

PROJECT NAME: DISTRICT WIDE - RUBBERIZED PLAYGROUND FLOORING
BID NUMBER: F08-23

REVISED AGREEMENT BETWEEN DISTRICT AND CONTRACTOR – January 21, 2009

THIS AGREEMENT made in six (6) copies on this _____ day of _____ in the year Two Thousand _____ BY AND BETWEEN **SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT**, San Bernardino County, California, (hereinafter called the "DISTRICT" or "OWNER").

and

_____, (hereinafter called the "CONTRACTOR"). CONTRACTOR'S License No. _____.

WITNESSETH: That the DISTRICT and CONTRACTOR for the considerations hereinafter named agree as follows:

ARTICLE 1 - SCOPE OF WORK. The Contractor shall perform, within the time stipulated, the contract as herein defined, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services to complete, in a workmanlike manner, all the work required in connection with the following titled project:

Bid No. F08-23
DISTRICT WIDE - RUBBERIZED PLAYGROUND FLOORING

All of said work to be performed and materials to be furnished shall be in strict accordance with the Plans, Drawings, Specifications, and provisions of the contract documents hereinafter enumerated.

ARTICLE 2 – CONTRACT AWARD. This Requirements Contract is for the Installation of Rubberized Playground Flooring. The initial contract term shall be for one (1) year from the award of Contract by SBCUSD Board of Education. Contracts may be extended, at the sole discretion of the District on a project-by-project basis, in 12-month increments, not to exceed a total of five years from the initial award of Contract. The initial annual dollar value of the work under this bid is estimated to be approximately \$200,000.00. The District reserves the right to award all, part, or none of the work specified under this bid and estimated contract amount. The District reserves the right to add additional contract dollar amounts through the term of this contract or any extensions thereof. Bid prices to remain firm through the term of this contract or any extensions thereof. The bid prices received from the contractor included price increases, if any, for inflation in the future years. The total contract amount for the maximum five year duration of this contract shall not exceed \$1,000,000.00.

ARTICLE 3 - THE AGREEMENT SUM. The DISTRICT shall pay to the CONTRACTOR for the performance of this Contract, subject to any additions and deductions provided in the project documents, the sum of:

NOT TO EXCEED _____ DOLLARS (\$____,____.00) FOR THE PERIOD _____, 2____ THROUGH _____, 2_____.

ARTICLE 4 – COMPLETION TIME. Beginning after the receipt of bids and for the next five years, the District shall identify exact projects for the work stipulated under this bid. The basis of the award of contract (s) shall be the total lowest responsive bid received as applied to the specific requirements of each project identified.

ARTICLE 5 – WORK TERMINATION. If, at any time during the performance of this Agreement, the DISTRICT determines, at the DISTRICT's sole discretion, that the CONTRACTOR's services are not achieving the results required hereunder, the DISTRICT shall be obligated to pay the CONTRACTOR only for that portion, if any, of the results achieved and immediately terminate the Agreement thereof.

- Non-compliance by the CONTRACTOR with the terms of this Agreement shall be cause for suspension and/or immediate termination by the DISTRICT. The DISTRICT shall provide written notice to the CONTRACTOR including the reasons for suspension or termination under this provision. If the Agreement is suspended, the CONTRACTOR shall have five (5) business days to cure the condition(s) for which the suspension was given or the Agreement will be terminated.

ARTICLE 6 – DOCUMENT DELIVERY. All notices and documents required pursuant to the terms hereof shall be in writing and may be delivered in person or by certified or registered mail, postage paid, as follows:

DISTRICT

Purchasing Department
Janice Gunter, Acting Buyer
777 North "F" Street
San Bernardino, California 92410
(909) 381-1132

CONTRACTOR

ARTICLE 7 – PROGRESS PAYMENTS. All invoices will be audited and approved by the DISTRICT's representative who, for the purpose of this Agreement is as follows:

Tim Deland
777 North F. St.
San Bernardino, CA 92410

The invoice shall describe in detail the services rendered and must include the CONTRACTOR's Social Security or Federal Tax I.D. Number. The DISTRICT shall make payment to the CONTRACTOR after receipt and approval of the invoice(s).

