

**AGREEMENT FOR DESIGN AND INSTALLATION
OF ENERGY EFFICIENCY UPGRADES AT VARIOUS SITES**

This Agreement for installation of conservation measures ("Agreement") is made as of November __, 2014, between the WILLOWS UNIFIED SCHOOL DISTRICT ("District") and FAMAND, INC. dba INDOOR ENVIRONMENTAL SERVICES ("Contractor") (together, "Parties").

- 1. Services.** Contractor shall furnish to the District the labor, equipment, material, and services to design, supply, and install energy efficiency upgrades at various sites, as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Work").
 - 1.1. Grants/Funding/Rebates/Incentives.** Contractor shall use commercially reasonable efforts to support the District in obtaining or maintaining grants/funding/rebates/incentives for the Site(s). Contractor shall use commercially reasonable efforts to support the District in obtaining an extension, if allowed and if necessary. If the District does not obtain extensions for the rebates on terms satisfactory to the District on its sole discretion, the District may terminate the Contract Documents upon written notice to Contractor without liability to either Party.
- 2. Term.** Contractor shall commence providing services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such Work as required and will achieve Final Completion of the Work on or before **fourteen weeks after the contract is awarded**. Time is of the essence for all Work under this Agreement.
- 3. Submittal of Documents.** Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required. If not provided with the Proposal, the bonds, certificates, and endorsement(s) of insurance shall be presented to the District for approval within seven (7) days after execution of the Agreement.

4. Contract Documents: The complete Contract consists of all Contract Documents as indicated below and incorporated herein by this reference below:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Signed Agreement | <input checked="" type="checkbox"/> Criminal Background Investigation Certification |
| <input checked="" type="checkbox"/> Notice to Proceed | <input checked="" type="checkbox"/> Iran Contracting Act Certification |
| <input checked="" type="checkbox"/> Terms and Conditions to Contract | <input checked="" type="checkbox"/> Insurance Certificates and Endorsements |
| <input checked="" type="checkbox"/> Noncollusion Declaration | <input checked="" type="checkbox"/> Performance Bond |
| <input checked="" type="checkbox"/> Prevailing Wage Certification | <input checked="" type="checkbox"/> Payment Bond |
| <input checked="" type="checkbox"/> Workers' Compensation Certification | <input checked="" type="checkbox"/> Specifications |
| <input checked="" type="checkbox"/> Drug-Free Workplace Certification | <input checked="" type="checkbox"/> Plans |
| <input checked="" type="checkbox"/> Tobacco-Free Environment Certification | <input checked="" type="checkbox"/> Exhibit "A" - Scope of Work |
| <input checked="" type="checkbox"/> Asbestos & Other Hazardous Materials Certification | <input checked="" type="checkbox"/> Exhibit "B" - Letter from Ray Kwan, S.E. |
| <input checked="" type="checkbox"/> Lead-Product(s) Certification | |

Any and all obligations of the District and Contractor are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.

The complete Agreement consists of all Contract Documents as defined above and incorporated herein by this reference. Any and all obligations of the District and Contractor are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.

Should any question arise concerning the intent or meaning of Contract Documents, including the Drawings or Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, modifications, beginning with the most recent, shall control over this Agreement (if any); this Agreement shall control over other Contract Documents. In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

5. Notice to Proceed. After the documents have been submitted to and accepted by the District pursuant to section 6, the District shall provide a Notice to Proceed to Contractor at which time Contractor shall proceed with the Work.

6. The project manager on the Project is John Alves ("Project Manager"). Contractor hereby acknowledges that the Project Manager has the authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. No work shall be carried on except with the knowledge and under the inspection of said Project Manager. Project Manager shall have free access to any or all parts of work at any time. Contractor shall furnish Project Manager reasonable opportunities for obtaining such information as may be necessary to keep Project Manager fully informed

respecting progress, manner of work, and character of materials. Contractor shall notify the Project Manager, in writing, of the commencement and completion of construction of each and every aspect of the Work at least 48 hours in advance. Contractor shall be liable for any delay caused by its non-compliant Work or its failure to provide proper notification for inspection.

