTRICT and CONTRACTOR. Securities shall be held in the name of the DISTRICT, and shall designate the CONTRACTOR as the beneficial owner.

2. The DISTRICT shall make progress payments to the CONTRACTOR for funds which otherwise would be withheld from progress payments provided that the Escrow Agent holds securities in the form and amount specified above.

3. Alternatively, upon written request of the CONTRACTOR, the DISTRICT shall make payments of the Contract retention directly to the Escrow Agent until this escrow is terminated. When the DISTRICT makes payments of earned retentions directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the CONTRACTOR until the time the escrow created under this Escrow Agreement is terminated. The CONTRACTOR may direct the investment of the payments into those securities specified in Public Contract Code section 22300, subdivision (c). Escrow Agent shall advise DISTRICT of the types of eligible securities to which the escrow funds have been invested. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the DISTRICT pays the Escrow Agent directly.

4. CONTRACTOR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the CONTRACTOR and Escrow Agent.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest, shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time, without notice to the DISTRICT.

6. Upon providing written authorization to the Escrow Agent, executed by an authorized representative of the DISTRICT, CONTRACTOR may withdraw all or any part of the principal contained in the escrow account. The written authorization executed by the DISTRICT shall specify the amount that may be withdrawn by the CONTRACTOR from the escrow account.

7. The DISTRICT shall have the right to draw upon the securities or earned retention contained in the escrow account upon notifying the Escrow Agent that CONTRACTOR has defaulted or otherwise breached the parties construction Contract. Upon seven days prior written notice to the Escrow Agent from the DISTRICT of the default/breach, the Escrow Agent shall immediately convert, if such be the case, the securities to cash, and shall distribute the cash and/or earned retention as instructed by the DISTRICT.

8. Notwithstanding any provision of this Escrow Agreement to the contrary, for a period of 35 days following the recordation of the Notice of Completion (**And Acceptance**), DISTRICT shall have unlimited access to the securities/earned retention to respond to stop **payment** notice claims, punch list and/or warranty items, and contract change orders. Pursuant to this paragraph, DISTRICT may withdraw from the escrow sufficient cash to cover 125% of the principal amount claimed in any stop **payment** notice, 150% of the estimated amount necessary to remedy any punch list and/or warranty items, and an amount reflective of adjusting retention to change order revised contract price. To withdraw funds, DISTRICT shall present to the Escrow Agent copies of any and all stop **payment** notices and/or a letter from its ARCHITECT/ENGINEER concerning the punch list and/or warranty items and/or approved change order, together with written notification from DISTRICT making demand for the funds. In response to DISTRICT'S demand, upon seven (7) days written notice, Escrow Agent shall immediately convert sufficient securities to cash and distribute the cash and/or earned retention to DISTRICT. In no event will Escrow Agent have any obligation to pay to DISTRICT more than the amount Escrow Agent is holding. DISTRICT'S rights under this paragraph are in addition to and do not supplant any other rights or remedies contained in this section or the remainder of this Escrow Agreement.

9. Upon receipt of written notification from the DISTRICT certifying that the Contract is final and complete and that the CONTRACTOR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CONTRACTOR all securities and earned retentions 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 payment of fees and charges.

10. Escrow Agent shall rely on the written notifications from DISTRICT and CONTRACTOR pursuant to the provisions of this Agreement and DISTRICT and CONTRACTOR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

11. The names of the persons authorized to give written notice or to receive written notice or to receive written notice on behalf of the DISTRICT and on behalf of CONTRACTOR in connection with this Agreement and exemplars of their respective signatures are as follows:

On behalf of DISTRICT

Purchasing Manager

Title

Ann Loorz

Name

Signature

Fresno Unified School District

Name of Company

4498 N. Brawley Avenue

Address

Fresno, California 93722

On behalf of CONTRACTOR

Title

Name

Signature

Name of Company

Address

On behalf of ESCROW AGENT

Title

Name

Signature

Name of Escrow Company

Address

Phone No.

Fax No

At the time the escrow account is opened, the DISTRICT and CONTRACTOR shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

As WITNESSES, the parties have executed this Agreement by their proper officers on the first date shown below.

DISTRICT

CONTRACTOR

Purchasing Manager

Title

Title

Ann Loorz

Name

Name

Signature

Signature

Date

Date

Phone No.

Fax No.