ARTICLE 8 - SUBSTITUTION OF SECURITIES. Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract, at the request and expense of the CONTRACTOR. This shall become effective subsequent to School Board approval of Escrow Agreement.

ARTICLE 9 - HOLD HARMLESS AGREEMENT. The CONTRACTOR agrees to and does hereby indemnify, defend and hold harmless the DISTRICT, its governing board, officers, agents and employees, from every claim or demand made and every liability, loss, damage or expense of any nature whatsoever, which may be incurred by reason of:

- A. Liability for damages for (1) death or bodily injury to persons, (2) injury to property or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR upon or in connection with the work called for in this Agreement except for liability for damages referred to above which result from the sole negligence or willful misconduct of the DISTRICT, their officers, employees, agents or independent CONTRACTORS who are directly employed by the DISTRICT or for defects in design furnished by such persons.
- B. Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs either on or off DISTRICT property, if the liability arose the negligence or willful misconduct of anyone employed by the CONTRACTOR, either directly or by independent contract.
- C. Any dispute between CONTRACTOR and CONTRACTOR'S subcontractors, suppliers, sureties, including, but not limited to, any stop notice actions.
- D. The CONTRACTOR, at his own expense, cost and risk, shall defend any and all actions, suits, or other proceeding that may be brought or instituted against the DISTRICT, their officers, agents or employees on any such claim, demand or liability and shall pay or satisfy any judgment that may be rendered against the DISTRICT, their officers, agents or employees in any action, suit or other proceedings as a result thereof.

ARTICLE 10 - PREVAILING WAGES.

- A. Wage rates for this project shall be in accordance with the "General Wage Determination Made By the Director of Industrial Relations Pursuant To California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1", for Riverside County. Wage rates shall conform with those posted in the DISTRICT Office.
- B. The following Labor Code sections are hereby referenced and made a part of this Agreement:
 - 1. Section 1775, Penalty for Failure to Comply with Prevailing Wage Rates.
 - 2. Section 1777.5, Apprenticeship Requirements.
 - 3. Section 1813, Penalty for Failure to Pay Overtime.
 - 4. Section 1810 and 1811, Working Hour Restrictions.
 - 5. Section 1775, Penalties for Prevailing Wage Violations.
 - 6. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
 - 7. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 and 4 (Section 16000 et seq).

ARTICLE 11 - RECORD AUDIT. In accordance with Government Code, Section 8546.7, records of both the DISTRICT and the CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of seven (7) years after final payment.

ARTICLE 12 - CERTIFICATIONS.

- A. Certifications of Compliance with Requirements for Worker's Compensation (Attachment No. 1 to Agreement) and Drug-Free Work Place (Attachment No. 2 to Agreement), are hereby made a part of this Agreement.

ARTICLE 13 - FINAL PAYMENT. Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the DISTRICT to the CONTRACTOR no sooner than thirty-five (35) days after a Notice of Completion for the individual Work or Task Order has been recorded, unless otherwise stipulated in the Notice of Completion, provided the Work has then been completed, the Agreement fully performed, closeout documents have been provided for each individual Work or Task Order to the DISTRICT complete and a final Certificate for Payment has been issued by the DISTRICT.

ARTICLE 14 - CONTRACTOR'S FAILURE TO PROCURE COMPLETION OF PROJECT. In the event said CONTRACTOR fails to furnish tools, equipment or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, and if the CONTRACTOR for a period of two (2) calendar days after receipt of written demand from DISTRICT to do so, fails to furnish tools, equipment or labor in the necessary quantity or quality, and to prosecute said work and all parts thereof in a diligent and workmanlike manner or after commencing to do so within said two (2) calendar days, fails to continue to do so, then the DISTRICT may exclude the CONTRACTOR from the premises or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the DISTRICT to another CONTRACTOR, or by a combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the DISTRICT, shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to CONTRACTOR from the DISTRICT or the CONTRACTOR shall pay the DISTRICT the amount of said charge, or the portion thereof unsatisfied. The sureties, provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the DISTRICT.