7. Acceptance of the Work shall be given by the Governing Board of the District.
8. Contractor designates Stan Butts as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor and shall be fully binding for Contractor. Contractor may change the designated Contractor Representative upon written notice to the District.
9. **Compensation.** As compensation for the Work, the District shall pay to the Contractor EIGHT HUNDRED SIXTY ONE THOUSAND DOLLARS (\$861,000) ("Total Contract Price"). Upon contract approval and issuance of the Notice to Proceed, Contractor Such amount shall not be increased without the express approval of the Board.
10. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District.
11. **Payment.** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by District's designated representative and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) any sums expended by the District in performing any of Contractor's obligations under the Agreement which Contractor has failed to perform or has performed inadequately; (2) defective Work not remedied; (3) stop payment notices as allowed by state law; (4) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (5) unsatisfactory prosecution of the Work by Contractor; (6) unauthorized deviations from the Agreement; (7) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Agreement or by District during the prosecution of the Work; (8) erroneous or false estimates by the Contractor of the value of the Work performed; (9) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (10) any other sums which the District is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain 5% from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.

12. Independent Contractor. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

13. Standard of Care. Contractor represents that it is a full-service energy services company with the technical capabilities to provide services to the District, including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, financing, training, monitoring and verification, maintenance, operation, and repair. Contractor's Work will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices and all Applicable Law, including the applicable provisions of California Code of Regulations, Title 24, the requirements of the applicable Building Department and the California Department of Education, and the District's Design Guides and Technical Specifications. Contractor represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

14. Ownership of Data. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Contractor or its Consultants prepare or cause to be prepared pursuant to this Agreement. Any drawings, specifications, plans, calculations, models and designs developed by Contractor under this Agreement shall become the property of the District when prepared and shall be delivered to the District upon completion of the Work. Contractor retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Contractor or its Consultants prepare or cause to be prepared pursuant to this Agreement. In the event the District changes or uses any fully or partially completed documents without Contractor's knowledge or participation or both, the District agrees to release Contractor of responsibility for such changes, and shall hold Contractor harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Contractor is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Contractor's full involvement, the District shall remove all title blocks and other information that might identify Contractor and its Consultants.

15. Site Examination. Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface

and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

16. Materials. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

16.1. Anti-Trust Claim. Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

16.2. Substitutions. No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

17. Equipment and Labor. Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.

18. Liens. Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment, Labor and other items furnished by it or any of its Subcontractors that become part of the System to the extent payment therefore has been received by Contractor from District.

19. Warranty/Quality. Unless a longer warranty is called for elsewhere in this Agreement, the Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

20. Correction of Errors. Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein.

21. Lead-Based Paint. Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

22. Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless

such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

For all approved changes in the scope of work that result in a net increase in costs to Contractor, the following format shall be used, supported by attached documentation.

| | WORK PERFORMED OTHER THAN BY CONTRACTOR | ADD |
|-----|---|------------|
| (a) | Material (attach itemized quantity & unit cost plus sales tax) | \$ |
| (b) | Add Labor (attach itemized hours & rates, fully encumbered) | \$ |
| (c) | Add Equipment (attach suppliers' invoice) | \$ |
| (d) | Subtotal | \$ |
| (e) | Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed 10% of item (d) | \$ |
| (f) | Subtotal | \$ |
| (g) | Add overhead and profit for Contractor, not to exceed 5% of Item (f) | \$ |
| (h) | Subtotal | \$ |
| (i) | Add Bond and Insurance, not to exceed two percent (2%) of Item (h) | \$ |
| (j) | TOTAL | \$ |
| (k) | Time | ___ Days |

| | WORK PERFORMED BY CONTRACTOR | ADD |
|-----|--|------------|
| (a) | Material (attach itemized quantity & unit cost plus sales tax) | |
| (b) | Add Labor (attach itemized hours & rates, fully encumbered) | |
| (c) | Add Equipment (attach suppliers' invoice) | |
| (d) | Subtotal | |
| (e) | Add overhead and profit for Contractor, not to exceed 15% of item (d). | |
| (f) | Subtotal | |
| (g) | Add Bond and Insurance, not to exceed 2% of Item (f) | |
| (h) | TOTAL | |
| (i) | Time | ___ Days |

23.Workers. Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. The District may evaluate the Contractor in any manner which is permissible under the law. Any person in the employ of the Contractor or a subcontractor whom the District may deem

incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.

24. Fingerprinting of Employees. Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Work and prior to permitting contact with any student.

25. Contractor Supervision. Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

26. Safety and Security. Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

27. Clean Up. Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

28. Access to Work. District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

29. Protection of Work and Property. Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

30. Occupancy. District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.

31. Force Majeure. Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor.

Contractor shall promptly notify the District in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event and the reason for and anticipated length of the delay. Contractor shall deliver such notice as soon as reasonably practicable, but in any event within forty-eight (48) hours of Contractor becoming aware of such delay.

