

RIVERSIDE COMMUNITY COLLEGE DISTRICT

RCCD

**RIVERSIDE COMMUNITY
COLLEGE DISTRICT**

PURCHASING

MORENO VALLEY COLLEGE | NORCO COLLEGE | RIVERSIDE CITY COLLEGE

GENERAL CONDITIONS

SAMPLE

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 Action of the Governing Board is a vote of a majority of the District's governing board.

1.1.2 Approval means written authorization through action of the governing board. The governing board has delegated to the Vice Chancellor, Business and Financial Services, who has delegated the authority to the Associate Vice Chancellor, Facilities Planning and Design to approve certain modifications, change orders or construction change directives where the aggregate sum of the changes do not exceed \$15,000 and each individual item of the change order or modification does not exceed \$10,000. In no case shall the Associate Vice Chancellor, Facilities Planning and Design have authority to approve total change orders or modifications to the Project exceeding 10% of the contract sum.

1.1.3 Architect means the architect, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project.

1.1.4 As shown, as indicated, as detailed refer to drawings accompanying this specification.

1.1.5 Contract or Agreement When the terms are used in these General Conditions shall be references to the Contract Documents as defined herein.

1.1.6 The Contract Documents The Contract Documents consist of the Agreement between District and Contractor (hereinafter the Agreement or Contract), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to bidders, and the requirements contained in the Bid Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.7 Contractor, District, and Architect are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if they are of singular number and neuter gender. Any reference to “Owner” shall mean “District.”

1.1.8 Days means calendar days.

1.1.9 Inspector of Record is the individual retained by the District in accordance with titles 21 and 24 of the California Code of Regulations and who will be assigned to the Project.

1.1.10 The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.11 Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

1.1.12 Labor Compliance Program – Labor Code section 1771.5 authorizes the establishment of Labor Compliance Programs (“LCPs”) to enforce prevailing wage requirements on public works construction projects. LCPs enforce prevailing wage laws on behalf of the public agencies that award public works contracts (known as “awarding bodies”) and serve as an alternative to the traditional enforcement role of the Division of Labor Standards Enforcement.

1.1.13 Locality in which the work is performed means the county in which the Project is located.

1.1.14 The Project is the complete construction of the Work performed in accordance with the Contract Documents.

1.1.15 Project Labor Agreement The Project Labor Agreement is a comprehensive local-hire and local-business collective bargaining agreement that is negotiated between the District and the San Bernardino/Riverside Counties Building and Construction Trades Council, which sets out the basic terms and work conditions for projects valued one million dollars and above, which are funded by Measure ‘C’ Bond funds.

1.1.16 The Project Manual The Project Manual is the volume assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

1.1.17 Provide shall include “provide complete in place,” that is “furnish and install.”

1.1.18 Safety Orders are those issued by any cognizant city, county, state or federal agency.

1.1.19 Site refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

1.1.20 The Specifications The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.21 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference.

1.1.22 Subcontractor, as used herein, includes those having direct or indirect contracts with Contractor and ones who furnished labor, material or services for a special design according to plans, drawings, and specifications of this Work, but does not include ones who merely furnish material not so worked.

1.1.23 Surety is the person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.

1.1.24 Work of the Contractor or Subcontractor shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor who performs any portion of the Work, to visit the Site of the proposed Work (a continuing obligation after the commencement of the Work), to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents before preparing and submitting any bid.

1.1.25 Workers includes laborers, workers, and mechanics.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 Correlation and Intent

1.2.1.1 *Documents Complementary and Inclusive.* The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. All Contract Documents form the Contractor's contract with the District. Any item of Work mentioned in the Specifications and not shown on

the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

1.2.1.2 *Coverage of the Drawings and Specifications.* The Drawings and Specifications generally describe the Work to be performed by Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor to provide a complete project. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

1.2.1.3 *Conflicts.* In the event there is a discrepancy between the various Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

1.2.1.4 *Conformance With Laws.* Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, even if through mistake or otherwise any such provision is not inserted, or is not correctly inserted.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public and municipal utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. Such checking shall include Title 21 and Title 24 of the California Code of Regulations, California Building Code, local utility, local water connection, local grading and all other applicable agencies. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with the Contract Documents, Contractor shall, within five (5) days, notify Architect and District in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Project.

The Contractor shall bear all expenses of correcting Work done contrary to said laws, ordinances, rules, and regulations if the Contractor performed same (1) without first consulting the Architect for further instructions regarding said Work or (2) disregarded the Architect's instructions regarding said work.

1.2.1.5 *Ambiguity and Inconsistency.* Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall, within five (5) days, notify Architect and District in writing of any perceived or alleged error, inconsistency, conflict, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance.

1.2.2 Addenda and Deferred Approvals

1.2.2.1 *Addenda* are the changes in specifications, drawings, contract documents, and plans which have been authorized in writing by the District or Architect, and which alter, explain, or clarify the contract documents. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda unless otherwise specified in the addenda.

1.2.2.2 *Deferred Approvals.* Contract Documents which require deferred approval items are meant to be for illustration purposes only. Contractor is responsible for all deferred approval requirements set forth in the Contract Documents. Contractor is responsible to comply with all laws, building codes, and regulations necessary to obtain all necessary approvals, including those required from the Division of the State Architect (“DSA”) and the State Fire Marshall. Contractor shall not be granted an extension of time for failure to obtain necessary approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall schedule all deferred approval items in its progress schedule pursuant to Article 3. If Contractor fails to include deferred-approval items in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages.

1.2.3 Specification Interpretation

1.2.3.1 *Titles.* The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

1.2.3.2 *As Shown, Etc.* Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where “as directed,” “as required,” “as

permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 *General Conditions.* The General Conditions and supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.4 *Abbreviations.* In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Contractor shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a “note” occurs on the Drawings. In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.3.5 *Plural.* Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.6 *Metric.* The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: “1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.7 *Standard Specifications.* Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization’s standard specifications, which are in effect at the date of the Contractor’s proposal unless directed otherwise. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.4 Rules of Document Interpretation

1.2.4.1 In the event of conflict within the drawings, the following rules shall apply:

- (a) General Notes, when identified as such, shall be incorporated into other portions of Drawings.
- (b) Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.

- (c) Larger scale drawings shall take precedence over smaller scale drawings.
- (d) At no time shall the Contractor base construction on scaled drawings.

1.2.4.2 Specifications shall govern as to materials, workmanship, and installation procedures.

1.2.4.3 If Contractor observes that drawings and specifications are in conflict, Contractor shall, within five (5) days, notify the Architect in writing for the purposes of obtaining an interpretation of the Contract Documents.

1.2.4.4 In the case of conflict or inconsistencies, the order of precedence shall be as follows:

- (a) General Conditions take precedence over Drawings and Specifications.
- (b) Special Conditions take precedence over General Conditions.
- (c) The Agreement shall take precedent over the Special Conditions.
- (d) In the case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality, and greater quantity of Work shall apply.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications, and other contract documents for the Project are the property of the District and/or Architect pursuant to Education Code § 17316. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. All copies except the Contractor's record set, shall be returned or properly accounted for upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work. The District and/or Architect hereby grants the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings, Specifications, and other documents prepared for the Project in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the District's property interest or other reserved right.

ARTICLE 2

DISTRICT

2.1 INFORMATION AND SERVICES REQUIRED OF THE DISTRICT

2.1.1 Site Survey

The District will furnish, at its expense, a legal description of the Site and a land survey showing the boundaries of the Site. Contractor shall be responsible for all surveys regarding location of construction, grading and site work.

2.1.2 Soils

When required by the scope of the Project, the District will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services, with written reports and appropriate written professional recommendations, may include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

2.1.3 Contractor Reliance

A soils investigation report has been obtained from test holes at the Site, and such report is available for the Contractor's use in preparing its bid and Work under this Contract. The soils report is available at the Architect's office for review. Any information obtained from such report or any other information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only. If, during the course of Work under this Contract, Contractor encounters subsurface conditions which differ materially from those indicated in the soils investigation report, then Contractor shall notify the District within five (5) calendar days of discovery of the condition, and changes to the contract price may be made in accordance with Article 7 entitled "Changes in the Work." Contractor agrees that no claim against District will be made by Contractor for damages and hereby waives any rights to damages in the event the Contractor fails to notify District within the five-day period mentioned above.

WARNING: DISTRICT DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. SOILS INVESTIGATION REPORT IS PROVIDED FOR CONTRACTORS INFORMATION ONLY. CONTRACTOR HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE PROJECT SITE AND THE SOILS CONDITIONS OF THE SITE. DISTRICT DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING

CONSTRUCTION. THE SOILS INVESTIGATION REPORT IS NOT A CONTRACT DOCUMENT.

2.1.4 Utilities

2.1.4.1 *Regional Notification Center.* Contractor, except in an emergency, shall contact the appropriate regional notification center at least two working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by the Contractor. Any damages arising from failure to make appropriate regional notification shall be at the sole risk of Contractor. Any delays caused by failure to make appropriate regional notification shall be at the sole risk of Contractor and shall not be considered for extension of time pursuant to Paragraph 8.4.

2.1.4.2 *Utilities - Removal and Restoration*

The District has endeavored to determine the existence of utilities at the Site of the Work from the records of the District of known utilities in the vicinity of the Work. The positions of these utilities as derived from such records are shown in the Contract Documents.

No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities may not be shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify the District's representative as to any utility discovered by Contractor in a different position than shown in the Contract Documents or which is not shown on the Contract Documents.

Contractor shall coordinate its Work with all utilities, including, but not limited to electricity, water, gas and telephone and meet with said utilities prior to the start of any work.

2.1.4.3 *Other Utilities.*

In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the Work, the work on the utility shall be performed and paid for as follows:

When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the

Contractor shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the work to be done by the Contractor.

When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the work to be done by the Contractor.

When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, the District will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with Article 7 or will make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with Article 7 herein.

No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether said cost is required to be borne by the owner of the utility.

The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

2.1.5 Existing Utility Lines; Removal, Relocation

2.1.5.1 *Main or Trunkline Facilities*

If the Contractor while performing the contract discovers utility facilities not identified by the District in the Contract Documents, Contractor shall, within five (5) days, notify the District and utility in writing.

The District has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications and made a part of the Notice Inviting Bids, District shall assume the responsibility for their timely removal, relocation, or protection.

The owner of the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

The Contractor shall exercise reasonable care and shall be compensated by the District for the actual verified field costs of locating, and removing, relocating, protecting or temporarily maintaining such main or trunkline utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in use on the project necessarily idled during such work. This work shall be performed in accordance with Article 7 of these General Conditions.

Alternatively, District may make changes in the alignment and grade of the work to obviate the need to remove, relocate, or temporarily maintain the utility, in accordance with Article 7 or District may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.

The Contractor shall not be assessed a forfeiture for delay in completion of the Project when such delay is caused by the failure of the District or the owner of the utility to provide for the removal, relocation, protection or temporary maintenance of all such main or trunkline facilities not indicated with reasonable accuracy.

Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

2.1.5.2 Assessment. These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in completion of the Work. Nothing in these subparagraphs shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

2.1.5.3 Notification. If the Contractor, while performing Work under this Contract, discovers utility facilities not identified by the District in the Contract Documents. Contractor shall, within five (5) days, notify the District and the utility in writing. If Contractor fails to notify the District within forty eight hours after discovery of any utility facilities not identified by District in the Contract Documents, Contractor waives all rights to be compensated for any extra Work or damages resulting from such discovered utilities.

2.1.6 Easements

District shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract Documents.

2.2 DISTRICT'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, including, but not limited to:

1. Failure to supply adequate workers on the entire Project or any part thereof;
2. Failure to supply a sufficient quantity of materials;
3. Failure to perform any provision of this Contract;
4. Failure to comply with safety requirements, or due to Contractor's creation of an unsafe condition;
5. In the case of bona fide emergency;
6. Failure to order materials in a timely manner;
7. Failure to prepare deferred-approval items or shop drawings in a timely manner;
8. Failure to comply with Contractor's schedule which would result in a delay to the critical path;
9. Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails (within a five-day period after receipt of written notice or a shorter time period expressly stated in the written notice from the District in an emergency situation) to commence and continue correction of such default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including those set forth in Article 14 after providing five-day written notice to Contractor and Surety. If during this five (5) day period, Surety personally delivers notice to District that it intends to perform such work, District shall allow Surety seven (7) days to perform. In an emergency situation, the District may correct such deficiencies without prejudice to other remedies the District may have, including those set forth in Article 14 after providing 48 hours notice to the Contractor. In either case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, or neglect. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

ARTICLE 3

THE CONTRACTOR

3.1 SUPERVISION AND CONSTRUCTION PROCEDURES

3.1.1 Contractor

The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and

have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall not perform the Work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work. If any of the Work is performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the work of those other contractors so as to avoid any impact on the project schedule pursuant to the requirements of Article 6 and Article 8. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:

(a) Responsibilities. It is the duty of the Contractor to complete the Work covered by his or her contract in accordance with the approved plans and specifications. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of their duties.

