

## GENERAL CONDITIONS

### **1. DEFINITIONS:**

- (a) The term "**Change Order**" shall refer to a written agreement, signed by the District and Contractor, modifying the Contract.
- (b) The term "**Claim**" (see Paragraph 39).
- (c) The term "**Construction Change Directive**" (C.C.D.) shall refer to a written directive, signed by the District, directing the Contractor to perform and/or omit certain work as specified within the Construction Change Directive. The Contractor shall promptly comply with the Construction Change Directive and promptly perform and/or omit the work specified in the Construction Change Directive.
- (d) The term "**Contract**" means the Contract Documents.
- (e) The term "**Contract Documents**" consists of all documents listed in Paragraph 2, Contract Documents, of these General Conditions.
- (f) The term "**Contract Sum**" means the total compensation specified in the Contract. The Contract Sum may be adjusted by Change Order.
- (g) The term "**Contract Time**" means the number of days set forth in the Bid Form within which the full completion of the Contractor's work must be achieved. The Contract Time may be adjusted by Change Order.
- (h) The term "**Contractor**" means the person or firm identified as such in the Contract, or its authorized representative.
- (i) The term "**District**" means the Sacramento City Unified School District, its trustees, officers, and employees.
- (j) The term "**Project**" means the total of the work and obligations agreed to be performed by Contractor under the Contract.

### **2. CONTRACT DOCUMENTS:**

The Contract Documents consist of the Notice to Contractors; Instructions to Bidders; Bid Form; Noncollusion Affidavit; Statement of Compliance; Designation of Subcontractors; Workers Compensation Certificate, Drug-Free Workplace Certification; Declaration Regarding Employee Fingerprinting and Criminal Background Check; Bid Bond; Determination of Bidder Responsibility Questionnaire; Contract; General Conditions; Supplemental Conditions, if any; Specifications, and drawings; Payment Bond; Faithful Performance Bond; any addenda issued; Change Orders; and any other documents described as such within these Contract Documents.

### **3. EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK:**

The Contractor shall examine carefully the site of the work and the Contract Documents, and shall satisfy himself as to the character, quality, and quantity of the surface and subsurface materials or obstacles to be encountered.

The submission of a bid proposal shall be conclusive evidence that the Contractor has satisfied himself through Contractor's own investigation as to the conditions to be encountered; the character, quality, and scope of work to be performed; the materials and equipment to be furnished; and all requirements of the Contract Documents.

Where investigations of subsurface conditions have been made with respect to foundation or other structural design, and that information is made available to Contractor or shown in the Contract Documents, said information represents only the statement as to the character of materials which have been actually encountered by it in its investigation, and is only made available or included for the convenience of bidders.

Investigations of subsurface conditions are made for the purpose of design, and the District assumes no responsibility whatsoever with respect to the sufficiency or accuracy of borings, the log of test borings, or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unanticipated conditions may not occur. When a log of test borings is made available to Contractor or included in the Contract Documents, it is expressly understood and agreed that said log of test borings does not constitute a part of the Contract, and represents only an opinion of the District as to the character of the materials to be encountered, and is made available or included in the Contract Documents only for the convenience of the bidders. Making such information available to bidders is not to be construed in any way as a waiver of the provisions of the first two paragraphs of this section, and bidders must satisfy themselves, through their own investigations, as to conditions to be encountered.

The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

- (1) Material that the Contractor believes may be 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 provisions of existing law.
- (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.

The District shall promptly cause an investigation of the conditions, and if it finds that the conditions do materially so differ, or 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.

In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or 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 required by the Contract, but shall proceed with all work to be performed under the Contract.

Nothing contained within this Section or the Contract Documents relieves the Contractor of its obligations set forth in the first two paragraphs of this Section.

#### **4. ADDENDA:**

If discrepancies or apparent errors are found in the Contract Documents prior to the date of bid opening, bidders shall submit a written request for clarification, which response to said request will be given in the form of addenda to all bidders, if time permits. Otherwise, in figuring the work, bidders shall consider that any discrepancies or conflict between Contract Documents shall be governed by Paragraph 21, Intent of Plans and Specifications, and Paragraph 26, Conformance with Codes and Standards, of the General Conditions.

The correction of any discrepancies in, or omissions from the drawings, specifications, or other Contract Documents, or any interpretation thereof, during the bidding period will be made only by an addendum issued by the District. A copy of each such addendum issued by the District

will be mailed, faxed or delivered to each person receiving a set of the Contract Documents, and shall be made a part of the Contract. Any other interpretation or explanation of such documents will not be considered binding.

**5. PROPOSAL:**

The Contractor's proposal shall be made on the form provided, with all items filled out, and properly signed. The proposal shall be signed in longhand; by the Contractor if an individual, by a member of the partnership, or by an officer of a corporation authorized to sign contracts in its behalf. If made by a corporation, the proposal shall show the name of the State under the laws of which the corporation is chartered or organized.