32. Final Completion.

32.1. Final Completion of the Work shall be deemed to have occurred only if:

- 32.1.1.** The Work has been completed.
- 32.1.2.** All life safety items are completed and in working order.
- 32.1.3.** Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 32.1.4.** Electrical circuits scheduled in panels and disconnect switches labeled.
- 32.1.5.** Painting and special finishes complete.
- 32.1.6.** A full release of all Stop Payment Notices served in connection with the Work shall be submitted by Contractor; and
- 32.1.7.** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136, from the Contractor and each subcontractor of any tier and supplier to be paid from the final payment; and
- 32.1.8.** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134, from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payments; and
- 32.1.9.** Contractor shall have made all corrections to the Work that are required to remedy any defects therein, including punchlist items, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents; and
- 32.1.10.** Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work; and
- 32.1.11.** Contractor shall have submitted an approved set of complete Record Drawings; and
- 32.1.12.** The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents; and
- 32.1.13.** Contractor shall have completed final clean-up as provided herein; and

32.1.14. On-site operation and maintenance training as required has occurred;
and

32.1.15. Contractor shall completely and accurately fill out and file Verified Reports, as appropriate. Refer to section 4-336 and section 4-343 of Part 1, Title 24 of the California Code of Regulations.

32.2. Upon acceptance of the Work of the Contractor as fully complete by the Governing Board of the District, the District shall record a Notice of Completion with the County Recorder.

32.3. The retention, less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid thirty-five (35) days after the recording of the Notice of Completion by District.

32.4. If Contractor fails to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of completion, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed. At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Contract Price, and/or District's right to perform the Work of the Contractor.

33.Termination.

33.1. For Convenience by District. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Contractor for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

33.2. With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

33.2.1. material violation of this Agreement by the Contractor; or

33.2.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

33.2.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the

required services from another Contractor. If the expense, fees, and costs to the District exceed the cost of providing the service pursuant to this Agreement, Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

33.3. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

34. Indemnification. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

35. Insurance.

35.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance:

35.1.1. General Liability. At least Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

35.1.2. Automobile Liability Insurance. At least One Million Dollars (\$1,000,000) combined single limit per occurrence for any automobile that shall protect the Contractor and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Contractor.

35.1.3. Workers' Compensation and Employers' Liability Insurance. For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

35.1.4. Builder's Risk Insurance. On a replacement cost value basis, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without

any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

35.1.5. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

35.1.5.1. For the general liability and automobile liability policies:

35.1.5.1.1. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Contractor; instruments of Service and completed operations of the Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

35.1.5.1.2. For any claims related to the projects, Contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Contractor's insurance and shall not contribute with it.

35.1.5.1.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

35.1.5.2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

35.1.5.3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

35.1.5.4. Contractor shall furnish the District with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The

endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.

35.1.6. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

36. Payment Bond and Performance Bond. Contractor shall not commence the Work until it has provided to the District, in a form acceptable to the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Construction Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

37. Permits and Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force, at Contractor's sole cost and expense, such permits and licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement. Contractor hereby acknowledges that it currently holds a valid Class A Contractor's license issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code.

38. Assignment. The rights, burdens, duties, or obligations of Contractor pursuant to this Agreement shall not be assigned by the Contractor without the prior written consent of the District, which shall not be unreasonably withheld.

39. Subcontractors. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Agreement shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Agreement, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by it. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.

40. Compliance with Laws. Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

40.1. Contractor hereby acknowledges that the Construction Manager(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements

of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.

40.2. California Labor Code Requirements. Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

40.2.1. Certified Payroll Records: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and shall electronically submit certified payroll records directly to the Labor Commissioner weekly and within ten (10) days of any request by the District or the Labor Commissioner in accordance with section 16461 of Title 8 of the California Code of Regulations.

40.2.2. State Labor Compliance: Contractor shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to State labor compliance monitoring and enforcement by the Compliance Monitoring Unit of the Department of Industrial Relations.

40.3. Federal Labor, Wage & Hour, Apprentice, and Related Provisions. As this Project is funded in whole or in part by federal funds, Contractor and all Subcontractors are subject to civil or criminal prosecution for any violation of the federal False Claims Act set forth under section 1001 of title 18 and section 231 of title 31 of the United States Code.

40.3.1. Minimum Wages. The Davis-Bacon Act and 29 CFR parts 1 through 7 shall apply if the Project is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution.

40.3.1.1. All laborers and mechanics employed or working upon the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) , the full amount of wages and bona fide fringe benefits, or cash equivalents thereof, due at time of payment computed at rates not less than those contained in the applicable wage

determination of the Secretary of Labor regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this section, including but not limited to paragraph 38.3.1.7; also, regular contributions made or costs incurred for more than a weekly period, but not less often than quarterly, under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of Work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing Work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *provided*, that the employer's payroll records accurately set forth the time spent in each classification in which Work is performed. The wage determination including any additional classification and wage rates conformed under this section, including but not limited to paragraph 38.3.1.6 and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the Site of the Work in a prominent and accessible place where it can be easily seen by the workers.