Bond No. _____

SAMPLE PERFORMANCE BOND

BE ADVISED THAT:

The **Fresno Unified School District** of Fresno County, California (“District”) has awarded to _____ as Principal (“Principal”) the Contract for the work described as follows for PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES , Bid No. 21-48, Sections A and B. The Principal is required to furnish a bond in connection with the Contract guaranteeing faithful performance;

We, the undersigned Contractor, as Principal, and Surety, are held and firmly bound to the District in the sum of _____ (\$XX,XXX.XX) this amount being not less than one hundred percent (100%) of the total amount payable by the District under the terms of the Contract awarded by the District to the Contractor/Principal), lawful money of the United State of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bonded Contractor/Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said Contract and any alteration thereof, made as therein provided, including, but not limited to, the provisions regarding contract duration and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void, otherwise, it shall be and remain in full force and effect.

Whenever Contractor/Principal shall be, and is declared by the District to be, in default under the Contract, the District having performed the DISTRICT’s obligations thereunder, the Surety shall promptly remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a contract between such bidder and the District, and make available, as work progresses, sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth above. The term “balance of the Contract price,” as used in this paragraph, shall mean the total amount payable to Contractor/Principal by the District under the Contract and any modifications thereto, less the amount previously, properly paid by the District to the Contractor/Principal.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the principal.

Surety shall not utilize Contractor/Principal in completing the Contract no shall Surety accept a bid from Contractor/Principal for completion of the Project if the District, when declaring the Contractor/Principal in default, notifies Surety of the DISTRICT’s objection to Contractor’s/Principal’s further participation in the completion of the Project. No right of action shall accrue on this bond to or for the use of any person or corporation other than the District named herein

or the successors or assigns of the District. Any suit under this bond must be instituted when the applicable statute of limitations period as provided by the laws of the State of California.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract, or of the work to be performed thereunder, shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, extension of time, alteration or modification of the Contract or of the work to be performed thereunder.

Contractor/Principal and Surety agree that if the District is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay District/s reasonable attorney fees incurred, with or without suit, in addition to the above amount.

AS WITNESSES, we have affixed our signatures and seals this _____ day of _____.

(Principal Seal)

PRINCIPAL

BY: _____

Title: _____

Address

Telephone No. / Fax No.

~~~~~  
(Surety Seal)

SURETY

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No. / Fax No.

\_\_\_\_\_  
Surety's Address

\_\_\_\_\_  
Surety (Claim) Telephone No. / Fax No.

Bond No. \_\_\_\_\_

## SAMPLE PAYMENT BOND FOR PUBLIC WORKS

**BE ADVISED THAT:**

The **Fresno Unified School District** of Fresno County, California (“District”), by appropriate action, has awarded to \_\_\_\_\_ as Principal (“Principal”), the Contract for the work described as follows for PLAYGROUND EQUIPMENT REPLACEMENT AT VARIOUS SITES , Bid No. 21-48, Sections A and B.

The PRINCIPAL is required by Chapter 7, commencing with Section 9550 of the California Civil Code to furnish a bond in connection with the Contract;

THEREFORE, we, the PRINCIPAL and Surety as Surety, are held and firmly bound unto the DISTRICT in the penal sum of \_\_\_\_\_ (\$XX,XXX.XX), lawful money of the United States of America 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 this bond.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, or its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons named in California Civil Code Section 9100 or fail to pay for any materials, 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 California Unemployment Insurance Code, with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the California Employment Development Department, any amounts required to be deducted, withheld, and paid over by Section 13020 of the California Unemployment Insurance Code with respect to work and labor thereon of any kind, the Surety will for the same, in or to an amount not exceeding the amount herein above set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney fees and other litigation expenses and costs as shall be fixed by the court, awarded and taxed as provided in Chapter 7 commencing with Section 9550 of the California Civil Code.

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any Contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment for it, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the Contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond shall be construed most strongly against the Surety and in favor of all persons for whose benefit it is given, and under no circumstances shall Surety be released from liability to those for whose benefit the bond has been given, by reason of any breach of Contract between the District and original Contractor or on the part of any

obligee named in the bond, but the sole condition of recovery shall be that claimant is a person described in Section 9100 of the California Civil Code and has not been paid the full amount of its claim. The Surety hereby waives notice of any changes, extension of time, addition, alteration, or modification mentioned above.

**AS WITNESS**, we have affixed our signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_.

(Principal Seal)

**PRINCIPAL**

BY: \_\_\_\_\_

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

Address  
\_\_\_\_\_

Telephone No. / Fax No.  
\_\_\_\_\_

~~~~~  
(Surety Seal)

SURETY

By: _____

Title: _____

Address

Telephone No. / Fax No.

Surety's Address

Surety (Claim) Telephone No. / Fax No.