(b) Performance of the work. The Contractor shall carefully study the approved plans and specifications and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved plans and specifications, the contractor shall correct the work immediately.

All inconsistencies or times which appear to be in error in the plans and specifications shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change directives, and as required by law.

The Contractor shall not carry on Work except with the knowledge of the Inspector of Record.

(c) Verified Reports. The Contractor shall make and submit to the office from time to time, verified reports as required in Section 36 of Title 21 and Section 4-366 of Title 24.

Contractor shall fully comply with any and all reporting requirements of Education Code Sections 17315, et seq., in the manner prescribed by Title 24, as applicable.

3.1.2 Contractor Responsibility

The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their

agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.1.3 Obligations not Changed by Architect's Actions

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.1.4 Acceptance/Approval of Work

The Contractor shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent Work thereon.

3.1.5 Performance of Work With Own Force

Contractor shall perform at least 15% of the Work, exclusive of supervisory and clerical work without the services of any subcontractor. Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Contract Documents.

3.2 SUPERVISION

3.2.1 Full Time Supervision

Unless personally present on the Project site where the Work is being performed, the Contractor shall keep on the Work at all times during its progress a competent construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District representative. All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor

shall notify District and Architect in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.

3.2.2 Staff

Notwithstanding other requirements of the contract documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

3.2.3 Right to Remove

District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.

3.3 LABOR AND MATERIALS

3.3.1 Contractor to Provide

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.2 Quality

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other school construction.

3.3.3 Replacement

Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.

3.3.4 Discipline

The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this article, or who creates safety hazards which jeopardize other persons and/or property.

3.3.5 Noise, Drugs, Tobacco, and Alcohol

Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the project. Contractor shall further prevent any of its employees or its subcontractor employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Likewise, Contractor shall prevent its employees or subcontractor's employees from bringing any animal onto the project. Contractors shall not violate any written school policies.

3.3.6 Delivery of Material

Contractor shall place orders for materials or equipment so that the Work may be completed in accordance with the Construction schedule for the Work as set forth in Article 8 of this Agreement. Contractor shall, upon demand from the Architect, furnish to the Architect documentary evidence including, but not limited to purchase orders, invoices, bills of materials, work orders and bills of lading, showing that orders have been placed.

3.3.7 Liens and Other Security Interests of Subcontractors and Material Suppliers

No material, supplies, or equipment for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to District free from any claims, security interests, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to place a lien upon the premises or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to its owner within five (5) days of such installation in writing, prior to making the installation.

3.3.8 Title to Materials

The title to new materials or equipment for the Work of this Contract, and attendant liability for its protection and safety, shall remain with Contractor until incorporated in the Work of this Contract and accepted by the District and Architect; no part of said materials shall be removed from its place of storage, and Contractor shall keep an accurate inventory of all said materials and equipment in a manner satisfactory to the District or its authorized representative.

3.3.9 Assemblies

For all material and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems. Incidental items not indicated on the Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized in the Contract Documents in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

3.3.10 Noise Control

The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. Specific attention shall be paid to work noise during final exams week in the months of December and June, as well as the week of commencement in June. Contractor shall be responsible for inquiring with District as to the specific dates of these events. District shall notify Contractor of any other time frames during the academic year where particular attention should be paid to noise control. In no event shall Contractor have a right to receive additional compensation or an extension to the contract time as a result of any such rescheduling or the making of such arrangements. These controls shall be implemented during site preparation and construction.

3.4 WARRANTY

The Contractor warrants to the District and Architect that material and equipment furnished under the Contract will be of the highest quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects

not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty to District includes, but is not limited to the following representations:

(a) In addition to any other warranties provided elsewhere, Contractor shall, and hereby does, warrant all Work after the date of Notice of Completion of Work by District and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship or materials within a one (1) year period from date of completion as defined in Public Contract Code Section 7107(c) without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

(b) In the event of failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at expense of Contractor who hereby agrees to pay costs and charges therefore immediately on demand.

(c) If, in the opinion of the District, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or attention which shall be charged against Contractor. Such action by the District will not relieve the Contractor of the guarantee provided in this Article or elsewhere in this Contract.

(d) This Article does not in any way limit the guarantee on any items for which a longer warranty is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee or warranty certificates upon completion of the project.

3.5 TAXES

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. District is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.6 PERMITS, FEES AND NOTICES

3.6.1 Payment

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are necessary after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). District shall be responsible for all testing and inspection as required by the DSA on-site or within the distance limitations set forth in Paragraph 13.5.2, unless a different mileage range is specified in the Special Conditions.

3.6.2 Compliance

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.6.3 Responsibility

The Contractor shall perform all Work in conformance with every law, statute, ordinance, building code, rule or regulation. The Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or project delay.

3.7 [RESERVED]

3.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.8.1 Requirements

(a) Within ten (10) calendar days after being awarded the contract, Contractor shall submit a progress schedule for District's approval. The schedule shall not exceed time limits set forth in the Contract Documents and shall comply with all of the scheduling requirements as set forth in the Specifications. Failure to submit a schedule or submittal of a schedule which shows completion of the Work beyond the specified completion date shall be deemed a material breach by the Contractor. The schedule must indicate the beginning and completion of all phases of construction and shall use the "critical path method" (commonly called CPM) for the value reporting, planning and scheduling, of all Work required under the Contract Documents. The scheduling is necessary for the District's adequate monitoring of the progress of the Work and shall be prepared in accordance with the time frame described in Article 8 of the General Conditions. The architect may disapprove of any schedule or require modification to it if, in the opinion of the Architect or District, adherence to the progress schedule will not cause the Work to be completed in accordance with the Agreement.

(b) Contractor shall not submit a schedule showing early completion without indicating float time through the date set for Project completion by District. Contractor's schedule shall account for all days past early completion as float which belongs to the Project. Usage of float shall not entitle Contractor to any delay claim or damages due to delay.

(c) Contractor shall not be granted an extension of time for failure to obtain necessary approvals for deferral approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall schedule all deferred approval items and shop drawings in its progress schedule. If Contractor fails to include deferred approval items and shop drawings in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages.

(d) In addition to providing a schedule update every thirty (30) days, the Contractor, if requested by the Architect or District, shall provide revised schedules within ten (10) days if, at any time, the Architect or District, consider the completion date to be in jeopardy because of "activities behind schedule." The additional schedule shall include a new arrow or precedence diagram and schedule reports conforming to the requirements above, designed to show how the Contractor intends to accomplish the Work to meet the completion date. The form and method employed by the Contractor shall be the same as for the original initial schedule. The Contractor shall modify any portions of the schedule that become infeasible because of "activities behind schedule" or for any other valid reason. An activity that cannot be completed by its original latest completion date shall be deemed to be behind schedule. If Contractor submits a revised schedule showing an earlier completion date for the Project, Architect's acceptance of this revised schedule shall not entitle Contractor to any delay claim or damages due to any such revised schedule.

3.8.2 Failure to Meet Requirements

Failure of the Contractor to provide proper schedules as required by this Article and Article 9 is a material breach of the contract and grounds for termination pursuant to Article 14. The District, at its sole discretion, may choose, instead, to withhold, in whole or in part, any progress payments or retention amounts otherwise payable to the Contractor.

3.9 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site for the District one current copy of the Uniform Building Code, Titles 19, 21 and 24 of the California Code of Regulations and one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents

shall be available to the Architect and shall be delivered to the Architect for delivery to the District upon completion of the Work.

3.10 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.10.1 Submittals defined

3.10.1.1 *Shop Drawings.* The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with shop drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term “manufactured” applies to standard units usually mass-produced, and “fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.10.1.2 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.10.1.3 *Contractor’s Schedule for Submission of Shop Drawings.* Contractor shall obtain and shall submit all required shop drawings, samples, etc., in accordance with Contractor’s “Schedule for Submission of Shop Drawings and Samples” as required in the scheduling portion of the General Conditions at Articles 3.8 or the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) days after the execution of the Contract. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings,

samples, and manufacturer's descriptive data for the review of the District, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, including the construction schedule. The submission of the shop drawings, product data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Paragraph 3.10.4. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the shop drawings. However, shop drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Paragraph 3.10.4, "Substitutions." Review by District and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each shop drawings:

"The contractor has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the shop drawings that does not conform to the contract documents. This shop drawing has been coordinated with all other shop drawings received to date by contractor and this duty of coordination has not been delegated to subcontractors, material suppliers, the Architect, or the engineers on this project.

Signature of Contractor and date"

3.10.1.4 *Extent of Review.* In reviewing shop drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, coordination of the differing subcontractor trades and shop drawings and Work which is not indicated on the shop drawings at the time of submission of shop drawings. Contractor and Subcontractors

shall be solely responsible for any quantities which may be shown on the submittals or Contract Documents.

3.10.2 Drawing Submission Procedure

3.10.2.1 *Transmittal Letter and Other Requirements.* All shop drawings must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as “clouding” on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.

3.10.2.2 *Copies Required.* Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers’ descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the District or Architect.

3.10.2.3 *Corrections.* The Contractor shall make all corrections required by Architect and shall resubmit, as required by Architect, corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to Paragraph 4.4.

3.10.2.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a shop drawing or sample submission or other submittal shall be commenced until the submission has been reviewed by Contractor and Architect and approved by Architect unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.10.3 Sample Submissions Procedure

3.10.3.1 *Samples Required.* In case a considerable range of color, graining, texture, or other characteristics are anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products; and products

delivered or erected without submittal and approval of a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date, and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.10.3.2 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions.

3.10.3.3 *Architect's Review.* The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures.

3.10.3.4 *Record Drawings and Annotated Specifications.* The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. A hard copy and a pdf copy on a CD of such Record Drawings in Autocad (or most current version required by OPSC) and Annotated Specifications will be delivered to District in accordance with the Contractor's approved construction schedule. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. On completion of the Work and prior to Application for Final Payment, the Contractor will provide one complete set of Record Drawings in Autocad (or most current version required by OPSC) and Annotated Specifications to the District, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.10.3.5 *Equipment Manuals.* Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. Contractor shall also convert each manual to a pdf file on a CD. The manuals shall be arranged in logical, sequential order, labeled, indexed, and placed in three-ring binders. At the completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for

Final Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in logical, sequential order, labeled, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the District through the Architect.

3.10.3.6 *District's Property.* All shop drawings, computer disks, annotated specifications, samples and other submittals shall become the District's property upon receipt by the District or Architect.

3.10.4 Substitutions

3.10.4.1 *One Product Specified.* Unless the Specifications state that no substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction or any specific name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Pursuant to Paragraph 3.10.4.3, the Contractor may, unless otherwise stated, offer any material, process, article, etc., which shall be materially equal or better in every respect to that so indicated or specified ("Specified Item") and will completely accomplish the purpose of the Contract Documents.

3.10.4.2 *Products Specified Which are Commercially Unavailable.* If the Contractor fails to make a request for substitutions for products, prior to the submission of its bid, and such products subsequently become commercially unavailable, the Contractor may request a substitution for such commercially unavailable item. The decision to grant this request is solely at the District's discretion. The written approval of the District, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. The District may condition its approval of the substitution upon the delivery to District of an extended warranty or other assurances of adequate performance of the substitution as well as an equitable deduction in the contract price should the substituted item cost less than the Specified Item. All risks of delay due the approval of a requested substitution by the DSA, or any other governmental agency having jurisdiction, shall be on the requesting party. All additional costs, all procurement and construction delays, and all costs for review by the Architect or its consultants shall be the responsibility of the Contractor and will be deducted from Contractor's pay request.

3.10.4.3 *Substitution Request Form.* Requests for substitutions of products, materials, or processes in place of a Specified Item must in writing on the District's Substitution Request Form ("Request Form") at the time of submitting bids to the District, except as provided for in Paragraph 3.10.4.2.