40.3.1.2. Any class of laborers or mechanics, including helpers, and which is to be employed under the Contract which is not listed in the wage determination shall be classified in conformance with the wage determination. An additional classification and wage rate and fringe benefits will not be approved unless when the following criteria have been met:

40.3.1.2.1. The Work to be performed by the classification requested is not performed by a classification in the wage determination; and

40.3.1.2.2. The classification is utilized in the area by the construction industry; and

40.3.1.2.3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

40.3.1.3. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the District agree on the classification and wage rate (including the amount designated for fringe benefits

where appropriate), a report of the action taken shall be sent by the Contractor to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

- 40.3.1.4.** In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the District do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contractor shall provide the questions, including the views of all interested parties and the recommendation of the District, to the District for the District's review and referral to the Administrator for determination.
- 40.3.1.5.** The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing Work in the classification under this Contract from the first day on which Work is performed in the classification.
- 40.3.1.6.** Whenever the minimum wage rate prescribed in any applicable wage determination for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 40.3.1.7.** If the Contractor does not make payments to a trustee or other third person, the Contractor may consider, as part of the wages of any laborer or mechanic, the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. If the Secretary of Labor so requires, the Contractor shall set aside in a separate account sufficient assets to meet obligations under the plan or program.

40.3.2. Withholding. District may, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of Contractor's or any Subcontractors' failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the District may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as it deems necessary to cause the

suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

40.3.3. Payrolls and basic records.

40.3.3.1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the Site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

40.3.3.2. The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the District. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information shall be submitted on a form acceptable to the District. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractor and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide

them upon request to the District, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. Contractor may require a Subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the District or other government agency

- 40.3.3.3.** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
- 40.3.3.3.1.** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5,
 - 40.3.3.3.2.** That the appropriate information is being maintained under 29 CFR 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and
 - 40.3.3.3.3.** That such information is correct and complete;
 - 40.3.3.3.4.** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and
 - 40.3.3.3.5.** That no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - 40.3.3.3.6.** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into or applicable to the Contract.
 - 40.3.3.3.7.** The weekly submission of a properly executed certification in the form set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 27.3.3 of this section.
 - 40.3.3.3.8.** The falsification of any of the above certifications may subject the Contractor or one or more Subcontractors to civil or criminal prosecution

under section 1001 of title 18 and section 231 of title 31 of the United States Code.

40.3.3.3.9. The Contractor or Subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the District or the federal Department of Labor, and shall permit representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

40.3.4. Apprentices and trainees.

40.3.4.1. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in an eligible apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job Site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every

apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

40.3.4.2. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to Work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable

predetermined rate for the Work performed until an acceptable program is approved.

40.3.4.3. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

40.3.5. Compliance with Copeland Act requirements. Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

40.3.6. Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in 29 CFR 5.5.

40.3.7. Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

40.3.8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

40.3.9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

40.3.10. Certification of Eligibility.

40.3.10.1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

40.3.10.2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

40.3.10.3. Contractor shall be subject to the penalty for making false statements prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

40.3.11. Clauses Mandated by Contract Work Hours and Safety Standards

Act. As used in the following paragraphs, the terms laborers and mechanics include watchmen and guards.

40.3.11.1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

40.3.11.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in the foregoing paragraph the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the foregoing paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to Work in excess of the standard workweek of forty hours without payment of the overtime wages required by the foregoing paragraph.

40.3.11.3. Withholding for unpaid wages and liquidated damages. The District may upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or Subcontractor under the Contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the foregoing paragraph 38.3.11.2.

40.3.11.4. Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the foregoing paragraphs concerning Overtime Requirements and Violation: Liability for Unpaid Wages and Liquidated Damages and also a clause requiring each Subcontractor to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the

clauses set forth in paragraphs 38.3.11.1 through 38.3.11.4 of this section.