Bidders are warned against making erasures or alterations of any kind on their proposal. Proposals which contain omissions, erasures, alterations, conditions, or additions not called for may be rejected. The proposal shall be enclosed in a sealed envelope having the name of the Project, as it appears on the proposal, and the name and address of the bidder shown thereon.

**6. LIST OF SUBCONTRACTORS:**

In accordance with California Public Contract Code, Chapter 4 (commencing with Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California (Subletting and Subcontracting Fair Practices Act), each proposal shall have listed on the form provided with the proposal: (a) the name, license number, license expiration date, complete address and telephone number of each subcontractor who will perform work or labor or render service to the general contractor, in or about the construction of the work or improvement, or a subcontractor licensed by the State of California, who, under subcontract to the general contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent (0.5%) of the general contractor's total bid, and (b) the portion of the work which will be done by each subcontractor. The Contractor shall list only one subcontractor for each such portion as defined by the Contractor in Contractor's bid. If Contractor fails to specify a subcontractor for any portion of the work to be performed under this Contract in excess of one-half of one percent (0.5%) of the total bid, Contractor agrees to perform that portion himself.

**7. WITHDRAWAL OF PROPOSAL:**

A proposal may be withdrawn at any time prior to the hour fixed in the Notice to Contractors for the opening of bids by a written request of the bidder, filed with the District. The withdrawal of a bid will not prejudice the right of a bidder to file a new proposal within the time prescribed.

**8. OPENING OF PROPOSALS:**

Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors, or as soon thereafter as is reasonable. Bidders or their representatives and others interested are invited to be present.

**9. PROPOSAL GUARANTY:**

The proposal must be accompanied by cash, a bidder's bond, certified check, or cashier's check in an amount not less than ten percent (10%) of the amount bid. The bidder's bond must be signed in favor of the District, and the certified check or cashier's check must be made payable to the Sacramento City Unified School District. The Contractor shall pay to the District such sums from said cash, bond, certified check, or cashier's check as necessary to reimburse the District for costs incurred for failure of the successful bidder to complete, sign and return in strict compliance with these Contract Documents, if requested to do so, Contractor's Qualification Questionnaire, or enter into a contract. The amount of said cash, bond, certified check, or cashier's check shall not be deemed to constitute a penalty or liquidated damages. The District shall not be precluded by such

cash, bond, certified check, or cashier's check from recovering from the defaulting bidder damages in excess of the amount of said cash, bond, certified check, or cashier's check incurred as a result of the failure of the successful bidder to complete, sign and return in strict compliance with these Contract Documents, if requested to do so, Contractor's Qualification Questionnaire, or enter into a contract.

**10. CONSIDERATION OF PROPOSALS:**

After the proposals have been opened and read, they will be checked for accuracy and compliance with these Contract Documents. The District reserves the right to reject any and all proposals; to waive any minor irregularity in a bid; and to accept one schedule of a proposal and reject another.

Bid prices shall include everything necessary for the completion of construction and fulfillment of the Contract, including, but not limited to, furnishing all materials, equipment, tools, excavation sheeting, bracing and supports, plant labor and services, except as may be provided otherwise in the Contract Documents. When a price is quoted in both words and figures, the words shall prevail in case of a discrepancy. Bid prices shall include allowance for all taxes, including, but not limited to, all Federal, State, and local taxes.

**11. COMPETENCY OF BIDDER:**

The bidder shall be licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California to do the type of work contemplated in the Project, and shall be skilled and regularly engaged in the general class or type of work called for under this contract.

**12. DISQUALIFICATION OF BIDDERS:**

More than one proposal from any individual, firm, partnership, corporation, or association, under the same or different names, will not be considered. Reasonable grounds for believing that any bidder is interested in more than one proposal for the work will cause the rejection of all proposals in which such bidder is interested. If there is reason to believe that collusion exists among the bidders, none of the participants in such collusion will be considered. Any proposal in which the prices are obviously unbalanced may be rejected.

**13. RELIEF OF BIDDERS:**

Attention is directed to the provisions of Public Contract Code section 5100, and following, concerning relief of bidders, and in particular to the requirement therein that if the bidder claims a mistake was made in Contractor's bid, the bidder shall give the District written notice within five (5) days after opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred.

**14. AWARD OF CONTRACT:**

Award of the Contract, if awarded at all, will be to the lowest responsible bidder whose proposal complies with the specified requirements. The award, if it be awarded, will be made by the District within sixty (60) days after opening of the proposals. The District reserves the right to award the base bid only, or the base bid plus any alternative bid or combination of alternate bids as set forth in the proposal form. If no alternates are selected by the District, the award will be based on the lowest base bid price. If an alternate or alternates are selected by the District, the award will be based on the lowest total base bid price, plus the bid prices of the selected alternate or alternates.