The Request Form must be accompanied by evidence as to whether the proposed substitution:

1. Is equal in quality/service/ability to the Specified Item;
2. Will entail no changes in detail, construction, and scheduling of related work;
3. Will be acceptable in consideration of the required design and artistic effect;
4. Will provide no cost disadvantage to the District;
5. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
6. Will required no change of the construction schedule.

In completing the Request Form, the bidder must state, with respect to each requested substitution, whether the bidder will agree to provide the Specified Item in the event that the District denies the bidder's request for such requested substitution. In the event that the bidder has agreed in the Request Form to provide the Specified Item and the District denies the bidder's requested substitution for a Specified Item, the bidder shall provide the Specified Item without any additional cost or charge to the District.

After bids are opened, the apparent lowest bidder shall provide, within five (5) days of opening such bids, any and all Drawing, Specifications, samples, performance data, calculations, and other information, as may be required to assist the Architect and the District in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the bidder.

After the District's receipt of such evidence by the bidder, the District will make its final decision as to whether the bidder's request for substitution for any Specified Items will be granted. The decision as to whether a proposed request for substitution is equal to a Specified Item shall be at the sole discretion of the District. Any request for substitution that is granted by the District shall be documented and processed though a Change Order. The District may condition its approval of any substitution upon delivery to the District of an extended warranty or other assurances of adequate performance of the substitution. Any and all risks of delay due to approval by the DSA or any other governmental agency having jurisdiction shall be on the bidder.

If the Architect and District accept a proposed substitution, the Contractor agrees to pay for all engineering and design services, including, without limitation, compensation to the Architect and affected engineers for their required time to process such substitution through the Division of the State Architect, if required, and to make all changes and adjustments in materials or the work of all trades directly or indirectly affected by the substituted item or items at no cost to the District.

3.10.4.4 *List of Manufacturers and Products Required.* The Contractor shall require all Subcontractors to prepare and submit to the Contractor, within thirty (30) days of execution of the Subcontract, comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for the Contractor's or Architect's approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and

samples, required by the Contract Documents, but rather shall be considered as a base from which more detailed submittals shall be developed for final review by the Contractor and the Architect.

3.10.5 Deferred Approvals

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 21 California Code of Regulations Section 17(g) and Title 24 California Code of Regulations Section 4-317 have specific requirements for deferred approval as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's.

3.11 INTEGRATION OF WORK

3.11.1 Scope

The Contractor shall be responsible for cutting, fitting, or patching to complete the Work and to make all parts fit together properly. Contractor shall be responsible for ensuring that all trades are coordinated and scheduled so as to ensure the timely and proper execution of the work. When modifying existing work or installing new Work adjacent to existing work, Contractor shall match, as closely as conditions of Site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work at no additional cost to District. All cost caused by defective or ill-timed work shall be borne by Contractor. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

3.11.2 Structural Members

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk and subject to replacement at its own expense without reimbursement under the Contract. Schedule delays resulting from Agency approvals for unauthorized work shall be the Contractor's responsibility.

3.11.3 Subsequent Removal

Permission to patch any areas or items of the Work shall not constitute a waiver of the District's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the District, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

3.12 CLEANING UP

3.12.1 Contractor's Responsibility

Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the Architect within five (5) days of request. Upon completion of Work, Contractor shall clean interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Upon completion of the Work, Contractor shall also remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the project by the District. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day.

3.12.1.1 In addition to the general cleaning, the following special cleaning shall be done at the completion of the work in accordance with the specifications including, but not limited to:

- (a) Remove putty stains from glazing, then wash and polish glazing.
- (b) Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.
- (c) Remove temporary protection and clean and polish floors and waxed surfaces.
- (d) Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint.
- (e) Remove spots, soil, plaster and paint from tile work, and wash tile.
- (f) Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
- (g) Vacuum-clean carpeted surfaces.
- (h) Remove debris from roofs, down spout and drainage system.

3.12.2 Failure to Cleanup

If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be the responsibility of the Contractor and deducted from the next progress payment.

3.13 ACCESS TO WORK

The Contractor shall provide the District, the Architect, Engineers and the Inspector of Record, access to the Work in preparation and progress wherever located. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

CONTRACTOR IS AWARE THAT THIS CONTRACT MAY BE SPLIT INTO SEVERAL PHASES AS ADDRESSED IN ARTICLE 6.

3.14 ROYALTIES AND PATENTS

3.14.1 Payment and Indemnity for Infringement

Contractor shall hold and save the District and its officers, agents, and employees, the Architect, and the Architect's consultants harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the District, unless otherwise specifically provided in the contract documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of the District, the Architect, or the Architect's consultants.

3.14.2 Review

The review by the Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

3.15 INDEMNIFICATION

3.15.1 Contractor

Contractor shall defend, indemnify and hold harmless District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, District, Architect, Inspector, the State of California and their officers,

employees, agents and independent contractors from any legal action including attorneys fees or other proceeding based upon such act, omission, breach, or as otherwise required by this Section 3.15.1.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorneys fees of any nature whatsoever, which may be incurred by reason of:

(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.

(c) Any dispute between Contractor and Contractor's subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at Contractor's own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified herein Section 3.15.1, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

Contractor shall ensure that its contract with each of its subcontractors contains provisions requiring the subcontractors to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the language of 3.15.1.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; and (4) products installed in or used in connection with the Work.

3.16 SUBMISSION OF DAILY REPORTS

3.16.1 General

At the close of each working day, the Contractor shall submit a daily report to the Architect and the Inspector, on forms approved by the District, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day. An attempt shall be made to reconcile the report daily, and it shall be signed by the Architect and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved that day. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.

3.16.2 Labor

The report required by Paragraph 3.16.1 shall show names of workers, classifications, hours worked and hourly rate. Project superintendent expenses are not allowed.

3.16.3 Materials

The report required by Paragraph 3.16.1 shall describe and list quantities of materials used and unit costs.

3.16.4 Equipment

The report required by Paragraph 3.16.1 shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily cost. Move-on and move-off fees shall be noted.

3.16.5 Other Services and Expenditures

Other services and expenditures shall be described in detail as the District requires.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 Replacement of Architect

In the case of the termination of the Architect, the District may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be the same as that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 Status

Pursuant to Titles 24 and 21 of the California Code of Regulations and as required pursuant to the Field Act, Education Code 17280 et. seq. the Architect will provide administration of the Contract Documents and the Work, and will be the District's representative during construction, as well as during the one (1) year period following the commencement of any warranties. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents.

4.2.2 Site Visits

The Architect will visit the Site at intervals necessary in the judgment of the Architect to become generally familiar with the progress and quality of the Work and to determine in general if the Work is being performed in accordance with the Contract Documents.

4.2.3 Limitations of Construction Responsibility

The Architect shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract Documents. The Architect shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

4.2.4 Communications Facilitating Contract Administration

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the District and the Contractor shall communicate through the Architect. Where direct communication is necessary between the District and the Contractor, the District's communication shall be through the District's authorized designee. The Architect shall be promptly informed, and shall receive copies of all written communications. Contractor shall not rely upon any communications from the District that is not from the District's authorized designee. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

4.2.5 Payment Applications

The Architect will review and make recommendations to the District regarding the amounts due the Contractor on the Certificates for Payment pursuant to Article 9 and subject to the Inspector's approval and Architect's observation.

4.2.6 Rejection of Work

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the District that the District reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect may recommend to the District that the District require additional inspection or testing of the Work in accordance with Paragraph 13.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 Warranties Upon Completion

The Architect, in conjunction with the Inspector will conduct field reviews of the Work to determine the date of completion, shall receive and forward to the District for the District's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

The Architect will conduct a field review of the Contractor's comprehensive list of items to be completed or corrected (final punch list) and one (1) follow-up field review if required. The cost incurred by the District for further field reviews or the preparation

of further punch lists by the Architect shall be invoiced to the Contractor and deducted from the final payment.

4.2.8 Interpretation

The Architect will interpret and decide matters concerning performance and requirements of the Contract Documents.

4.2.9 Additional Instructions

4.2.9.1 Typical Parts and Sections. Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.9.2 Dimensions. Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Architect's decisions on matters relating to aesthetic effect will be final.

4.3 INSPECTOR OF RECORD

4.3.1 General

One or more project inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24.

4.3.2 Inspector's Duties

All Work shall be under the observation of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 Inspector's Authority to Reject or Stop Work

The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any

Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 Inspector's Facilities

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required under Division 1 of the Specifications.

4.3.5 Testing Times

The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES

If at any time prior to the completion of the requirements under the Contract Documents, the District is required to provide or secure additional professional services for any reason by any act of the Contractor, the Contractor shall be invoiced by the District for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:

- (a) Services made necessary by the default of the Contractor.
- (b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- (c) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- (d) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).

- (e) Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- (f) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- (g) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- (h) Services in conjunction with more than one (1) re-review of submittals of shop drawings, product data, samples, etc.

4.5 DISPUTES

4.5.1 Decision of Architect

Disputes between District and Contractor involving money or time, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.5.2. A decision by the Architect, as provided in Paragraph 4.5.5, shall be required as a condition precedent to proceeding with remedies set forth in Paragraph 4.5.6 as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to the remedies under Paragraph 4.5.2 through 4.5.5 in the event: (1) the position of Architect is vacant; (2) the Architect has not received evidence or has failed to render a decision within agreed time limit; (3) the Architect has failed to take action required under Paragraph 4.6.4 within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the Architect; or (4) the Claim relates to a Stop Notice Claim not arising from any extra change order or Construction Change Directive for which approval has not been provided.

4.5.2 Architect's Review

The Architect will review claims and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the claim in whole or in part, stating reasons for rejection; (4) recommend approval of the claim; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.5.3 Documentation if Resolved

If a claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.5.4 Actions if Not Resolved

If a claim has not been resolved and all documentation requested pursuant to Paragraph 4.5.2 has been provided, the party making the claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) modify the initial claim; (2) notify the Architect that the initial claim stands; or (3) supplement with additional supporting data.

4.5.5 Architect's Written Decision

If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within twenty (20) days. Upon expiration of such time period, the Architect will render to the parties its written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. The Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5.6 Continuing Contract Performance

Pending final resolution of a Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract. If the dispute is not resolved, Contractor agrees it will neither rescind the contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the project is located, after the project has been completed, and not before. At the District's sole option, the District may submit individual disputes for binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual disputes, such resolution is full and final as to that particular claim.

4.5.7 Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface

When any excavation or trenching extends greater than four feet below the surface or if any condition involving hazardous substances are encountered:

(a) Immediately upon discovery, The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, by telephone and in writing, of the condition except:

1. If such condition is a hazardous waste condition, Contractor's bid includes removal or disposal of hazardous substances. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III

disposal site in accordance with the provisions of existing law. In such case, the notice bulletin procedures of Article 7 apply.

2. Subsurface or latent physical conditions at the Site differing from those indicated.
3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

(b) The public entity shall investigate the conditions, and if District finds that the conditions do materially so differ, do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order or construction change directive under the procedures described in the Contract.

(c) In the event that a dispute arises between the public entity or District and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.8 Claims for Extension of Time

If Contractor and District cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Paragraph 8.4. Upon completion of the procedures set forth under Paragraph 8.4, Contractor must then comply with the requirements in this Article including those set forth under Paragraph 4.5.9.

4.5.9 Claims Procedures

4.5.9.1 Procedure applicable to all Claims:

(a) **Definition of Claim:** A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the CONTRACT and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the District.

(b) **Filing Claim is Not Basis To Discontinue Work:** The Contractor shall promptly comply with Work under the Contract or Work requested by the District even though a written claim has been filed. The Contractor and the District shall

make good faith efforts to resolve any and all claims that may arise during the performance of the Work covered by this contract.

(c) Claim Notification: The Contractor shall within seven (7) calendar days after the claim arises, submit a notification, in writing, with the District stating clearly the basis for the claim. If the notification is not submitted within seven (7) days after the claim arises, the Contractor shall be deemed to have waived all right to assert the claim, and the claim shall be denied. Claims submitted after the final payment date shall also be considered null and void by the District. All claims shall be reviewed pursuant to Paragraph 4.5.1, 4.5.2, and 4.5.5.

(d) Formal Claim Submission: If the Contractor does not concur with the District's decision regarding the Claim Notification, the Contractor will issue a formal Claim Appeal within fourteen (14) days of receipt of the District's decision and all detailed information in support of the Claim Appeal within thirty (30) days. All appeals shall be submitted before final payment. If the Claim Appeal is not submitted within fourteen (14) calendar days and detailed information within thirty (30) days, the Contractor shall be deemed to have waived its right to assert the Claim and the Claim shall be denied. Contractor's failure to submit any detailed information which is in the possession of Contractor shall render such information inadmissible by Contractor at trial or arbitration.