- 41. Certified Payroll Records:** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and shall make them available to the District immediately upon request.
- 42. Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 43. Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractors.
- 44. Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 45. Confidentiality.** Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 46. Disputes.** In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. The demand for mediation of any claim over \$375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial

written notice, and the demand shall not be made later than the time of Contractor's submission of the request for final payment. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

47. Attorney Fees and Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

48. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, facsimile transmission, or electronic mail, addressed as follows:

District

Willows Unified School District
823 West Laurel Street
Willows, CA 95988
ATTN: Dr. Mort Geivett
TEL: (530) 934-6600
FAX: (530) 934-6609
EML: mgeivett@willowsunified.org

Contractor

Famand, Inc.
dba Indoor Environmental Services
1512 Silica Avenue
Sacramento, CA 95815
ATTN: Stan Butts
TEL: (916) 988-8808
FAX: (916) 348-3020
EML: sbutts@ies-hvac.com

Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

49. Governing Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

50. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

51. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition,

or any subsequent breach of the same or any other term, covenant, or condition herein contained.

52.Headings and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party of its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

53.Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

54.Cooperation. The Parties hereto hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.

55.Binding Contract. This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

56.Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

57.No Rights in Third Parties. This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

58.Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

59.Counterparts. This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.

60.Provisions Required By Law Deemed Inserted. 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 this Agreement shall be read and enforced as though it were included therein.

61.Entire Contract. This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

WILLOWS UNIFIED SCHOOL DISTRICT

FAMAND, INC. dba INDOOR ENVIRONMENTAL SERVICES

Date: _____, 2014

Date: _____, 2014

By: _____

By: _____

Print Name: Dr. Mort Geivett

Print Name: Stan Butts

Print Title: Superintendent

Print Title: Vice President

Address: _____

License No.: 646794

Telephone: _____

Address: _____

Facsimile: _____

Telephone: _____

E-Mail: _____

Facsimile: _____

E-Mail: _____

Information regarding Contractor:

Proper Name: _____

_____:

License No.: _____

Employer Identification and/or Social Security Number

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

Type of Business Entity:

___ Individual

___ Sole Proprietorship

___ Partnership

___ Limited Partnership

___ Corporation, State: _____

___ Limited Liability Company

___ Other: _____

Exhibit "A"

Scope of Work

This scope of work is intended to define the requirements which will form the basis for the procurement of Energy Conservation work at District Facilities that are part of the Agreement.

**Work Order #1
Major Equipment Procurement**

HVAC SCOPE OF WORK

General

The scope of work for this Work Order includes the procurement and transportation of the major components of the System at each Facility.

Procurement

Contractor shall procure the HVAC required for the System under this Work Order. The following shall be procured:

Shipping and Transportation

The Contractor shall make all necessary arrangements with each manufacturer or distributor for the proper packaging and shipment of all equipment to the District Facility or Contractor's warehouse. All equipment shall be shipped in appropriate packaging and by suitably equipped transportation to avoid damage to the equipment at all points from the manufacturer's or distributor's site to the District Facility or Contractor's warehouse. The Contractor shall ensure that suitable equipment is available and used for unloading and handling of the equipment at the project Facility.

Equipment Documentation

Upon placement and confirmation of the purchase order, the Contractor shall request from each manufacturer all applicable documentation regarding shipping, handling, factory testing, storage, installation, and maintenance for all equipment ordered. Upon receipt, this information shall be stored and/or transmitted to the District as appropriate.

WORK ORDER MILESTONES

| Estimated Work Order Milestone Schedule | |
|--|----------------------------|
| Milestone | Milestone Date |
| Major Equipment Ordering | Award of Contract + 1 week |

FIXED PRICE AMOUNT

The fixed price for this Work Order ("Work Order Price") is **\$498,600**.

Work Order #2

Energy Conservation Scope of Work

Section 1 Basis of Energy Engineering

Section 2 HVAC Scope of Work

Section 3 Proposed Project Installation Timeline & Coordination

1.0 BASIS OF ENERGY ENGINEERING

Forecasted energy savings are the difference between the pre- and post-retrofit period consumption for the equipment included in the scope of Work. The pre-retrofit (or Baseline) data for this project covers the period from July 2012 through June 2013. The Baseline data takes into consideration the quantity of facilities and size; 2013/2014 building operational schedules; 2013/2014 School Calendar and 2013/2014 individual school Bell Schedules; occupancy factors and utilization; utility usage, costs and utility rates along with the available average ASHRAE weather files for the closest weather station. Except weather files, all this data have been obtained from the District.

Since Contractor does not control/follow the building operations on a day-by-day basis, it is virtually impossible to track the energy consumption and savings from utility bills due to many dynamic factors that are out of the Contractor's control. These factors (permanent or temporary) include, but are not limited to: weather changes; changes in the use of any facility and number of occupants (including, but not limited to, staff, faculty and students); changes to the hours of operation of any facility; changes to the control system scheduling; changes or modifications to the equipment or services provided under this Agreement; changes in utility suppliers, method of utility billing, number of days in the billing cycle, utility rates or method of utility purchasing; improper maintenance of the equipment or of any energy-consuming equipment; changes to the equipment or to any facility required by changes to building codes; additions or deletions of energy-consuming equipment; personal portable heaters; refrigerators and vending machines and/or additions or deletions of any facilities (i.e. portable classroom buildings), etc. It should be also noted, that the weather within last two years was unusually mild and, as a result, heating and cooling energy costs were lower than normal.