**15. RETURN OF PROPOSAL GUARANTEES:**

When the award of the contract has been made, the proposal guarantees accompanying the three lowest bids shall be retained. All other guarantees for bids not to be further considered in making

the award will be returned. Retained guarantees will be returned when the Contract has been fully signed.

**16. SIGNING OF CONTRACT:**

A Contract shall be signed by the successful bidder in duplicate on the form provided and returned, within ten (10) calendar days after receipt of the forms. After signing by the District, one copy will be delivered to the District, and one copy shall be returned to the Contractor.

If the bidder to whom the award is made fails or refuses to enter into the Contract within ten (10) calendar days from the time the Contract forms are first received by the Contractor, Paragraph 9, Proposal Guaranty, of these General Conditions shall apply. The District may then award the Contract to the next lowest responsible bidder. This will be done after the failure or refusal of the low bidder to enter into the Contract, as is convenient for the District. If the next lowest responsible bidder fails or refuses to enter into the Contract, then Paragraph 9, Proposal Guaranty, of these General Conditions shall apply. The District may then award the Contract to the next lowest responsible bidder.

**17. CONTRACT BONDS:**

Within ten (10) calendar days of Contractor's receipt of Contract, the Contractor shall furnish corporate surety bonds to the benefit of the District, issued by a surety company acceptable to the District and authorized to do business in the State of California, as follows:

A. Faithful Performance Bond -- In a sum not less than one hundred percent (100%) of the total contract price as set forth in the Contract to guarantee the Contractor's faithful performance of all covenants and stipulations of the Contract. The bond shall contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

B. Payment Bond -- In a sum not less than one hundred percent (100%) of the total contract price as set forth in the Contract to guarantee the payment of wage, and bills contracted for materials, supplies, or equipment used in the performance of the Contract. The bond shall be in accordance with the provisions of Sections 3225, 3226, and 3247 to 3252, inclusive, of the Civil Code of the State of California, and Section 13020 of the Unemployment Insurance Code of the State of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

Faithful Performance Bond and Payment Bond shall be on the forms contained within the Contract Documents.

**18. NOTIFICATION OF SURETY COMPANIES:**

The surety companies shall familiarize themselves with all provisions and conditions of the Contract. It is understood and agreed that the surety or sureties waive the right of special notification of any modifications or alterations, omissions or reductions, extra or additional work, extensions of time, or any other act or acts by the District or its authorized agents under the terms of the Contract; and failure to so notify the surety companies of such changes shall in no way relieve the surety or sureties of their obligations under this Contract. The surety expressly waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

**19. INSURANCE:**

Within ten (10) calendar days of Contractor's receipt of Contract, the Contractor shall furnish a Certificate of Insurance substantiating the fact that Contractor has taken out the insurance

hereinafter set forth for the period covered by the Contract with an insurance carrier acceptable to the District and under terms satisfactory to the District. Insurance industry's standard Accord Certificate of Insurance or binder forms shall bear an endorsement precluding the cancellation or reduction of coverage of any policy covered by such Certificate or binder before the expiration of thirty (30) days after the District shall have received notification of such cancellation, suspension, reduction, or voided coverage. Contractor shall immediately furnish copies of its insurance policies required under this Contract to the District upon request. In the event Contractor does not have a Certificate of Insurance or binder evidencing the proper insurance coverages, the Contractor shall not be allowed on the work site.

All insurance policies shall include the Sacramento City Unified School District, its trustees, officers, employees, agents, inspectors, project managers, consultants, subconsultants, their employees, and each of them, as additional insureds to protect, as well as to provide the defense of, from all suits, actions, damages, liability, or claims of every type and description to which they may be subjected or put by reason of, or resulting from, the Contractor's performance of the Contract. Contractor's insurance shall apply as primary insurance, and any other insurance carried by the additional insureds identified above shall apply as excess and will not contribute with this insurance.

Each insurance policy shall include the following provisions: (1) The standard severability of interest clause in the policy and when applicable the cross liability insurance coverage provision which specifies that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured; (2) It acts as primary insurance, and that no insurance held or owned by the District shall be called upon to cover, either in full or in part, any loss covered under the policy acquired by Contractor; and (3) The stated limits of liability coverage for Commercial/Comprehensive General Liability, and Business Automobile Liability, assumes that the standard "supplementary payments" clause will pay in addition to the applicable limits of liability and that these supplementary payments "are not included as part of the insurance policies limits of liability." If any of the policies indicate that defense costs are included in the general aggregate limit, then the required general aggregate limits shall be a minimum of \$2,000,000 or more at the District's discretion.

If the Contractor fails to maintain such insurance, the District may take out insurance to cover damages of the below-mentioned classes for which the District might be held liable on account of the Contractor failing to pay such damages and deduct and retain the amount of the premium for such insurance from any sums due the Contractor under the Contract. Failure of the District to obtain such insurance shall in no way relieve the Contractor from any of its responsibilities under the Contract.