(e) Appeal Claim Format: The Contractor shall provide all written detailed documentation which supports the claim, including but not limited to: arguments, justifications, cost, estimates, schedule analysis and detailed documentation. The format of the Claim Appeal shall be as follows:

- (1) Cover letter.
- (2) Summary of factual basis of claim and amount of claim.
- (3) Summary of the basis of the claim, including the specific clause and section under the Contract under which the claim is made.
- (4) Documents relating to the claim, including:
 - a. Specifications
 - b. Drawings
 - c. Clarifications (RFI's)
 - d. Other relevant information
 - e. Analysis of claim merit.
 - f. Analysis of claim cost.
 - g. For claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path.
 - h. Certification.
 - i. Chronology of events and related correspondence.
 - j. Daily reports and logs.

(f) Certification: The Contractor (and subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:

- (1) That the Contractor has reviewed the claim and that such claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
- (3) The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.
- (4) That the Contractor is familiar with Government Code Sections 12650 et seq. and Penal Code Section 72 and that false claims can lead to substantial fines and/or imprisonment.

(g) Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(h) Mandatory Claim Appeal Procedure: The Contractor's Claim Appeal shall be denied if it fails to provide the written basis of the claim and certification as set forth herein.

(i) District May Request Additional Information: Within thirty (30) days of receipt of the Claim Appeal and the information under this Article, the District may request in writing any additional documentation supporting the claim or documentation relating to defenses to the claim which the District may assert.

4.5.9.2 Claims Procedures in Addition to Government Code Claim. Nothing in the claims procedures set forth in this Article 4 of the General Conditions shall act to waive or relieve the Contractor from meeting the requirements set forth in Government code Section 900 et seq.

4.5.9.3 Binding Arbitration of Individual Claim Issues. At the District's sole option, the District may submit individual disputes, or claims, to binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized, such resolution is a full and final resolution of the particular claim or dispute. Under no circumstances may the Contractor stop work, rescind its contract or otherwise slow the progress of Work during resolution of individual claims in binding Arbitration.

4.5.9.4 Resolution of Disputes in Court of Competent Jurisdiction. If claims are not resolved under the procedure set forth and pursuant to Article 4.5.9.2, such claim or controversy shall be submitted to a court in the county of competent jurisdiction after the Project has been completed, and not before. Prior to the filing of any such action in

accordance with this Paragraph, the Contractor shall comply with the requirements set forth in Government Code Section 900 et seq.

4.5.9.5 *Warranties, Guarantees and Obligations.* The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto; and all of the rights and remedies available to District and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the same obligations and responsibilities, assumed by Contractor pursuant to the Contract Documents. Each subcontract agreement shall preserve and protect the rights of the District and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.1.2 Subcontractor Licenses

All subcontractors shall be properly licensed by the California State Licensing Board at the time bids are opened by the District.

5.1.3 Substitution of Subcontractor

Substitution of Subcontractors shall be permitted only as authorized under Public Contract Code §§ 4107 et. seq. Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the completion of the Project.

5.1.4 Contingent Assignment of Subcontracts and Other Contracts

Each subcontract and other contract or agreement for any portion of the Work is hereby assigned by the Contractor to the District provided that:

- (a) Such assignment is effective only after termination of this contract with the Contractor by the District as provided herein and only for those subcontracts and other contracts and agreements that the District accepts by notifying the Subcontractor or Materialman (as may be applicable) in writing; and
- (b) Such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.

The Contractor shall include adequate provisions for this contingent assignment of subcontracts and other contracts and agreements in each such document.

ARTICLE 6

CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

6.1 DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 Separate Contracts

(a) District reserves the right to let other contracts in connection with this Work. Contractor shall afford other contractors reasonable opportunity for (1) introduction and storage of their materials; (2) access to the Work; and (3) execution of their work. Contractor shall properly connect and coordinate its work with that of other Contractors.

(b) If any part of Contractor's Work depends on proper execution or results of any other contractor, the Contractor shall inspect and within seven (7) days or less, report to Architect, in writing, any defects in such work that render it unsuitable for proper execution of Contractor's work. Contractor will be held accountable for damages to District for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractors' work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of Contractor's work.

(c) To ensure proper execution of its subsequent Work, Contractor shall measure and inspect Work already in place and shall at once report to the Architect in writing any discrepancy between executed Work as built and the Contract Documents.

(d) Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of the Project and the potential impact of such work on Contractor's schedule.

(e) Nothing herein contained shall be interpreted as granting to Contractor the exclusive occupancy at the site of Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project Site. If execution of any contract by the District is likely to cause interference with Contractor's performance of its contract, District shall decide which contractor shall cease work temporarily and which contractor shall continue, or whether work can be coordinated so that contractors may proceed simultaneously.

(f) District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts at the Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

CONTRACTOR IS AWARE THAT THIS CONTRACT MAY BE SPLIT INTO SEVERAL PHASES. IF THE CONTRACT IS SPLIT INTO PHASES THEN CONTRACTOR HAS MADE ALLOWANCE FOR ANY DELAYS OR DAMAGES WHICH MAY ARISE FROM COORDINATION WITH CONTRACTORS FOR OTHER PHASES. IF ANY DELAYS SHOULD ARISE FROM ANOTHER CONTRACTOR WORKING ON A DIFFERENT PHASE, CONTRACTOR'S SOLE REMEDY FOR DAMAGES, INCLUDING DELAY DAMAGES, SHALL BE AGAINST THE CONTRACTOR WHO CAUSED SUCH DAMAGE AND NOT THE DISTRICT. CONTRACTOR SHALL PROVIDE ACCESS TO OTHER CONTRACTORS FOR OTHER PHASES AS NECESSARY TO PREVENT DELAYS AND DAMAGES TO OTHER CONTRACTORS WORKING ON OTHER PHASES OF CONSTRUCTION.

6.1.2 District's Right to Carry Out the Work

See Paragraph 2.2.

6.1.3 Designation as Contractor

When separate contracts are awarded to contractors on the Project Site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate District/Contractor Agreement.

6.1.4 Contractor Duties

The Contractor shall have overall responsibility to reasonably coordinate and schedule Contractor’s activities with the activities of the District’s own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the District until subsequently revised. Additionally, Contractor shall coordinate with Architect and District inspector to ensure timely and proper progress of work.

6.2 CONSTRUCTIVE OWNERSHIP OF PROJECT SITE AND MATERIAL

Upon commencement of Work, the Contractor becomes the constructive owner of the entire site, improvements, material and equipment on Project site. Contractor must ensure proper safety and storage of all materials and assumes responsibility as if Contractor was the owner of the Project site. All risk of loss or damage shall be borne by Contractor during the Work until the date of Completion. As construction owner, Contractor must carry adequate insurance in case of calamity and is not entitled to rely on the insurance requirements as set forth in this agreement as being adequate coverage in case of calamity.

6.3 DISTRICT’S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the District as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.12, the District may clean up and allocate the cost among those it deems responsible.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 No Changes Without Authorization

There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Architect for a minor change in the Work as herein provided. District shall not be liable

for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's Governing Board has authorized the same and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the District's Governing Board, the Architect, the Contractor, and the DSA.

Should any Change Order result in an increase in the Contract price, the cost of such Change Order shall be agreed to, in writing, in advance by Contractor and District and be subject to the monetary limitations set forth in Public Contract Code Section 20118.4. In the event that Contractor proceeds with any change in Work without first notifying District and obtaining the Architect's and District's consent to a Change Order, Contractor waives any claim of additional compensation for such additional work.

CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY.

7.1.2 Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, or an extension of the Contract Time, or when a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the District and the Contractor. The Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDERS ("CO")

A CO is a written instrument prepared by the Architect and signed by the District (as authorized by the District's Governing Board), the Contractor, the Architect, and the DSA (if necessary), stating their agreement upon all of the following:

- (a) A description of a change in the Work;
- (b) The amount of the adjustment in the Contract Sum, if any; and
- (c) The extent of the adjustment in the Contract Time, if any.

7.3 CONSTRUCTION CHANGE DIRECTIVE

7.3.1 Definition

A Construction Change Directive is a written order prepared by the Architect and signed by the District and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly. In the case of a Construction Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform Construction Change Directive shall be the responsibility of Contractor. Any dispute as to the sum of Construction Change Directive or timing of payment, shall be resolved pursuant to Paragraph 4.5.

7.3.2 Use to Direct Change

A Construction Change Directive shall be used in the absence of agreement on the terms of a CO. A copy of a proposed form is provided at the end of this Article.

7.4 REQUEST FOR INFORMATION ("RFI")

7.4.1 Definition

An RFI is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

7.4.2 Scope

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents.

7.4.3 Response Time

The Architect must respond to a RFI within a reasonable time after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or Construction Change Directive, if appropriate. If the Architect cannot respond to the RFI within a reasonable time, the Architect shall notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.

7.4.4 Costs Incurred

The Contractor shall be responsible for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. District, at its sole discretion, shall invoice Contractor for all such professional services arising from this Article.

7.5 REQUEST FOR PROPOSAL (“RFP”)

7.5.1 Definition

An RFP is a written request prepared by the Architect requesting the Contractor to submit to the District and the Architect an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

7.5.2 Scope

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by Paragraph 7.7. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST (“COR”)

7.6.1 Definition

A COR is a written request prepared by the Contractor requesting that the District and the Architect issue a CO based upon a proposed change called for in an RFP or a claim pursuant to Paragraph 4.5.

7.6.2 Changes in Price

A COR shall include breakdowns per Paragraph 7.7 to validate any change in Contract Price due to proposed change or claim.

7.6.3 Changes in Time

A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in Paragraph 3.8 of the General Contract. Any changes in time will be granted only if there is an impact to the critical path. If contractor fails to request a time extension in a COR, then the Contractor is thereafter precluded from requesting or claiming a delay.

7.7 COST OF CHANGE ORDERS

7.7.1 Scope

Within ten (10) days after a request is made for a change that impacts the Contract Sum as defined in Paragraph 9.1, the critical path, or the Contract Time as defined in Paragraph 8.4.2, the Contractor shall provide the District and the Architect, with a written estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, and wage rates required for the change, and the effect upon the Contract Time of such CO. Changes may be made by District by an appropriate written CO, or, at the District's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written Construction Change Directive.

District may, as provided by law and without affecting the validity of this Agreement, order changes, modification, deletions and extra work by issuance of written CO or Construction Change Directives from time to time during the progress of the Project, contract sum being adjusted accordingly. All such work shall be executed under conditions of the original Agreement except that any extension of time caused thereby shall be adjusted at time of ordering such change. District has discretion to order changes on a "time and material" basis with adjustments to time made after Contractor has justified through documentation the impact on the critical path of the Project.

7.7.2 Determination of Cost

The amount of the increase or decrease in the Contract Price from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. If an agreement cannot be reached within fifteen (15) days after submission and negotiation of Contractor's proposal, Contractor may submit pursuant to Paragraph 7.7.3. Submission of sums which have no basis in fact are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code Section 12650 et. seq.);
- (b) By unit prices contained in Contractor's original bid and incorporated in the Project documents or fixed by subsequent agreement between District and Contractor;
- (c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. However, in the case of disagreement, Contractor must utilize the procedure under section 7.7.3; or
- (d) By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. **Basis for Establishing Costs.**

a. Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The District reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the District.

c. Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$250 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the Work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the District than holding it at the Work Site, it shall be returned unless the Contractor elects to keep it at the Work Site at no expense to the District.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d. Other Items. The District may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.

e. Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the District may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f. Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

7.7.3 Format for Proposed Cost Change

The following format shall be used as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Directive form is provided at the end of this Article.