Therefore, engineering calculations approach is based on a measure-by-measure (ECM-by-ECM) basis and is to be derived by comparing the specific value of physical parameters after the installation to its value prior to the installations. For example: lighting systems retrofit (see below) will result in lower wattage consumption than Baseline scenario. This measure is not affected by weather changes, HVAC or other unrelated equipment energy consumption that are reflected in the utility bills. Below are some key characteristics and features of the measure-by-measure energy saving calculations method:

- It calculates savings based on District inputs, field measurements, and agreed upon assumptions and stipulations.
- It does not involve utility bill comparisons; however, utility bills may be analyzed to identify energy consuming trends and correlations.

- It is structured so that the individual measure's savings, as described in Scope of Work, shall not be effected by unrelated building modifications.

Additionally, selected energy savings calculations have been performed with the help of the on-line Energy Saving Calculators developed by California Energy Commission (CEC). These on-line calculators are offered by CEC as a part of CA Clean Energy Jobs Act (Proposition 39). CONTRACTOR has no control over engineering methodologies utilized by CEC in on-line Energy Saving Calculators.

In any event, the overall energy use of the facility would be lower than if the energy saving measures (retrofits) identified in the facility solutions project herein had not been implemented.

If desired, the Contractor may provide additional utility data analysis and benchmarking based on the standard engineering principals for an additional fee (excluded from this Scope of Work). The District is to notify Contractor in writing no later than thirty (30) days after any changes as outlined above made to the Property that would affect the energy usage at the Property. The District shall make available to Contractor no later than thirty (30) days upon receipt, on a monthly basis for at least one year after Completion and Acceptance Date, copies of all energy bills, energy usage data, and any and all other such documentation related to changes to energy usage as outlined above.

2.0 GENERAL HVAC SCOPE OF WORK

2.1 Basis of Design and Engineering

The intent of this project is to reduce the District's utility costs and operational expenses by replacing the existing HVAC equipment with new high energy efficient units.

As requested, Contractor will be replacing the existing units listed below with new higher efficient equipment of equal capacity. These direct replacements are based on the assumption that the original units have been sized properly for the local weather conditions, current occupancy levels and space use. Unless specifically requested, it is not IES' intent to re-design or to modify these systems. Unless specified otherwise, it is Contractor's intent to maximally re-use the existing air distribution systems, rooftop units' platforms, electrical, gas & condensate drain connections and other existing HVAC system components. It is assumed that that these system components to be re-used are in good operational order and no repairs are needed.

The new equipment, as identified below, is selected based on the energy efficiency and economic viability. These retrofits are like-for-like equipment replacements that are not structural in nature. Contractor has provided a review by the licensed Structural Engineer (as required by Division of State Architect), stating that no existing building structural elements will be affected by the replacement HVAC systems. See Exhibit "B." In the letter, Contractor's structural engineer has opined that according to State of California Division of State Architect Office of Regulation Service Policy #97-08, IR 11B-6, IR A-22, and applicable Sections 17280-17316 of the California Education Code, this project falls into the categories of non-structural Work. Contractor's structural engineer further opined that this Work does not infringe on the Life Safety Systems, if any. The Work described herein is limited to old HVAC systems replacement only. Therefore, Contractor represents that approval

from Department of State Architect is exempted for the in-kind HVAC replacements based on the considered herein reasons.

In the absence of the reliable as-built drawings, Contractor has made certain design engineering and estimating assumptions for all work prior to completion of the final engineering and construction. Though unanticipated, there may be some changes to the scope of work based on the unknown pre-existing conditions. Should they arise; a fair and equitable solution will be negotiated in good faith between the District and Contractor for any additional costs required according to the terms herein.

Contractor will use the current Uniform Building Code (UBC), California Uniform Plumbing Code (UPC), California Uniform Mechanical Code (UMC), the National Electrical Code (NEC), Sheet Metal & Air Conditioning Contractors' National Association (SMACNA) standards.