The minimum insurance coverages to be obtained by the Contractor as hereinabove referred to are as follows:

- A. Commercial/Comprehensive General Liability Insurance (Insurance Services Organization, Inc. form GL-00-02, Ed. 01-73); Bodily Injury and Property Damage Liability Insurance for Premises and Operations; Personal Injury for Premises and Operations; Independent Contractors; Incidental Contracts; Contractual Liability; Broad Form Comprehensive General Liability Endorsement (Insurance Services Organization, Inc. form GL-04-04, Ed. 5-81); and Products and Completed Operations which shall be in the amount of not less than a combined single limit of \$1,000,000 per occurrence for one or more persons injured and property damaged on an occurrence form insurance policy. The aggregate limit of liability for products and completed operations may be \$1,000,000.

B. Business Automobile Liability Policy Insurance: Protection against loss as a result of liability to others caused by an accident and resulting in bodily injury and/or property damage, arising out of the ownership or use of any automobile. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.

C. Workers' Compensation and Employers' Liability Insurance: The Contractor shall be a qualified self-insurer or shall carry full Workers' Compensation and Employers' Liability insurance coverage, either through the State Compensation Insurance Fund or a standard approved policy obtained from a licensed insurance carrier for all persons employed, either directly or through subcontractors, in carrying out the work under this Contract in accordance with the "Workers' Compensation and Insurance Act," Division IV thereof. Employers' limits of liability shall be the prevailing statutory limits of liability.

D. Builder's Risk: The Contractor shall, at his own expense, maintain a builder's risk fire insurance policy, Special form including extended coverage and vandalism, malicious mischief endorsements, but excluding earthquake and flood damage. This policy shall be jointly in the name of the District and the Contractor, payable as their respective interest may appear. Such insurance shall be carried in the amount of 100% of the contract price, less the value of the cost of clearing and preparing the construction site, including filling, grading and excavation. In the event of a partial or total destruction by fire of any or all of the work herein provided for at any time prior to the completion and acceptance thereof, the Contractor shall promptly reconstruct all work so destroyed or injured at his own cost and expense.

Any exceptions to the provisions of this section must be delineated in the Contract Documents. In addition, it is understood and agreed that an excess insurance policy or an umbrella policy (following form) may be utilized to meet the above-required limits of liability for Commercial/Comprehensive General Liability, Business Automobile Liability policy, and the Workers' Compensation Employers' Liability.

**20. PRE-CONSTRUCTION CONFERENCE:**

Prior to the start of construction, a conference may be called by the District for the purpose of reviewing the construction program with the Contractor. At this conference, the sequence of work, methods of access to the construction site and temporary facilities shall be reviewed by the Contractor and District. Coordination of utilities within the project limits, including relocations and maintenance of existing facilities and additions thereto, shall be confirmed in writing by utility representatives and the Contractor at this conference, or within five (5) working days thereafter.

**21. INTENT OF PLANS AND SPECIFICATIONS:**

It is the intent of these Contract Documents that the work performed under the Contract shall result in a complete operating system in satisfactory working condition with respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but fairly implied. The prices paid for the various items in the proposal shall include full compensation for furnishing all labor, materials, tools, equipment, overhead, profit, incidentals, and doing all work necessary to complete the finished product as provided in the Contract Documents.

The specifications and drawings are intended to be explanatory of each other. Any work shown on the drawings, and not in the specifications, or vice versa, is to be treated as if indicated

in both. In the case of conflict or inconsistency, the Supplementary Conditions (if any) shall control over the General Conditions, and the specifications shall control over the drawings. Figured dimensions shall control over scaled measurements. In all cases, the more costly or expensive interpretation is deemed to control and be the interpretation incorporated into the Contract Documents and Contract Sum.

Organization of the specifications into various subdivisions and the arrangement of the drawings shall not control Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings, and nontechnical words and abbreviations are used in accordance with their commonly understood meanings.

The Contract Documents may 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. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably be deemed to fall within the broadest possible scope of such general statement.

Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience, and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

The Contractor shall assume responsibility for design of all systems and fabrications needed to meet performance criterion described in the Contract Documents. Design by the Contractor shall include, but is not limited to, concrete form work, casework joinery, fire sprinkler systems, and mechanical and electrical systems represented diagrammatically on Contract Drawings. Design shall be governed by descriptive criterion specified for each item. The Contractor shall also assume responsibility for temporary structures used to implement construction such as shoring and scaffolding.

## **22. CLARIFICATION OF CONTRACT DOCUMENTS:**

Should it appear to the District, Architect, or District's designated representative, that the work to be done, or any of the matters relative thereto, are not sufficiently detailed or explained in the Contract Documents, or in the event of any doubt or question arising respecting the true meaning of the Contract Documents, the Contractor shall apply to the District for such further explanations as may be necessary, and the District shall render his or her decisions thereon. The Contractor shall thoroughly review all Requests for Information (RFI's or Design Clarifications/Verification Requests [DCVR's]) submitted by subcontractors prior to submission to the District to determine whether such RFI's and DCVR's are already answered in the Contract Documents.