	<u>EXTRA</u>	<u>CREDIT</u>
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b) Labor (attach itemized hours and rates)	_____	_____
(c) Equipment (attach invoices)	_____	_____
(d) Subtotal	_____	_____
(e) If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Sub-contractor, not to exceed fifteen percent (15%) of item (d).	_____	_____

EXTRA

CREDIT

(f)	Liability and Property Damage Insurance, Worker's, Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed as follows: FICA @ 6.2% - with a wage ceiling of \$84,900; Medicare @ 1.45% - no wage ceiling; FUTA @ .8% - with a wage ceiling of \$7,000; ETT and SUI @ 2.3% - with a wage ceiling of \$7,000; Workers' Compensation @ 5.94% ; Liability and Property Damage @ 2.5% . Total not-to-exceed is 19.19% . <i>(Note: Modifications to these percentages will be evaluated and possibly modified only on a case-by-case basis and only after proper proof of alternate percentages are documented and approved in advance. In addition, as wage ceilings are met, those corresponding percentages must drop from the "burden" calculations).</i>	_____	_____
(g)	Subtotal	_____	_____
(h)	General Contractor's Overhead and Profit: Not to exceed fifteen percent (15%) of Item (g) if Contractor performed the work. No more than five percent (5%) of Item (g) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed fifteen percent (15%) if Item (g), and portions performed by Subcontractor shall not exceed five percent (5%) of Item (g)	_____	_____
(i)	Subtotal	_____	_____
(j)	Bond not to exceed one percent (1%) of Item (g)	_____	_____
(k)	TOTAL	_____	_____
(l)	Time	_____	_____

The undersigned Contractor approves the foregoing Change Order or Construction Change Directive as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order or Construction Change Directive, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood

that said Change Order or Construction Change Directive shall be effective when approved by the Governing Board of the District.

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

7.7.4 Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to Paragraph 7.7.3. Contractor will be allowed a maximum of 5% total profit and overhead. If subcontractor work is involved, subcontractors shall be entitled to a maximum of 5% profit and overhead on the deducted work. Any deviation from this Article shall not be allowed.

7.7.5 Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.6 Accounting Records

With respect to portions of the Work performed by COs and Construction Change Directives on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

7.7.7 Notice Required

If the Contractor desires to make a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to Paragraph 4.5 and this Article. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such claim shall be authorized by a CO.

7.7.8 Applicability to Subcontractors

Any requirements under this Article 7 shall be equally applicable to COs or Construction Change Directives issued to Subcontractors by the Contractor to the same extent required by the Contractor.

7.7.9 Alteration to Change Order Language

Contractor shall not alter or reserve time in Change Orders or Construction Change Directives. Contractor shall execute finalized Change Orders and proceed under Paragraph 7.7.7 and Paragraph 4.5 with proper notice. If Contractor intends to reserve time, without an approved CPM schedule prepared pursuant to Paragraph 3.8 then Contractor may be prosecuted pursuant to the False Claim Act.

SAMPLE

CONSTRUCTION CHANGE DIRECTIVE NO.

PROJECT: _____

TO: _____

You are hereby directed to provide the extra work necessary to comply with this Construction Change Directive.

DESCRIPTION OF CHANGE: _____

NOTE:

Contractor agrees to furnish all labor and materials and perform all of the above-described work in accordance with the above terms in compliance with the applicable sections of the Contract documents. The amount of the charges under this Construction Change Directive is limited to the charges allowed under Article 7 of the General Conditions. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Construction Change Directive shall constitute the entire compensation and/or adjustment in the contract time and contract sum due to the Contractor arising out of the change in the work covered by this Construction Change Directive, unless otherwise provided in this Construction Change Directive.

SAMPLE

CHANGE ORDER NO. _____

PROJECT: _____

TO: _____

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: _____

COST (This cost shall not be exceeded): _____

Original Contract Price: \$ _____

Change Order Amount: \$ _____

New Contract Price: \$ _____

TIME FOR COMPLETION: _____

Original Completion Date: _____

Time for Completion of CO: _____

New Completion Date: _____

NOTE:

Contractor agrees to furnish all labor and materials and perform all of the above-described work in accordance with the above terms in compliance with the applicable sections of the Contract documents. The amount of the charges under this Change Order is limited to the charges allowed under Article 7 of the General Conditions. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time and contract sum due to the Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order. It is understood that this Change Order shall be effective when approved by the Governing Board of the District.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Contract Time

Contractor shall perform and complete all Work under this Contract within the time specified in the Agreement Form. Moreover, Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or Project milestones developed pursuant to the provisions of the Contract including, but not limited to the Project Schedule set forth in the Specifications.

8.1.2 Notice to Proceed

District may give a notice to proceed within three (3) months of the award of the bid by District. Once Contractor has received the notice to proceed, Contractor shall complete the Work in the period of time referenced in the Contract Documents.

In the event that District desires to postpone the giving of the notice to proceed beyond this three-month period, it is expressly understood that with reasonable notice to the Contractor, the giving of the date to proceed may be postponed by District. It is further expressly understood by Contractor, that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the giving of the notice to proceed.

If the Contractor believes that a postponement will cause a hardship to Contractor, Contractor may terminate the contract with written notice to District within 10 days after receipt by Contractor of District's notice of postponement. It is further understood by Contractor that in the event that Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement. Should Contractor terminate the contract as a result of a notice of postponement, District shall have the authority to award the contract to the next lowest responsible bidder.

8.1.3 Computation of Time

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in the contractor's schedule for each winter weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the

Project's use. The Contractor will not be allowed a day-for-day weather delay when the contract is bid for construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. The Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the Work under construction from the effects of inclement weather.

If the weather is unusually severe in excess of the NOAA data norm and prevents the Contractor from beginning work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.

8.2 HOURS OF WORK.

8.2.1 Sufficient Forces

Contractors and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

8.2.2 Performance During Working Hours

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

8.2.3 Costs for After Hours Inspections

If the Work done after hours is required by the Contract Documents and requires work to be done outside the Inspector's regular working hours, the costs of any after hour inspections, shall be borne by the Contractor. Contractor shall provide the Inspector of Record 24-hour written notice prior to any overtime work being approved.

If the District allows the Contractor to do Work outside regular working hours for the Contractor's convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the District and deducted from the next Progress Payment.

If the Contractor elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the District and deducted from the next Progress Payment.

8.3 PROGRESS AND COMPLETION.

8.3.1 Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 Liquidated Damages

Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, **One Hundred Dollars and Zero Cents(\$100.00)** for each calendar day of delay in completion. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay. Contractor and his surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

8.4.2 Excusable Delay

Contractor shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its subcontractors, including acts of God, as defined in Public Contract Code Section 7107, acts of enemy, epidemics and quarantine restrictions. Contractor shall within five (5) calendar days of beginning of any such delay notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted after proper compliance with Paragraph 3.8 requiring preparation and submission of a properly prepared CPM schedule.

No extended overhead, general conditions costs, impact costs, out-of-sequence costs or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project schedule.

The Contractor shall notify the Architect in writing of any anticipated delay and its cause, in order that the Architect may take immediate steps to prevent, if possible, the occurrence or continuance of delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

In the event the Contractor requests an extension of Contract time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in work. When requesting time, i.e., extensions, for proposed Change Orders, they must be submitted with the proposed Change Order with full justification and documentation. If the Contractor fails to submit justification with the proposed Change Order it waives its right to a time extension at a later date. Such justification must be based on the official Contract schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the scope of work. The justification must include, but is not limited to, the following information:

(a) The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.

(b) Logical ties to the official Contract schedule for the proposed changes and/or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and/or delay. (A fragment of any delay of over ten (10) days must be provided.)

The Contractor and District understand and expressly agree that insofar as Public Contract Code Section 7102 may apply to changes in the Work or delays under this contract, the actual delays and damages, if any, and time extensions are intended to, and shall provide, the exclusive and full method of compensation for changes in the Work and construction delays.

8.4.3 Notice by Contractor Required

The Contractor shall within five (5) calendar days of beginning of any such delay notify the District in writing of causes of delay with justification and supporting documentation. District will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under Paragraph 8.4.2 shall be an extension of the Contract Time at no cost to the District.

Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

8.4.4 No Additional Compensation for Delays within Contractor's Control

CONTRACTOR IS AWARE THAT GOVERNMENTAL AGENCIES, SUCH AS THE DEPARTMENT OF GENERAL SERVICES, GAS COMPANIES, ELECTRICAL UTILITY COMPANIES, WATER DISTRICTS AND OTHER AGENCIES MAY HAVE TO APPROVE CONTRACTOR PREPARED DRAWINGS OR APPROVE A PROPOSED INSTALLATION. CONTRACTOR HAS INCLUDED DELAYS AND DAMAGES WHICH MAY BE CAUSED BY SUCH AGENCIES IN CONTRACTOR'S BID. THUS,

CONTRACTOR IS NOT ENTITLED TO MAKE CLAIM UPON THE DISTRICT FOR DAMAGES OR DELAYS ARISING FROM THE DELAYS CAUSED BY SUCH AGENCIES. FURTHERMORE, THE CONTRACTOR HAS SCHEDULED FOR SUCH DELAYS AND IS NOT ENTITLED TO AN EXTENSION OF TIME FOR DELAYS CAUSED BY GOVERNMENTAL AGENCIES WHICH CONTRACTOR MUST OBTAIN APPROVALS FROM AND, THUS, CONTRACTOR IS NOT ENTITLED TO AN EXTENSION OF TIME.

CONTRACTOR SHALL ONLY BE ENTITLED TO COMPENSATION FOR DELAY WHEN THE FOLLOWING CONDITIONS ARE MET: (1) THE DISTRICT IS RESPONSIBLE FOR THE DELAY; (2) THE DELAY IS UNREASONABLE UNDER THE CIRCUMSTANCES INVOLVED; AND (3) THE DELAY WAS NOT WITHIN THE CONTEMPLATION OF DISTRICT AND CONTRACTOR.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents.

9.2 COST BREAKDOWN

9.2.1 Required Information

On forms or software programs (e.g., Microsoft Project or Primavera) approved by the District, the Contractor shall furnish the following:

- (a) Within ten (10) days of the award of the Contract, a detailed breakdown of the Contract Price (hereinafter "Schedule of Values") for each Project or Site;
- (b) Within ten (10) days of the award of the Contract, a schedule of estimated monthly payment requests due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the District may require;
- (c) Within ten (10) days of the award of the Contract, the name, address, telephone number, fax number, California State Contractors License number, classification and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

9.2.2 District Approval Required.

The District shall review all submissions received pursuant to Paragraph 9.2.1 in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.

9.3 PROGRESS PAYMENTS

9.3.1 Payments to Contractor

Within thirty (30) days after approval of the Request for Payment, Contractor shall be paid a sum equal to **ninety-five percent (95%)** of the value of the Work performed (as certified by Architect and Inspector and verified by Contractor) up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be the Contractor's best estimate. Work completed as estimated shall be an approximation or estimate only and no mistake, inaccuracy, error or falsification in any approved estimate shall operate to release the Contractor, or any surety upon any bond, from damages arising from such Work, or from the District's enforcement of each and every provision of this Contract including but not limited to the Performance Bond and Payment Bond. The District shall have the right subsequently to correct any mistake, inaccuracy, error or falsification made or otherwise set forth in any approved Request for Payment and such correction may occur in any future Payment Application or in the final payment to the Contractor. No Surety upon any bond shall be relieved, released or exonerated of its obligations under this Contract or any applicable bond when the District is unable to correct an overpayment to the Contractor due to any abandonment by the Contractor or termination by the District.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

Notwithstanding anything to the contrary stated above, the Contractor may include in its Request for Payment the value of any structural steel, mail order materials, G.F.R.C. panels and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

- (a) The aggregate cost of materials stored off-site shall not exceed Twenty-Five Thousand Dollars (\$25,000) at any time without the written approval of the District to be given or withheld in the District's sole discretion;
- (b) Title to such materials shall be vested in the District as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- (c) With each Contractor Request for Payment, the Contractor shall submit to the District a written list identifying each location where materials are stored off-

site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

(d) The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;

(e) Representatives of the District shall have the right to make inspections of the storage areas at any time; and

(f) Such materials shall be (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

9.3.2 Purchase of Materials and Equipment

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

9.3.3 No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract which includes, but is not limited to, the Performance Bond and Payment Bond. The District may correct any error subsequent to any payment. In no event shall the Contractor or the Surety be released or exonerated from performance under this Contract when the District overpays the contractor based upon any mistake, inaccuracy, error or falsification in any estimate that is included in any Request for Payment.

9.3.4 Issuance of Certificate of Payment

The Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in Paragraph 9.6. The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) minor deviations from the Contract Documents correctable prior to completion, and (4) specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

9.4 APPLICATIONS FOR PROGRESS PAYMENTS

9.4.1 Procedure

9.4.1.1 *Application for Progress.* On or before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the Architect an itemized Application for Progress Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

- (a) The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- (b) The amount being requested under the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- (c) The balance that will be due to each of such entities after said payment is made;
- (d) A certification that the Record Drawings and Annotated Specifications are current;
- (e) Itemized breakdown of work done for the purpose of requesting partial payment;
- (f) An updated construction schedule in conformance with Paragraph 3.8;
- (g) The additions to and subtractions from the Contract Price and Contract Time;
- (h) A summary of the retentions held;
- (i) Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;
- (j) The percentage of completion of the Contractor's Work by line item; and
- (k) An updated Schedule of Values from the preceding Application for Payment.

