# Agreement

THIS AGREEMENT, dated the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_, in the County of Fresno, State of California, is by and between Washington Unified School District (hereinafter referred to as "DISTRICT"),and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "CONTRACTOR").

The DISTRICT and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project documents, including the Notice Calling For Bids, Information for Bidders, Bid Form, Designation of Subcontractors, Workers' Compensation Certificate, Payment Bond, Information Required of Bidder, all pre-qualification forms submitted pursuant to Public Contract Code Section 20111.5, if any, Insurance Certificates, Plans, Drawings, Specifications, this Agreement, and all modifications, addenda and amendments thereto, by this reference incorporated herein. The Project 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 within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of:

***2019-20 WEST FRESNO MIDDLE SCHOOL LED LIGHTING PROJECT***

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with any plans, drawings, specifications and all provisions of the complete contract as hereinabove 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 CONTRCTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, Division of State Architect, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project 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 Project documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within three (3) working days of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

1. DISTRICT shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of

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

1. The work shall be commenced on or before the fifth (5th) day after receiving the DISTRICT'S Notice to Proceed and shall be completed within **forty-five (60)** consecutive calendar days from the date specified in the Notice to Proceed.
2. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the DISTRICT will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to DISTRICT as fixed and liquidated damages, and not as a penalty, the sum of Two Hundred Dollars ($200 ) for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due to or to become due to CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the amount thereof. Time extensions may be granted by the DISTRICT.
3. 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, the Superintendent or designee shall so certify to the Governing Board of the DISTRICT, and if the CONTRACTOR for a period of ten (10) 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 ten (10) 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 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.
4. The CONTRACTOR agrees to and does hereby indemnify 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:
   1. Liability for damages for (1) death or bodily injury to persons; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR upon or in connection with the work called for in this Project, except for liability resulting from the sole active negligence, or willful misconduct of the DISTRICT. 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. The CONTRACTOR, at CONTRACTOR'S own expense: cost, and risk shall
   2. Defend any and pay for any and all actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment, liabilities, penalties, and attorney's fees that may be incurred by or rendered against the DISTRICT, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.
   3. This indemnity shall imply no reciprocal right of CONTRACTOR in any action on the Agreement pursuant to California Civil Code section 1717 or section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by CONTRACTOR shall apply to any and all acts or omissions, whether active or passive, on the part of CONTRACTOR or its agents, employees, representatives, or Subcontractor's agents, employees and representatives, resulting in claim or liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the County Superintendent.
   4. In any and all claims against the DISTRICT, the Architect and each of their consultants, officers, employees and agents by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any Subcontractor under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.
5. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain:
   1. Commercial General and Automobile Liability Insurance

CONTRACTOR shall maintain in effect at all times during the performance of the work hereunder not less than the following coverage and limits of Commercial General and Automobile Liability insurance:

Form and Amount

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily injury, personal injury, or damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents or consultants, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than $2,000,000 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and the property damage, or any combination of the three. Any deductibles must be declared to and approved by the DISTRICT. At the option of the DISTRICT., either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses.

* 1. Before commencement of the work, CONTRACTOR shall submit written evidence that it has obtained, for the period of the Agreement, Builder's Risk "All-Risk" Completed Value Insurance and/or Inland Marine "All-Risk" Installation Floater Insurance, as may be applicable, upon the entire project which is the subject of this Agreement, including completed work and work in progress. The policy or policies of insurance shall name CONTRACTOR, DISTRICT and Architect as insurers as their respective interests may appear, and shall include an insurer’s waiver of subrogation rights in favor of each. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the DISTRICT, except that the deductible on earthquake coverage may be in accordance with the underwriter’s requirements.

1. 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, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. The DISTRICT retains the sole discretion to approve the bank selected by the CONTRACTOR to serve as escrow agent. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request DISTRICT to make payment of earned retentions directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments in securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the contract, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300. CONTRACTOR shall pay to each subcontractor, not later than 20 days after receipt of such payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure performance of the CONTRACTOR.

1. 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 California, and that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose title is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is authorized to act for and bind the corporation.
2. 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.
3. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement 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.
4. Any work contemplated under this document constitutes a Public Work within the meaning of Labor Code section 1720 and Labor Code section 1771 applies to the work.
5. The successful contractor and all subcontractors for the Project will be required to attend a mandatory Pre-Job Conference before commencing work.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

SUPERINTENDENT

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

Signature

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

Print Name

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

Title

CONTRACTOR

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

Signature

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

Print Name

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Title