2.2 Mechanical Scope of Work, Unit Replacements at Willows High School and Murdock Elementary School

The following lists in detail the mechanical Scope of Work to be performed for all unit replacements:

- Provide necessary rigging and trucking of new equipment to the project site.
- Provide and install new package units as detailed below.
- Provide all sheetmetal as needed to connect new unit to existing opening.
- Furnish and install weather tight sealant on all seams, joints and connections to ensure full weather seal.
- Reconnect existing gas lines with new fittings as needed to the new equipment, supply all materials and equipment for a complete system.
- Reconnect condensate lines, provide new connectors as needed.
- Reconnect electrical service to all new equipment with new disconnects, as needed.
- Contractor's technicians will perform a complete start-up and test of new equipment to ensure proper system operation.
- Clean all areas daily as new work is completed.
- One year warranty on Contractor's provided equipment and workmanship. Warranty starts from the day of equipment start-up.

The quantities, sizes and location of all new HVAC units are listed below:

| Willows High School | | | | | | |
|--|------------|---------------------|-------------|--------------|------------------------------------|----------------------------------|
| Proposed Equipment | | | | | | |
| Area | Qty | Nominal Tons | Type | Brand | Cooling Efficiency SEER/EER | Heating Efficiency AFUE % |
| Main Hall 1, Main Hall 2, Classrooms 201 - 205, (2) Library, Classroom 101, 301 - 304, 401 - 404 | 18 | 4 | Package /GE | Carrier | 13 SEER | 80% |

| Murdock Elementary School | | | | | | |
|---|------------|---------------------|-------------|----------------|------------------------------------|---|
| Proposed Equipment | | | | | | |
| Area | Qty | Nominal Tons | Type | Brand | Cooling Efficiency SEER/EER | Coefficient of Performance (COP) |
| Office 3 | 1 | 1 | WSHP | Climate Master | 13.5 EER | 4.3 |
| Office 1, Office 2, Office 6, Classroom 502 | 4 | 2 | WSHP | Climate Master | 13.4 EER | 4.7 |
| Office 5 | 1 | 2.5 | WSHP | Climate Master | 13.4 EER | 4.6 |
| Classroom 101 105,201-205, 301 - 305, 401 - 404, 500, 501, Office 4 | 22 | 5 | WSHP | Climate Master | 13.4 EER | 4.3 |
| (2) Cafeteria | 2 | 15 | Package /GE | York | 11.0 EER | 80% AFUE |

Notes:

- * - G/E - denotes Gas Heating/Electric Cooling system unit.
- H/P - denotes Heat Pump system unit.
- WSHP - denotes Water Source Heat Pump system unit

2.3 HVAC Scope of Work, Boiler Replacement at Murdock Elementary School

The following lists in detail the mechanical Scope of Work to be performed at the Murdock Elementary School:

- Disconnect, remove and dispose of the old boiler serving the water source heat pump loop.
- Provide and install (1) new "Raypac MVB" or equal outdoor boiler to supply the existing water source heat pump loop. This unit will include a cold water run package.
- Provide necessary rigging and trucking of new equipment to the project site.
- Furnish and install weather tight sealant on all seams, joints and connections to ensure full weather seal.
- Insulate all new hot water lines installed.
- Reconnect electrical, gas, water make up and drain to the new unit.
- Reconnect the existing flue pipe systems to the new heating systems.
- Supply all controls as needed for a complete system.
- IES technicians and factory personnel will perform a complete start-up and test of new equipment to ensure proper system operation.

2.4 HVAC Scope of Work, HVAC System for Cafeteria Building at Willows High School

This project is for the replacement of the existing built up compressor, evaporative condenser and direct expansion air handlers to more efficient direct expansion split systems and will include the following:

- Remove and recycle all refrigerants and oils from the old system.
- Disconnect and remove all equipment needed for the new system installation.
- Install a new housekeeping pad and fence for new equipment.
- Supply and install one new "Trane" or equal, 40-ton nominal capacity air cooled condensing unit and secure to the new pad on the ground outside the building.
- Supply and install one new "Trane" or equal, 12.5-ton nominal capacity air cooled condensing unit and secure to the new pad on the ground outside the building.
- Replace the existing direct expansion coils in the existing air handlers with new R410A coils, seal unit air tight.
- Run new refrigerant piping between the new coils and air cooled condensing units.
- Install new electrical service to the new units.
- Supply new single zone programmable thermostats for each unit.
- Replace or repair the condensate pans in the existing air handlers.
- Provide necessary rigging and trucking of new equipment to the project site.
- Furnish and install weather tight sealant on all seams, joints and connections to ensure full weather seal.
- IES technicians and factory personnel will perform a complete start-up and test of new equipment to ensure proper system operation.