9.4.2 Prerequisites for Progress Payments

9.4.2.1 *First Payment Request.* The following items, if applicable, must be completed before the first payment request will be accepted for processing:

- (a) Installation of the Project sign;

- (b) Receipt by Architect of submittals;
- (c) Installation of field office;
- (d) Installation of temporary facilities and fencing;
- (e) Submission of documents listed in the Paragraph 9.2 relating to Cost Breakdown;
- (f) Preliminary schedule analysis, due within 10 days after Notice to Proceed;
- (g) Contractor's Construction Schedule (Progress Schedule to be CPM based in conformance with Paragraph 3.8);
- (h) Schedule of unit prices, if applicable;
- (i) Submittal Schedule;
- (j) Copies of necessary permits;
- (k) Copies of authorizations and licenses from governing authorities;
- (l) Initial progress report;
- (m) Surveyor qualifications;
- (n) Written acceptance of District's survey of rough grading, if applicable;
- (o) List of all subcontractors, with names, license numbers, telephone numbers, and scope of work;
- (p) All bonds and insurance endorsements; and
- (q) Resumes of General Contractor's Project Manager, and if applicable, job site Secretary, Record Documents Recorder, and job site Superintendent.

9.4.2.2 *Second Payment Request.* The second payment request will not be processed until all submittals and shop drawings have been accepted for review by the Architect.

9.4.2.3 *All Payment Requests.* No payment requests will be processed unless Contractor has submitted copies of the Certified Payroll records for the Work which correlates to the payment request and a proper CPM schedule pursuant to Paragraph 3.8 is submitted.

9.4.2.4 Any payments made to Contractor where criteria set forth in Paragraph 9.4.2.1 or 9.4.2.2 have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers and that

Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

9.5 WARRANTY OF TITLE

The Contractor warrants title to all work. The Contractor further warrants that all work is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Failure to keep work free of liens, claims, security interests or encumbrances is grounds to make a claim against Contractor's payment and performance bond to immediately remedy and defend.

If a lien or stop notice of any nature should at any time be filed against the Work or any District property, by any entity which has supplied material or services at the request of the Contractor, Contractor and Contractor's surety shall promptly, on demand by District and at Contractor's and surety's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately therefrom.

If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required thereof, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

9.6 DECISIONS TO WITHHOLD PAYMENT

9.6.1 Reasons to Withhold Payment

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required by Paragraph 9.4 cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

- (a) Defective Work not remedied;
- (b) Stop Notices served upon the District;
- (c) Liquidated damages assessed against the Contractor;
- (d) The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of any Contract Price or by the completion date;
- (e) Damage to the District or other contractor;

- (f) Unsatisfactory prosecution of the Work by the Contractor;
- (g) Failure to store and properly secure materials;
- (h) Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Directives, and verified reports;
- (i) Failure of the Contractor to maintain record drawings;
- (j) Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- (k) Unauthorized deviations from the Contract Documents;
- (l) Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.
- (m) Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
- (n) Failure to properly maintain or clean up the Site;
- (o) Payments to indemnify, defend, or hold harmless the District;
- (p) Any payments due to the District including but not limited to payments for failed tests, or utilities changes or permits;
- (q) Failure to submit an acceptable schedule in accordance with Paragraph 3.8; or
- (r) Failure to pay Subcontractor or suppliers as required by Paragraph 9.8.1.
- (s) Failure to provide release from material suppliers or subcontractors when requested to do so.

9.6.2 Reallocation of Withheld Amounts

District may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations as defined in Paragraphs 9.6.1 and 9.5. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of

claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the contract documents or fails to perform any provision thereof, District may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The District shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming work) shall be made thereof.

9.6.3 Payment After Cure

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

9.7 NONCONFORMING WORK

Contractor shall promptly remove from premises all Work identified by District as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such Work which has been identified by District as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, District may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

9.8 SUBCONTRACTOR PAYMENTS

9.8.1 Payments to Subcontractors

No later than ten (10) days after receipt, or pursuant to Business and Professions Code Section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.8.2 No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

9.8.3 Payment Not Constituting Approval or Acceptance

An approved Request for Payment, a progress payment, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.8.4 Joint Checks

District shall have the right, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

9.9 COMPLETION OF THE WORK

9.9.1 Close-Out Procedures

9.9.1.1 *Punch List Items.* When the Contractor considers the Work complete, the Contractor shall prepare and submit to the District a comprehensive list of minor items to be completed or corrected (hereinafter "Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Upon receipt of the Contractor's Punch List, and not before, the Architect and Inspector will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the inspection discloses any item, whether or not included on the Contractor's list, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before District's issuance of the Notice of Completion, complete or correct such item. The Contractor shall then submit a request for an additional inspection by the District to determine Completion. When the Work, or designated portion thereof, is complete, the District will file a Notice of Completion. Warranties required by the Contract Documents shall commence on the date of Completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion. The Notice of Completion shall be submitted to the District and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

9.9.1.2 Close-Out Requirements.

(a) Utility Connections. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

(b) Record Drawings.

1. The intent of this procedure is to obtain an exact “as built” record of the Work upon completion of the project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings.
 - a. Any Work not installed as originally indicated on drawings.
 - b. The exact location and elevations of all covered utilities, including valves, cleanouts, etc.
2. Contractor is liable and responsible for inaccuracies in as-built drawings, even though they become evident at some future date.
3. Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector’s approval of the corrected prints and employ a competent draftsman to transfer the “as-built” information to the most current version of Autocad or as presently being utilized for Plan Check Submission by either the District, OPSC or DSA and print a complete set of transparent sepias. When completed, Contractor shall deliver corrected sepias and Diskette with Autocad file to the District.

(c) Maintenance Manuals. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. In addition, Contractor shall submit a pdf version of each manual on a CD. All installation, operating, and maintenance information and drawings shall be bound in 8½” x 11” binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery. Contractor shall also provide training for District personnel on proper maintenance of each piece of equipment and Contractor shall video-tape each training session, providing a copy of the training video to District.

(d) Inspection Requirements.

1. Before calling for final inspection, Contractor shall determine that the following Work has been performed:

- a. The Work has been completed.
 - b. All life safety items are completed and in working order.
 - c. Mechanical and electrical Work complete, fixtures in place, connected and ready for tryout and test.
 - d. Electrical circuits scheduled in panels and disconnect switches labeled.
 - e. Painting and special finishes complete.
 - f. Doors complete with hardware, cleaned of protective film relieved of sticking or binding and in working order.
 - g. Tops and bottoms of doors sealed.
 - h. Floors waxed and polished as specified.
 - i. Broken glass replaced and glass cleaned.
 - j. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
 - k. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.
 - l. Finished and decorative work shall have marks, dirt and superfluous labels removed.
 - m. Final cleanup, as in Paragraph 3.12.
2. Furnish a letter to District stating that a responsible representative of District [give name and position] has been instructed in working characteristics of mechanical and electrical equipment.
- (e) Labor Compliance Requirements.
1. The Contractor and/or its Subcontractors shall ensure that all outstanding Labor Compliance Items identified in the Discrepancy Notices and or Labor Compliance Close-Out Notices are fully satisfied, and all required documentation has been submitted to and approved by the Labor Compliance Administrator.

(f) Project Labor Agreement Requirements.

1. The Contractor and/or its Subcontractors shall ensure that all outstanding Project Labor Agreement Required documents have been submitted to and approved by the Project Labor Agreement (PLA) Administrator.

9.9.2 Costs of Multiple Inspections

More than two (2) requests of the District to make inspections required under Paragraph 9.9.1 shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

9.10 PARTIAL OCCUPANCY OR USE

9.10.1 District's Rights

The District may occupy or use any completed or partially completed portion of the Work at any stage. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. If District and Contractor cannot agree as to responsibilities such disagreement shall be resolved pursuant to Paragraph 4.5.1. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the District as provided under Paragraph 9.9.1.

9.10.2 Inspection Prior to Occupancy or Use

Immediately prior to such partial occupancy or use, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.10.3 No Waiver

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

9.11 COMPLETION AND FINAL PAYMENT

9.11.1 Final Inspection

Contractor shall comply with Punch List procedures under Paragraph 9.9.1.1, and maintain the presence of project superintendent and project manager until the punch list is complete to ensure proper and timely completion of the punch list. Under no circumstances shall Contractor demobilize its forces prior to completion of the punch list. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect shall inspect the Work and shall submit to Contractor and District a final inspection report noting the work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

Upon completion of the Work contained in the final inspection report, the Contractor shall notify the District and Architect, who shall again inspect such Work. If the Architect and the District finds the Work contained in such final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The District shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (which, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from the District, pay the amounts due Subcontractors.

9.11.2 Retainage

The retainage, less any amounts disputed by the District or which the District has the right to withhold Pursuant to Paragraph 9.6, shall be paid after approval of the District by the Architect's Certificate of Payment, after the satisfaction of the conditions set forth in Article 9, and after thirty-five (35) days after the acceptance of the Work and recording of the Notice of Completion by District. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code § 22300.

9.11.3 Procedures for Application for Final Payment

9.11.3.1 *Prerequisites for Final Payment.* The following conditions must be fulfilled prior to Final Payment:

- (a) A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights.
- (b) The Contractor shall have made all corrections to the Work which are required to remedy any defects therein, 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.
- (c) 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.
- (d) Contractor must have completed all requirements set forth in Paragraph 9.9.1.2.
- (e) Architect shall have issued a Final Certificate of Payment.

(f) The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

(g) The Contractor shall have completed final clean up as required by Paragraph 3.12.

(h) The Contractor shall have complied with all Labor Agreement requirements for the project as set forth in Paragraph 9.9.1.2(e).

(i) The Contractor shall have complied with all Project Labor Agreement requirements for the project as set forth in Paragraph 9.9.1.2(e).

9.12 SUBSTITUTION OF SECURITIES

The District will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor Responsibility

The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk, with the exception of damage to the work caused by "acts of God" as defined in Public Contract Code Section 7105(b)(2).

Contractor shall take, and require subcontractor to take, all necessary precautions for safety of workers on the Work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or Architect or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the Work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety

and health of workers. The name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

10.1.2 Subcontractor Responsibility

Contractor shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.3 Cooperation

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the District, and all insurance carriers and loss prevention engineers.

10.1.4 Accident Reports

Subcontractors shall immediately, within two (2) days, report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported within four (4) days by telephone or messenger. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to the District and the Architect giving full details of the accident.

10.1.5 First-Aid Supplies at Site

The Contractor will provide and maintain at the Site first-aid supplies which complies with the current Occupational Safety and Health Regulations.

10.1.6 Material Safety Data Sheets and Compliance with Proposition 65

(a) Contractor is required to have material safety data sheets available in a readily accessible place at the job site for any material requiring a material safety data sheet per the Federal "hazard communication" standard, or employees' "right-to-know law." The Contractor is also required to properly label any substance brought into the job site, and require that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

Contractor is required to comply with the provisions of California Health and Safety Code section 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

10.1.7 Non-Utilization of Asbestos Material

NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, 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.

All Work or materials found to contain asbestos or Work or material installed with asbestos-containing equipment will be immediately rejected and this Work will be removed at no additional cost to the District.

Decontamination and removal of Work found to contain asbestos or Work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the District, who shall have sole discretion and final determination in this matter.

The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

Interface of Work under this Contract with work containing asbestos shall be executed by the Contractor at his risk and at his discretion, with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos-containing products. By execution of this Contract, the Contractor acknowledges the above and agrees to hold harmless District and its assigns for all asbestos liability which may be associated with this work and agrees to instruct his employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (a) Employees on the Work and other persons who may be affected thereby;
- (b) The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- (c) Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Contractor is constructive owner of Project site as more fully discussed in Paragraph 6.2.

10.2.2 Contractor Notices

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 Safety Barriers and Safeguards

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 Use or Storage of Hazardous Material

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the District any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the District and local fire authorities.

10.2.5 Protection of Work

The Contractor and Subcontractors shall continuously protect the Work, the District's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and

Subcontractors, at their own expense, shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the District.

The Contractor, at Contractor's expense, will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work.

Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair Work shall be obtained and paid for by Contractor.