ARTICLE 15 - INSURANCE. Contractor's Public Liability Insurance in an amount not less than \$1,000,000.00 for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000.00 on account of one accident, and Contractor's Property Damage insurance in an amount not less than \$1,000,000.00.

Automotive Liability, Bodily: \$1,000,000.00 person
Accident: \$1,000,000.00
Property Damage: \$1,000,000.00 each accident

CONTRACTOR shall take out and maintain during the life of this contract insurance as required by Articles 1 through 3 below and as follows:

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

2. This Agreement may be amended by the mutual written consent of the parties hereto. If any actual or physical deletions or changes appear on the face of the Agreement, such deletions or

changes shall only be effective if the initials of both contracting parties appear beside such deletion or change.

3. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant. If any provision of this Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect.

ARTICLE 16 - CONTRACTOR'S LICENSE. To perform the work required by this notice, CONTRACTOR must possess licenses required by law for this type of work.

ARTICLE 17 - CORPORATION IN GOOD STANDING. If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of _____, and that _____, whose title is _____, is authorized to act for and bind the corporation.

ARTICLE 18 - PROVISIONS REQUIRED BY LAW. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

ARTICLE 19 - LIQUIDATED DAMAGES. Pursuant to Government Code Section 53069.85, if Work is not started or completed within the Contract Time or in strict accordance with the Project Schedule, it is understood, acknowledged and agreed that the DISTRICT will suffer damage. It is therefore agreed that the CONTRACTOR shall pay to the DISTRICT the sum of **Two Hundred Dollars (\$200.00)** for each and every calendar day of delay beyond the Contract Time, or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule or beyond the time indicated in the Project Schedule for any individual contract activity. CONTRACTOR expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the CONTRACTOR does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule. If the DISTRICT accepts Work or makes any payment under this Contract after a default by reason of delays, the acceptance of such work and/or payment(s) shall in no respect constitute a waiver or modification of any provisions regarding Contract Time, a completion schedule, the Project Schedule or liquidated damages. In the event the same is not paid, the CONTRACTOR further agrees that the DISTRICT may deduct the amount thereof from any money due or that may become due the CONTRACTOR under the Contract. This Article does not exclude recovery of damages under provisions of the Agreement Documents.

ARTICLE 20 - COMPONENT PARTS OF THE AGREEMENT. The Agreement entered into by this Agreement consists of the following Agreement Documents, all of which are component parts of the Agreement as if herein set out in full or attached hereto:

- Notice Inviting Bids
- Information for Bidders
- Bid Cover Sheet
- Bid Form
- Bidder's Noncollusion Affidavit
- Certification of Compliance with DVBE Policy
- Proposed Subcontractors
- Bid Bond
- Bidder References and Responsibility Information
- San Bernardino City USD Business Outreach Registration
- Agreement Between District and Contractor

- Bidder's Certificate Regarding Worker's Compensation
- Drug-Free Workplace Certification
- Statement of Intent to Meet DVBE Participation Goal
- Faithful Performance Bond
- Payment Bond
- Vendor Tax Information
- Certification of Non-Utilization of Asbestos Materials
- Prime/General Contractor Information
- Contractor Prevailing Wage Compliance Certification
- Guarantee
- Escrow Agreement - (optional)
- General Conditions
- Supplementary General Conditions
- Special Conditions
- Project Construction Schedule
- Plans and Specifications
- Scope of Work Summary
- **District Wide - Rubberized Playground Flooring Drawings**

All of the above named Agreement Documents are intended to be complementary. Work required by one of the above named Agreement Documents and to by others shall be done as if required by all.

ARTICLE 21 - ENTIRE AGREEMENT. This Agreement, including exhibits, terms on the purchase order and addenda incorporated herein by reference, represents the entire agreement and understanding between the parties. The terms of this Agreement will prevail over any different or additional terms in CONTRACTOR's proposal or other forms unless agreed in writing by DISTRICT. Any modifications to this Agreement shall be in writing and signed by authorized representatives of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Governing Board of the DISTRICT.

CONTRACTOR

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

Signature

Signature

Typed Name

Typed Name

Official Title

Official Title

Address