Contractor represents to District that by submission of an RFI or DCVR, the Contractor has thoroughly reviewed the RFI or DCVR, and thoroughly reviewed the Contract Documents, and determined that the RFI or DCVR is not answered or reasonably inferable in the Contract Documents, and that the RFI or DCVR pertains to an unforeseen condition or circumstance that is not described in the Contract Documents, that there is a conflict or discrepancy in the Contract Documents, or there is an omission in the Contract Documents.

In the event any RFI and/or DCVR is answered or reasonably inferable from the Contract Documents, Contractor agrees to pay the District the reasonable cost for their time and expenses associated with reviewing and responding to RFI's and DCVR's which are already answered or reasonably inferable from the Contract Documents. In the event of a disagreement over such compensation, the judgement of the District's construction representative shall prevail.

**23. PLANS AND SPECIFICATIONS TO BE FURNISHED:**

The Contractor will be furnished, free of charge, two (2) copies of the Contract Documents. The Contractor shall retain an approved set of plans and specifications on the job at all times during the progress of the work.

**24. SUPPLEMENTAL DRAWINGS AND INSTRUCTIONS:**

In addition to the drawings incorporated in the Contract at the time of signing, the District may furnish such working drawings and supplemental drawings from time to time as may be necessary to make clear, or to define in greater detail, the intent of the Contract drawings and specifications. In furnishing such additional drawings and/or instructions, the District shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the nature of the work. These working drawings and supplemental drawings shall become a part of the Contract Documents, and the Contractor shall make its work conform to them.

**25. FINGERPRINTING REQUIREMENTS:**

The District has determined that employees of the Contractor, subcontractor and suppliers will have only limited contact – or no contact – with pupils under this contract, provided that the following conditions imposed by the school district are complied with. All bidders are required to familiarize themselves with the conditions and to agree to comply with and enforce them at all times until the completion and acceptance of all work under this contract. To the extent that the Contractor asserts, and the District in writing agrees, that compliance with those conditions is not feasible, the Contractor will be required to comply with the fingerprinting and certification requirements. In that case, compliance will not delay the issuance of the Notice to Proceed and there will be no allowance for delay beyond the date of issuance for compliance by the Contractor or subcontractors.

A. Contractor will install and maintain chain link fencing, or other fencing approved by District, around the perimeter of the work site to prevent Contractor employees from having contact with students and to prevent students from entering the work site.

B. Contractor will place at each entrance to the work site a sign, in lettering at least one inch in height, with the following wording:

<p><b>NOTICE-RESTRICTED WORK SITE</b></p> <p>“Students are prohibited from entering. All persons working on this site (including suppliers) are prohibited from contacting students. Any persons needing to enter the school site outside of the designated work site must first report to the school office and must be accompanied by school personnel at all times on the school sites.”</p>
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- C. Contractor shall provide toilet facilities at the work site for use by all Contractor employees and shall not permit students to enter those toilet facilities. Contractor employees shall not be permitted access to school site toilet facilities.
- D. Contractor shall provide to District a list of names of all Contractor employees and shall maintain a daily log of all Contractor employees who come on to the work site.
- E. Contractor shall have one of its employees who has been fingerprinted and cleared by DOJ present at the work site to monitor compliance with these conditions at any time that any Contractor employee is present at the work site during times when students are present on the school site, unless specifically relieved of this responsibility by a designated representative of the District.
- F. Contractor shall be responsible to enforce these conditions and shall report any violation known to Contractor to the District.

**26 CONFORMANCE WITH CODES AND STANDARDS:**

All work and materials shall be in full accordance with the latest adopted standards and regulations of the State Fire Marshal; the California Building Code; Title 24 of the California Code of Regulations; the California Electrical Code; the California Plumbing Code published by the Eastern Plumbing Officials Association; Americans With Disabilities Act; and all other applicable codes, laws, or regulations. Nothing in these Contract Documents is to be construed to permit work not conforming to these requirements. Contractor acknowledges and agrees that immediately upon signing of the Contract, Contractor will diligently review the Contract Documents and determine if any work described or inferred within the Contract Documents is not in conformance with these requirements. Should Contractor discover work within the Contract Documents not in conformance with these requirements, Contractor agrees to immediately notify District in writing of said nonconformance, and to not proceed with nonconforming work. When the work detailed in the Contract Documents differs from governing codes, it is understood and agreed that the Contract Sum is based upon the more costly or expensive standard.

**27. PERSONAL ATTENTION AND SUPERINTENDENCE:**

The Contractor shall give personal attention to, and shall supervise the work to the end that it shall be faithfully prosecuted. The Contractor shall keep on the work at all times throughout its progress, a competent superintendent who shall represent the Contractor in Contractor's absence, and shall have complete authority to represent and act for the Contractor. The superintendent must possess the skills, knowledge, and forethought necessary to complete the project and have prior successful experience in similar projects. The superintendent must be present during the course of all work being performed and attend all Project meetings. All communication with the supervisor shall be as binding as if given to the Contractor. Whenever the Contractor or Contractor's superintendent is not present on a particular part of the work, the District may stop the work until the Contractor or Contractor's superintendent arrives.