10.2.6 Requirements for Existing Sites

Contractor shall (unless waived by the District in writing):

- (a) When performing construction on existing sites, become informed and take into specific account the maturity of the students on the Site; and perform Work which may interfere with school routine before or after school hours, enclose working area with a substantial barricade, and arrange Work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities. The Contractor shall comply with specifications and directives of the District regarding the timing of certain construction activities in order to avoid unnecessary interference with school functioning.
- (b) Provide substantial barricades around any shrubs or trees indicated to be preserved.
- (c) Deliver materials to building area over route designated by Architect.
- (d) Take preventive measures to eliminate objectionable dust, noise, or other disturbances.
- (e) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or directions of Architect; and not interfere with the Work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on the Project site.
- (f) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the District. All filing and plan check fees shall be paid by Contractor.

(g) Provide District on request with Contractor's written safety program and safety plan for each site.

10.2.7 Shoring and Structural Loading

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the District.

10.2.8 Conformance Within Established Limits

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the District or the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.

10.2.9 Subcontractor Enforcement of Rules

Subcontractors shall enforce the District's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.2.10 Site Access

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the District, observe the boundaries of the Site designated by the District, park only in those areas designated by the District, which areas may be on or off the Site, and comply with any parking control program established by the District, such as furnishing license plate information and placing identifying stickers on vehicles.

10.2.11 Security Services

The Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in the District's sole discretion.

10.3 EMERGENCIES

10.3.1 Emergency Action

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7.

10.3.2 Accident Reports

The Contractor shall promptly report in writing to the District all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses in conformance with Article 10.1.4. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported in accordance with Paragraph 10.1.4, immediately by telephone or messenger to the District.

10.4 HAZARDOUS MATERIALS

10.4.1 Discovery of Hazardous Materials

In the event the Contractor encounters or suspects the presence on the job site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by § 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the District and the Architect in writing, whether or not such material was generated by the Contractor or the District. The Work in the affected area shall not thereafter be resumed, except by written agreement of the District and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the District and the Contractor.

10.4.2 Hazardous Material Work Limitations

In the event that the presence of hazardous materials is suspected or discovered on the Site (except in cases where asbestos and other hazardous material work in the Contractor's responsibility), the District shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by District, as certified by an independent testing laboratory and approved by the appropriate government agency.

10.4.3 Indemnification by Contractor for Hazardous Material Caused by Contractor

In the event the hazardous materials on the Project Site is caused by the Contractor, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the District for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless District and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site.

10.4.4 Terms of Hazardous Material Provision

The terms of this Hazardous Material provision shall survive the completion of the Work and/or any termination of this Contract.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Insurance Requirements

Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least an A status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
- (b) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- (c) Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;

(d) Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;

(e) Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and

(f) Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

(g) Claims involving sudden or accidental discharge of contaminants or pollutants.

11.1.2 Subcontractor Insurance Requirements

The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under Paragraph 11.1.1 in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of Paragraph 11.1.1 without prior written approval of the District.

11.1.3 Additional Insured Endorsement Requirements

The Contractor shall name, on any policy of insurance required under Paragraph 11.1, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be a CG 2010 (11/85) or CG 2010 (10/93) form and state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to 11.1.1 must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.4 Specific Insurance Requirements

Contractor shall take out and maintain and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain:

1. Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than:

- (a) Per occurrence (combined single limit) \$1,000,000.00
- (b) Project Specific Aggregate (for this project only) \$1,000,000.00
- (c) Products and Completed Operations \$1,000,000.00
- (d) Personal and Advertising Injury Limit..... \$1,000,000.00

2. Insurance Covering Special Hazards

The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

- (a) Automotive and truck where operated in amounts \$1,000,000.00
- (b) Material Hoist where used in amounts \$1,000,000.00
- (c) Explosion, Collapse and Underground (XCU coverage) \$1,000,000.00

3. In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars (\$2,000,000.00).

11.2 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance as required under Paragraph 11.6 and in compliance with Labor Code § 3700.

11.3 BUILDER'S RISK / "ALL RISK" INSURANCE

11.3.1 Course-of-Construction Insurance Requirements

The Contractor, during the progress of the Work and until final acceptance of the Work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable Work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition,

increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

11.4 FIRE INSURANCE

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the District.

11.5 OTHER INSURANCE

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.6 PROOF OF INSURANCE

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause:

"This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."

- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

- (c) Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and that

such insurance policy shall be primary to any insurance or self-insurance maintained by District.

(d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the District.

11.7 COMPLIANCE

In the event of the failure of any contractor to furnish and maintain any insurance required by this Article 11, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.

11.8 WAIVER OF SUBROGATION

Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

11.9 PERFORMANCE AND PAYMENT BONDS

11.9.1 Bond Requirements

Unless otherwise specified in the Special Conditions, prior to commencing any portion of the Work, the Contractor shall furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide

that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the District may terminate the Contract for cause.

11.9.2 Surety Qualification

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

11.9.3 Alternate Surety Qualifications

If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.

11.9.4 Insolvency of Surety

If at any time during the course of the contract the Contractor's Surety becomes insolvent, Contractor will be required to obtain replacement bonds, with a qualified surety, for an amount to be determined by the District up to the full value of the contract.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 Uncovering Work for Required Inspections

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Sum or Time.

12.1.2 Costs for Inspections not Required

If a portion of the Work has been covered which the Inspector or the Architect has not specifically requested to observe prior to its being covered, the Inspector or the Architect may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be charged to the District. If such Work is not in accordance with Contract Documents, the Contractor shall pay such costs unless

the condition was caused by the District or a separate contractor, in which event the District shall be responsible for payment of such costs to the Contractor.

12.2 CORRECTION OF WORK

12.2.1 Correction of Rejected Work

The Contractor shall promptly correct the Work rejected by the Inspector or the District upon recommendation of the Architect as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

12.2.2 One-Year Warranty Corrections

If, within one (1) years after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.9.1, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so unless the District has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation under this Paragraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

12.2.3 District's Rights if Contractor Fails to Correct

If the Contractor fails to correct nonconforming Work within a reasonable time, the District may correct it, pursuant to Article 9.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The District and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants,

agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and Obligations Cumulative

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 No Waiver

No action or failure to act by the Inspector, the District, or the Architect shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Compliance

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 Independent Testing Laboratory

The District will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the District's representative and not by the Contractor. Any costs or expenses of inspection or testing incurred outside of a fifty (50) mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater, shall be paid for by the District, invoiced by the District to the Contractor, and deducted from the next Progress Payment.

13.5.3 Advance Notice to Inspector

The Contractor shall notify the Inspector, in writing, at least 24 hours in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector, in writing, at least 24 hours in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

13.5.4 Testing Off-Site

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 Additional Testing or Inspection

If the Inspector, the Architect, the District, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under Paragraph 13.5.1, the Inspector will, upon written authorization from the District, make arrangements for such additional testing, inspection, or approval. The District shall bear such costs except as provided in Paragraph 13.5.7.

13.5.6 Costs for Retesting

If such procedures for testing, inspection, or approval under Paragraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the District, invoiced to the Contractor, and deducted from the next Progress Payment.

13.5.7 Costs for Premature Test

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the District for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Inspector's and Architect's fees and expenses, and the amount of the invoice of shall be deducted from the next Progress Payment.

13.6 TRENCH EXCAVATION

13.6.1 Trenches Greater Than Five Feet

Pursuant to Labor Code § 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the

Contractor shall, in advance of excavation, submit to the District or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.6.2 Excavation Safety

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

13.6.3 No Tort Liability of District

Pursuant to Labor Code § 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

13.6.4 No Excavation Without Permits

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

13.7 WAGE RATES, TRAVEL, AND SUBSISTENCE

13.7.1 Wage Rates

Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations (“Director”). These rates are on file at the administrative office of the DISTRICT and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

13.7.2 Holiday and Overtime Pay

Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

13.7.3 Wage Rates Not Affected by Subcontracts

The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

13.7.4 Per Diem Wages

The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

13.7.5 Forfeiture and Payments

Pursuant to Labor Code §1775 and the applicable Labor Compliance Program, the Contractor shall forfeit to the District, not more than Two-Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. Further details regarding the enforcement of paying prevailing wage rates, reporting violations, withholding contract payments, forfeitures and hearing to review withholding of contract payments are set forth in the applicable Labor Compliance Program.

13.8 RECORDS OF WAGES PAID

13.8.1 Payroll Records

(a) Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman,

apprentice, worker or other employee employed by him or her in connection with the Project.

(b) All payroll records shall be certified and submitted to the District with each application for payment, but shall not be submitted less than once per month. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

(d) The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United

States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Any copy made available to any agency included in the Joint Enforcement Strike Force on the Underground Economy or to any other law enforcement agency investigating violations shall not be obliterated and shall include individual's names, address and social security number.

(f) The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One-Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Failure to timely respond to a request for payroll records may result in debarment by the Labor Commissioner.

Responsibility for compliance with this Article and the applicable Labor Compliance Program shall rest upon the Contractor.

13.8.2 Withholding of Contract Payments & Penalties

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

(a) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or

(b) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or

(c) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or

(d) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or

(e) The Contractor or Subcontractor(s) fail to comply with the applicable Labor Compliance Program; or

(f) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

Any withholding of contract payments and penalties are set forth in the applicable Labor Compliance Program.

13.9 PROJECT LABOR AGREEMENT

The Contractor and all the Subcontractors shall at all times comply with the requirements of the Project Labor Agreement. The Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work, requiring each Subcontractor, of every Tier, who furnishes any labor for the performance of Work, to comply with the provisions of the Project Labor Agreement at no additional cost. Compliance by the Contractor with the requirements of the Project Labor Agreement shall be a condition of the Contractor's right to payment under its Applications for Payment. Any requirement currently set forth in, or hereafter developed, adopted or implemented pursuant to the terms of the Project Labor Agreement, that is applicable to the Project, that is not set forth herein or that is by mistake incorrectly stated, shall be deemed to be inserted in these General Conditions and shall be read and enforced as though it were included herein; and, if through mistake or otherwise any such requirement is not inserted or if inserted and requires correction, then upon request of either party these General Conditions shall forthwith be amended by Modification to make such insertion or correction. In the event of a conflict between the Project Labor Agreement and the provisions of the Contract Documents, the Project Labor Agreement shall control.

13.9.1 Apprentice Wages and Definitions

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

13.9.1.1 Employment of Apprentices

Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any

apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5. Apprentices may comprise up to thirty percent (30%) of the work force of each particular craft, classification or type of worker employed, unless the applicable joint apprenticeship committee establishes a lower percentage. To the extent possible, fifty percent (50%) of the apprentice work force shall consist of first-year apprentices. Pursuant to Article 14, Apprentices, §14.1, Importance of Training of the Project Labor Agreement, Contractors who wish to utilize apprentices from a Non-Labor Management state-approved apprenticeship program for their core workforce shall *ten (10) days prior to commencing work on the project* submit a written request for evaluation to the PLA Administrator to determine if the program meets or exceeds the parallel Labor Management Program's completion rates, completion counts, and total registered apprentices. The PLA Administrator will be responsible for issuing a written decision within seven (7) days of receipt of request.

13.9.1.2 Submission of Contract Information.

Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

13.9.2 Apprentice Fund

The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a

credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

13.9.3 Prime Contractor Compliance

The responsibility of compliance with Article 13 and §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7 and the applicable Labor Compliance Program (as applicable).

13.10 LABOR COMPLIANCE PROGRAM

The following provisions shall apply only if the Construction Contract states that an appropriate Labor Compliance Program shall apply to the Project: Pursuant to California Labor Code section 1771.7, the Owner has implemented and shall enforce the Labor Compliance Program that has been established for the Project. A pre-construction conference will be held for the benefit of the Contractor and the Subcontractors to discuss labor requirements of the Labor Compliance Program that apply to the Project at which attendance by the Contractor is mandatory. The Labor Compliance Program includes, without limitation, provisions requiring the Contractor to comply with the prevailing rates of wages, maintenance and submission of weekly certified payroll records, employment of apprentices and, compliance with legal hours of work, and debarment as set forth in Paragraph 3.19, above. The Contractor, and any Subcontractors, are required to comply with the requirements of the Labor Compliance Program, at no additional cost to the Owner. Payroll records shall be certified and submitted to the labor compliance office, along with, and as a condition to, the Contractor's Applications for Payment (or at the time intervals designated in the Labor Compliance Program) and furthermore shall be available for inspection at all reasonable hours at the principal office of the Contractor. The Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work, requiring each Subcontractor, of every Tier, who furnishes any labor for the performance of Work, to comply with these provisions at no additional cost. Compliance by the Contractor with the requirements of this Paragraph 3.21 shall be a condition to the Contractor's right to payment under its Applications for Payment. Contractor and its Subcontractors shall comply with all applicable provisions of the California Labor Code and the Labor Compliance Program relating to prevailing wage, hours of work, apprentices, and maintenance and submission of certified payroll reports, and shall pay appropriate penalties as described in Subparagraph 3.19.11, above, for failure to comply pursuant to the California Labor Code, including, but not limited to, § 1775, 1776, 1777.7 and 1813. The requirements of this Paragraph 3.10 are in addition to the Contractors requirement to include and require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work requiring compliance with the provisions of this Paragraph at no additional cost.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 Application

Pursuant to Government Code § 4551, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 Assignment of Claim

Upon demand in writing by the assignor, the District shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the District has not been injured thereby or the District declines to file a court action for the cause of action.