2.5 HVAC Scope of Work Exclusions

The above Scope of Work excludes the following:

- Plumbing, Fire Sprinklers, Fire and Life Safety equipment and its components.
- Warranty, repair and/or upgrade of the existing mechanical, plumbing and electrical systems, air distribution and control systems found in disrepair or not compliant to code. Any and all systems and defects which require repairs/replacements as a result of pre-existing condition.
- Upgrade of the existing overall site electrical service capacity, if required for the new units.
- All work is to be completed during normal working hours. Any request by District to change working times may result in a change order for added overtime rates.
- DSA fees, reviews and approvals.
- Any items not specified in this Scope.

3.0 PROPOSED PROJECT INSTALLATION TIME LINE & COORDINATION

This project will require extensive scheduling and coordination to insure the efficient implementation of the Work shown herein. Contractor will provide retrofit services in Phases. Each construction Phase will include a complete HVAC and/or Lighting system retrofit at a given building or school site.

The District shall provide safe access to the buildings. During the retrofit services, areas of the building designated by Contractor may need to be vacated to ensure the safety of the occupants. It will be the District's responsibility to temporarily relocate the students to other classrooms and/or, if needed, provide temporary facilities for the duration of the given phase of each project. Contractor shall provide reasonable notice to District if relocation is necessary.

In order to minimize the disruption of District's operation, coordination and scheduling items shall include but are not limited to multiple trips to the job site, multiple equipment riggings, temporary relocation of the tenants (students), etc. Contractor will work with the District to develop a detailed project schedule. Once the project schedule is confirmed, Contractor will provide the District with a Schedule of Values and a progress payment schedule, which corresponds to the project schedule. The installation of mechanical systems will start upon executing this Agreement and ordering and obtaining all necessary equipment, parts and materials needed for installation. It is anticipated the construction phase of this project would be performed in the Fall of 2014.

District and its representatives shall coordinate all the project activities with Contractor's Project Manager only.

WORK ORDER MILESTONES

| Estimated Work Order Milestone Schedule | |
|--|------------------------------|
| Milestone | Milestone Date |
| Construction Mobilization | Award of Contract + 4 weeks |
| Substantial Completion | Award of Contract + 10 weeks |
| Final Completion | Award of Contract + 14 weeks |

FIXED PRICE AMOUNT

The fixed price for this Work Order ("Work Order Price") is **\$362,400**.

Exhibit "B"

Letter from Ray Kwan, S.E.

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part 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 by 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, 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 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 such provisions before commencing the performance of the Work of this Agreement.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The person's or organization's policy of maintaining a drug-free workplace.
 - (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free

Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

TOBACCO-FREE ENVIRONMENT CERTIFICATION

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

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

LEAD-PRODUCT(S) CERTIFICATION

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Department of Education (CDE), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

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

The CDE mandates that school districts utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. Furthermore, since it is assumed by the district that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (**Including Title 8, California Code of Regulations, Section 1532.1**). Any and all Work which may result in the disturbance of lead-containing building materials must be coordinated through the District.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

All contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors shall comply with the Renovation, Repair and Painting Rule, shall receive training from a U.S. EPA-accredited training provider, and shall be certified by the U.S. EPA. Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

If failure to comply with these laws, rules, and regulations results in a site or worker contamination, Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work.

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

The undersigned hereby acknowledges, under penalty of perjury, that he or she has received notification of potential lead-based materials on the owner's property, as well as the existence of applicable laws, rules and regulations governing work with, and disposal of, such materials with which it must comply. The undersigned also warrants that he or she has the authority to sign on behalf of and bind the Contractor.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND
(100% of Contract Price)

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

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the Willows Unified School District, ("District") and Famand, Inc. dba Indoor Environmental Services ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)

("Project" or "Contract") which Contract dated September 9, 2014, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

NOW, THEREFORE, the Principal and _____
_____ ("Surety")
are held and firmly bound unto the Board of the District in the penal sum of _____
_____ DOLLARS (\$ _____),
lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

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

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 Principal in completing the Project nor shall Surety accept a Bid from Principal for completion of the Work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period ending one year after the date of Final Completion during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The above obligation is separate from and does not affect to the obligations under the Performance Guarantee, the Maintenance Services Agreement, or any warranty obligations that are effective for any period longer than one year following the Final Completion date.

Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, the District's rights against Contractor under California Code of Civil Procedure section 337.15

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 2014.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

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

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

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

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the Willows Unified School District ("District") and Famand, Inc. dba Indoor Environmental Services ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)

("Project" or "Contract") which Contract dated September 9, 2014, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and _____ ("Surety")

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

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

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 2014.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

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