The Contractor shall be liable for the faithful observation of any instructions delivered to the Contractor or to the Contractor's authorized representatives. Any order given by the District not otherwise required by the specifications to be in writing will, on request of the Contractor, be given or confirmed by the District in writing.

**28. BEGINNING OF WORK:**

The Notice to Proceed shall constitute authority for the Contractor to enter upon the site of the work and to begin operations, upon condition that the Contractor has strictly complied with all requirements of these Contract Documents, including but not limited to, furnishing all required certificates of insurance. When the Contractor has started work on the Project, the Contractor shall diligently prosecute the work to completion within the time limit provided in the Contract Documents.

The Contractor shall give the District at least two (2) working days' notice of Contractor's intention to start work, specifying the time, date, and location at which the Contractor intends to begin. The counting of working days shall begin seven (7) calendar days from the date of the Notice to Proceed, whether or not Contractor is allowed on the work site due to Contractor's failure to furnish District with all documentation required by these Contract Documents. In no event shall there be a period of time greater than thirty (30) days, from the time the Contract forms are first received by the Contractor and the commencement of the Contract Time, regardless of the receipt or lack thereof by District of all document required by these Contract Documents.

**29. PROGRESS SCHEDULE:**

By submitting a bid, Contractor represents it has reviewed the full scope of work required by the Contract Documents, including but not limited to, the availability of materials, labor, equipment and supplies, constraints upon Contractor's own forces and resources, reasonably anticipated weather conditions and other factors, and agrees that the Contract Time is reasonable under the circumstances.

Within ten (10) days of the Notice to Proceed, the Contractor shall submit five (5) copies of its proposed progress schedule to the District. The District and/or its consultants may review the proposed project schedule. Contractor's proposed progress schedule, and all updates or revisions thereto, shall:

1. Demonstrate adequate planning for the work including a practical plan to complete the work within the Contract Time.
2. Identify all major work activities, including but not limited to, equipment, materials, building elements, items requiring District's prior approval, submittals, and review of submittals, system test dates, scheduled overtime, dates for District furnished items, dates for access to specific sites, dates for District furnished utilities, connection and relocation of existing utilities, and connection to and/or penetration of existing structures.
3. Indicate planned mobilization of materials, equipment and work force.
4. Indicate planned sequence of early operations or procurement, including submittals.
5. A minimum of thirty days shall be allowed for District's review of all submittals.
6. Provide a brief description of each work activity, and duration in days, and identifying the trades performing the work.
7. Not provide for completion of the work required under these Contract Documents either sooner than, or later than, the contractual completion date set forth in these Contract Documents.

The District may review the proposed progress schedule for compliance with these Contract Documents. If the Contractor's proposed progress schedule does not comply with the requirements

of these Contract Documents, it may be returned to Contractor for revisions necessary to bring the proposed progress schedule into compliance with the Contract Documents. Should the Contractor fail or refuse for any reason to timely submit to District, the Contractor's proposed progress schedule, in strict compliance with all requirements of these Contract Documents, the Contractor agrees it thereby waives any claim on the Project arising from delay or delay related causes, no matter how characterized.

By submission of its proposed progress schedule to the District for review, the Contractor represents that it has reviewed the proposed progress schedule with each of its subcontractors, and each subcontractor has agreed that as to that subcontractor's portion of the work, the proposed progress schedule is reasonable, and further that each subcontractor will devote the resources necessary to complete its portion of the work within the time shown on the proposed progress schedule.

The District's receipt of the proposed weekly progress schedule and monthly updated progress schedules, all in strict compliance with these Contract Documents, shall be a condition precedent to the District's approval of the Contractor's periodic pay requests and/or the District's obligation to request payment be issued to Contractor. Contractor shall supply accurate as-built drawings on a weekly basis to Inspector and Architect. The Contractor shall, to every reasonable extent, carry on the work of construction of the various elements of the project concurrently, and shall not defer construction of any portion of the work in favor of any other portion without the express written approval of the District.

**30. RESPONSIBILITY FOR ACCURACY:**

The Contractor shall obtain all necessary measurements for and from the work, and shall check dimensions, elevations, and grades for all layout and construction work and shall supervise such work, the accuracy for all of which Contractor shall be responsible. Each subcontractor shall adjust, correct, and coordinate Contractor's work with the work of others so that no discrepancies will result in the whole work. Contractor shall be responsible for verifying that all information and data contained and set forth in all of Contractor's submittals that may be required by the Contract Documents, comply in all respects with the Contract Documents.