13.12 LOCAL RESIDENTS, APPRENTICES AND LOCAL BUSINESSES

13.12.1 Local Residents

13.12.1.1 Employment of Local Residents

In accordance with the Owner's Project Labor Agreement (PLA), Article 3, Section 3.3.1 Employment of Local Residents, and in recognition of the Owner's mission to serve its local residents, the Unions and contractors agree that, to the extent allowed by law, and as long as they possess the requisite skills and qualification, residents of the Riverside and San Bernardino Counties shall be first referred for Project Work, including journeyman, apprentice, or other positions which may be established under a Schedule A and covered by applicable prevailing wage for utilization on Project Work, until at least fifty percent (50%) of the positions for Project Work for a particular contractor (including contractor's "core workforce"), by craft, have been filled with residents of the Riverside and San Bernardino Counties.

13.12.1.2 Referral Procedures

In an effort to comply with the Owner's Project Labor Agreement (PLA), Article 3, Section 3.3 Referral Procedures. All hiring procedures, including related practices affecting apprenticeship, shall be operated so as to consider the goals of the Owner to encourage employment of residents in Riverside County first and then to San Bernardino County (those zip codes listed in Attachment B of the PLA), and utilization of Local Businesses (Riverside and San Bernardino Counties) on the Project, and to facilitate the ability of all Contractors to meet their employment needs. All projects subject to the Owner's Project Labor Agreement shall utilize the "PLA Local Residency Preference Program – Candidate Request Form". This form is to be used in conjunction with each Unions established dispatch process.

13.12.2 Utilization of Local Businesses

The Owner encourages the utilization of Local Businesses (Riverside and San Bernardino Counties, which are those zip codes listed in Attachment B of the PLA) on the Project, and to facilitate the ability of all Contractors to meet their employment needs. All projects subject to the Owner's Project Labor Agreement shall utilize the "The Local Business Report Form and the Local Business Listing Form". These forms are to be completed by all Prime Contractors/Consultants, including subcontractors/subconsultants regardless of tier.

The term "Local Businesses" is defined as those businesses having either their principal office, or functioning within the Riverside and San Bernardino Counties (as defined by the zip codes listed on "Attachment B of the PLA"), and actively engaged in their principal line(s) of business within the Riverside and San Bernardino Counties on the date this PLA was entered into, or for six months prior to the award of covered work. Priority of business focus will be for Riverside County businesses. The RCCD Board of Trustees recognizes the importance of promoting economic growth in the communities it serves and, therefore, encourages the involvement of local businesses in every aspect of the execution of its Building Program work.

The Contractor shall encourage local business participation and shall submit the Local Business Report and the Local Business Listing forms prior to award of contract and thereafter in the event of changes or additions.

13.13 STATE AUDIT

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the District, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

13.14 STORM WATER POLLUTION PREVENTION

13.14.1 Application

This Section addresses the preparation, implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) for the purpose of preventing the discharge of pollutants from the construction site. This includes the elimination of pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas. The District will not issue a Notice to Proceed until Contractor has prepared by a qualified individual and obtained approval of the Permit Registration Documents (“PRDs”) that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents from all applicable Local Governing Agencies including the Regional Water Quality Control Board. The Contractor shall also secure a certification that the construction project has met all of the conditions of the General Construction Activity Storm Water Permit (GCASP) and comply with all applicable local, state and federal regulations governing storm water pollution prevention.

13.14.2 References and Materials

- California Stormwater Quality Association New Development and Redevelopment Best Management Practice Handbook
- 2009 California Stormwater Quality Association Construction BMP Handbook .

State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. Available on-line at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml. - Use materials of a class, grade and type needed to meet the performance described in the BMP Handbook.

13.14.3 Preparation and Approval

The Contractor shall prepare by a qualified individual the PRDs that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents. The Contractor’s Qualified SWPPP Developer (“QSD”) shall prepare the Storm Water Pollution Prevention Plan (SWPPP) as required to comply with storm water pollution regulations for project sites with storm water discharges associated with construction activity such as clearing or demolition, grading, excavation and other land disturbances. The SWPPP shall apply to all areas that are directly related to construction activity, including but not limited to staging areas, storage yards, material borrow areas, and access roads.

The Contractor shall prepare and submit to the Local Governing Agencies and the District the SWPPP for review and approval if the project sites, new or existing, with land disturbance of 1 or more acres (or less than 1 acres if part of a common plan of development); the construction activity that results in land surface disturbances of less than one acre is part of a larger common plan of development or sale of one or more acres of disturbed land surface; or the construction activity associated with Linear Underground/Overhead Projects (“LUPs”) including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

The Contractor shall also pay annual renewal fee(s) until the contract is completed and make all such checks payable to the State Water Resources Control Board. The Notice of Intent must be submitted at least two weeks prior to the commencement of construction activities.

The Contractor shall prepare the SWPPP by following the format in Sections 2, 3, 4 and Appendices A through F of the California Stormwater BMP Handbook - Construction, January 2009 edition, published by the California Stormwater Quality Association. The publication is available from:

California Stormwater
Quality Association
P.O. Box 2105
Menlo Park, CA 94026-2105
Phone: (650) 366-1042
E-mail: info@casqa.org

or

<https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx>

Where land disturbance is less than 1 acre, any BMPs indicated in the BMP Handbook needed to prevent or minimize storm water pollution shall be implemented at no extra cost to the District.

Within two weeks after Award of Contract by the District, the Contractor shall submit to the District’s Civil Engineer one copy of the PRDs including the SWPPP for review. After the District’s approval, the Contractor shall provide approved copies of the

SWPPP as follows: one copy each to the District's Construction Inspector, District's Construction Manager, District Architect, Commissioned Architect and District's Civil Engineer.

13.14.4 Implementation

The Contractor shall implement the Storm Water Pollution Prevention Plan by doing the following:

Obtain a Waste Discharger Identification (WDID) number from the SWRCB before beginning construction. This number will be issued once your PRDs are administratively accepted and fee is received.

Keep the SWPPP, REAPs, monitoring data on the construction site.

Employ a Qualified SWPPP Practitioner (QSP) to implement the SWPPP during construction and develop Rain Event Action Plans ("REAPs").

Install, inspect, maintain and monitor BMPs required by the General Permit.

Install perimeter controls prior to starting other construction work at the site.

Contain on-site storm water at the jobsite. Do not drain on-site water directly into the storm drain.

Implement the SWPPP.

Provide SWPPP and BMP implementation training for those responsible for implementing the SWPPP.

Designate trained personnel for the proper implementation of the SWPPP.

Conduct monitoring, as required, and assess compliance with the Numeric Action Levels (NALs) or Numeric Effluent Limitations (NELs) appropriate to your project.

Report monitoring data.

Maintain a paper or electronic copy of all required records for three years from the date generated or date submitted, whichever is last. These records must be available at the construction site until construction is completed.

Have a QSD revise the SWPPP as needed to reflect the phases of construction and to suit changing site conditions and instances when properly installed systems are ineffective.

Assist the District with entering any necessary data or information into the Stormwater Multi-Application and Reporting System ("SMARTS") system.

At the end of Construction Contract:

- i. Submit Notice of Termination (NOT) into the SMARTS when construction is complete and conditions of termination listed in the NOT have been satisfied. A copy of the NOT can be found at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml.
- ii. Leave in place storm water pollution prevention controls needed for post-construction storm water management and remove those that are not needed as determined by the District. Thereafter, left-in-place controls will be maintained by the District.
- iii. Provide Site Monitoring Reports, SWPPP revisions, Compliance Certifications and related documents to the District. Post-construction storm water operation and management plan as mentioned in the compliance certifications are considered to be in place at the end of the Construction Contract.

13.14.5 Monitoring

The Contractor shall conduct examination of storm water pollution prevention controls as required by the State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. This includes properly qualified personnel performing all required monitoring, testing, inspections and monitoring. The Contractor shall also conduct examination of storm water pollution prevention controls , as well as before and after each storm event in compliance with the State Water Resources Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (General Permit) (SWRCB, 2009).and at least once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or BMP changes as soon as feasible. All maintenance related to a storm event should be completed within 48 hours of the storm event. The Contractor shall also prepare and maintain, at the jobsite, a log of each inspection using Site Monitoring Report forms.

13.14.6 Liabilities and Penalties

Review of the SWPPP and inspection logs by the District shall not relieve the Contractor from liabilities arising from non-compliance with storm water pollution regulations.

Payment of penalties for non-compliance by the Contractor shall be the sole responsibility of the Contractor and will not be reimbursed by the District.

Compliance with the Clean Water Act pertaining to construction activity is the sole responsibility of the Contractor. For any fine(s) levied against the District due to non-compliance by the Contractor, the District will deduct from the final payment due the Contractor the total amount of the fine(s) levied on the District, plus legal and associated costs.

The Contractor shall submit to the District a completed NOI for change of information (Construction Site Information and Material Handling/Management Practices).

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

14.1.1 Grounds for Termination

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

- (a) Issuance of an order of a court or other public authority having jurisdiction; or
- (b) An act of government, such as a declaration of national emergency.

14.1.2 Notice of Termination

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the District, terminate the Contract and recover from the District payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

14.2 TERMINATION BY THE DISTRICT FOR CAUSE

14.2.1 Grounds for Termination

The District may terminate the Contractor and/or this Contract for the following reasons:

- (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- (b) Persistently or repeatedly is absent, without excuse, from the job site;
- (c) Fails to make payment to Subcontractors, suppliers, materialmen, etc.;
- (d) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- (e) Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; or
- (e) Otherwise is in substantial breach of a provision of the Contract Documents.

14.2.2 Notification of Termination

When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contractor and/or this Contract and may, subject to any prior rights of the surety:

- (a) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (b) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept; and
- (c) Complete the Work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors.

14.2.3 Payments Withheld

If the District terminates the Contract for one of the reasons stated in Paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

14.2.4 Payments Upon Completion

If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid to the Contractor, or District, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

14.3 TERMINATION OF CONTRACT BY DISTRICT (CONTRACTOR NOT AT FAULT)

14.3.1 Termination for Convenience

District may terminate the Contract upon fifteen (15) calendar days of written notice to the Contractor and use any reasonable method the District deems expedient to complete the project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or Contractor make it impossible or against the District's interest to complete the work. In such a case, the Contractor shall have no claims against the District except: (1) the actual cost for labor, materials, and services performed which may be documented through timesheets, invoices, receipts, or otherwise, and (2) ten percent (10%) profit and overhead, and (3) five percent (5%) termination cost of the total of items (1) and (2). Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept.

14.3.2 Non-Appropriation of Funds/ Insufficient Funds

In the event that sufficient funds are not appropriated to complete the Project or the DISTRICT determines that sufficient funds are not available to complete the Project, DISTRICT may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the DISTRICT exercises this option, the DISTRICT shall pay for any and all work and materials completed or delivered onto the site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of fifteen percent (15%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the DISTRICT. DISTRICT may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as DISTRICT may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

14.4 REMEDIES OTHER THAN TERMINATION

If a default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to Article 14.2, do any of the following:

- (a) Permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the District may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand;

(b) If the workmanship performed by the Contractor is faulty or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with work or materials that conform to the Contract Documents, in which event the Contractor, at its sole costs and expense, shall proceed in accordance with the District's order and complete the same within the time period given by the District in its notice to the Contractor; or

(c) Initiate procedures to declare the Contractor a non-responsible bidder for a period of two to five years thereafter.

All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the District at the maximum legal rate. The District may retain or withhold any such amounts from the Contract Price. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to Paragraph (b) above, the Contractor shall replace the same with new work or materials approved by the Architect and the District, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect and the District shall direct, all work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable work or materials. In no event shall anything in this Paragraph be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Paragraph are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

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