**31. DISTRICT'S RIGHT TO PARTIAL OCCUPANCY & EFFECT OF INSPECTION OR USE:**

The District may occupy or use any completed or partially completed portion of the Work, provided that:

- (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and
- (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District.

If the Contractor and the District are unable to agree upon the matters set forth in (ii) above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the District's Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. The District's use or occupancy of the

Work or portions thereof pursuant to the proceeding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

Neither the inspection by an inspector or by the District, nor any measurement, approved modification, submittal, shop drawing, order, or certificate, nor acceptance of any part or whole of the work, or payment of money, nor any possession or use by the District or its agents, shall operate as a waiver of any provisions of the Contract or of any power or authority reserved therein, or of any right to damages thereunder; nor shall the waiver of any breach of this Contract be held to be a waiver of any subsequent or other breach.

**32. INSPECTION:**

All work done and all materials and equipment furnished under this Contract shall be subject to the inspection and approval of the District. The District or their authorized representative shall have access to the work at all times during its construction, and shall be furnished with every reasonable facility and assistance for ascertaining that the materials and workmanship are in accordance with the requirements and intent of the Contract Documents. Any work constructed without inspection as provided above, except with the specific written consent or approval of the District, or constructed contrary to the instructions or orders of the District or his or her authorized representative, must, if requested by the District, be uncovered for examination and properly restored at the Contractor's expense.

Properly authorized inspectors are required under California Code of Regulations, Title 24. The District will employ and be responsible for payment of all wages associated with the employment of the Title 24 inspectors, excepting that, if, in the District's sole determination, its costs or expenses associated with the employment of the Title 24 inspectors is increased by any act or omission of the Contractor or any of its subcontractors or material suppliers, including but not limited to, costs and expenses associated with re-inspection or overtime compensation for the District's inspector(s), weekend or holiday work, the Contractor agrees to pay said increased costs and expenses. If the Contractor fails or refuses to pay said increased costs and expenses, the District may withhold the increased costs and expenses from payments due to the Contractor.

An inspector shall have the authority to order the work entrusted to his or her supervision stopped, if, in his or her opinion, such action becomes necessary, until the District is notified and has determined and ordered that the work may proceed in due fulfillment of all Contract requirements.

The inspection of the work by the District's inspector(s) or their consultants, does not relieve the Contractor of any of the Contractor's obligation to fulfill the Contract as prescribed. Any work, materials, or equipment not meeting the requirements and intent of the Contract Documents shall be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may have previously been inspected or approved and payment therefor may have been made. If nonconforming work, materials, or equipment not meeting the requirements and intent of the Contract Documents is discovered, and the Contractor fails to remedy the nonconforming work, materials, or equipment, or the District agrees in writing to accept the nonconforming work, materials, or equipment, Contractor agrees to sign a Change Order or otherwise reimburse District in a sum equal to the cost to remedy the nonconforming work, materials, or equipment.

It is expressly understood and agreed that the District will be entitled to recover from Contractor the full cost of remedying nonconforming work, materials, or equipment, and that diminution in value will not be considered as a method for valuing the District's damages for nonconforming work, materials, or equipment, and further that the doctrine of economic waste will

not be a defense to the District's recovery from Contractor of the full and complete cost and expense of remedying nonconforming work, materials, or equipment.

Re-examination of any work may be ordered by the District, and such work must be uncovered by the Contractor. The Contractor shall pay the entire cost of such uncovering, re-examination, and replacement if the work does not conform to the Contract Documents.

**33. REMOVAL OF REJECTED MATERIALS OR WORK:**

The Contractor shall, upon request and without delay, remove from the site of the work, all rejected or condemned materials of any kind brought to, or incorporated in, the work. No such rejected or condemned materials shall again be offered for use in any work under the Contract. All work which has been rejected shall be remedied, or removed and replaced, by the Contractor in an acceptable manner at Contractor's expense.

Upon failure of the Contractor to comply within forty-eight (48) hours with any written order of the District made under this section, or to make satisfactory progress in so doing, the District may cause such rejected materials to be removed, or such rejected work to be remedied, or removed and replaced, and deduct and retain the costs from any sums due or to become due to the Contractor.

**34. USE OF COMPLETED PORTIONS:**

The District shall have the right at any time during the progress of this work to take over and place in service any completed or partially completed portion of the work, notwithstanding the time for completion of the entire work or such portions which may not have expired; but such taking possession thereof shall not be deemed an acceptance of any of the work, nor work on those portions not completed in accordance with the Contract Documents.

**35. MEANS AND METHODS:**

The District will not have control over, be in charge of, nor be responsible for construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility, unless otherwise required by the Contract Documents.

**36. DELAYS:**

The Contractor agrees to complete all of its work required in the Contract Documents, or any subsequent revisions or modifications thereto, within the time specified in the bid form, subject to Change Orders increasing or decreasing the time specified. If the Contractor fails to complete all its obligations within the time specified in the Contract, the Contractor shall pay to the District, as liquidated damages, the sum specified at Article 3 of the Contract (entitled "Time is of the Essence") for each consecutive calendar day the work remains uncompleted beyond the time specified in the Contract for completion.

**37. LIQUIDATED DAMAGES FOR DELAY:**

It is agreed by the parties to this Contract that time is of the essence to the performance of this Contract by Contractor, and that in case all work called for under the Contract is not completed in all respects and requirements within the time called for in the Contract Documents, plus any agreed upon extensions of time, damage will be sustained by the District, and that it is and will be impracticable to determine the actual amount of damage by reason of such delay; and the Contractor agrees that the sum set forth within these Contract Documents is a reasonable amount to be charged as liquidated damages; and it is therefore agreed that the Contractor will pay to the

District the sum set forth in Article 5 of the Contract, "Liquidated Damages", for each and every calendar day's delay beyond the time prescribed; and the Contractor further agrees that the District may deduct and retain the amount thereof from any monies due the Contractor under the Contract.

If so required by the District in order to conduct timely and accurate inspections and assess the progress of the work, Liquidated Damages may be separately set forth as a reasonable amount to be charged if the Contractor does not submit progress schedules or other such required submittals in accordance with the Project Specifications.

**38. EFFECT OF EXTENSION OF TIME:**

The granting of a written extension of time for the completion of the work on account of delays which, in the judgment of the District, are unavoidable delays, or granted for the performance of extra or additional work, shall in no way waive on the part of the District, any of its rights under this Contract.

**39. CLAIMS:**

A Claim is any request by Contractor to adjust, alter, modify, or otherwise change the Contract Sum or the Contract Time, or both. A Claim must be stated with specificity, including identification of the event or occurrence giving rise to the Claim, the date of the event, and the asserted affect on the Contract Sum and the Contract Time, if any. The Claim shall include adequate supporting data. Adequate supporting data for a Claim for an adjustment of the Contract Time shall include scheduling data demonstrating the impact of the event on the completion of the Project. Adequate supporting data for a Claim for an adjustment in the Contract Sum shall include a detailed cost breakdown of items included within the Claim and documentation supporting each item of cost.

Contractor shall submit all Claims to the District before proceeding to perform the work, or portions of the work, giving rise to such Claim. Contractor hereby expressly waives any Claims of which Contractor was aware, whether or not the exact amounts of such Claims were ascertainable, and that are not submitted to the District prior to Contractor proceeding to perform the work, or portions of the work, giving rise to such Claims.

All Claims shall be submitted to the District for decision within fifteen (15) days after the event or occurrence giving rise to the Claim. Contractor hereby expressly waives all Claims not made within the aforesaid time limit.

Contractor expressly waives any Claims for delay or adjustment to the Contract Time if, within three (3) days of the event or occurrences giving rise to the delay, the Contractor fails to provide written notice to District. Said written notice shall include the event or occurrence giving rise to the delay, the estimated duration of the delay, and the impact of the event or occurrence upon the completion of the Project. Contractor will not be entitled to adjustments to the Contract Time for delays attributable to normal seasonal weather. Contract Time adjustments may be allowed if the delay is attributable to weather which is extreme or unusual for the region and the season and delays the completion of the Project. Abnormal, extreme or unusual conditions will be considered based on locally recognized annual weather patterns for the month in which the abnormal weather occurs.

Claims must be submitted to District before the date of final payment. Contractor hereby expressly waives all Claims not submitted, in complete and proper form, on or before the date of final payment.

As used herein, the following terms shall have the following meanings:

"Excusable Delay" means any delay of the completion of the Project beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of the Contractor such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and abnormally stormy or inclement weather conditions in which the work cannot continue. The financial inability of the Contractor or any subcontractor and/or default of any subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an adjustment in the Contract Time.

"Compensable Delay" means any delay of the completion of the work beyond the expiration date of the Contract Time caused by the gross negligence or willful acts of the District, and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract Time and/or Contract Sum. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hinderance, or disruption.

"Unexcusable Delay" means any delay of the completion of the Project beyond the expiration of the Contract Time resulting from causes other than those listed above. An Unexcusable Delay shall not entitle the Contractor to an extension of the Contract Time or an adjustment of the Contract Sum.

The Contractor may make a Claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

- (a) If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.
- (b) If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcusable Delay.
- (c) If an Unexcusable Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension in the Contract Time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph (a) exceeds the number of days of the Unexcusable Delay.
- (d) For a Compensable Delay, the Contractor shall only be entitled to an adjustment in the Contract Sum in an amount equal to the actual additional labor costs, material costs, and unavoidable equipment costs incurred by the Contractor as a result of the Compensable Delay, plus the actual additional wages or salaries and fringe benefits and payroll taxes of supervisory and administrative personnel necessary and directly employed at the Project site for the supervision of the work during the period of Compensable Delay. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hinderance, or disruption. There shall be no Compensable Delay unless the event or occurrence giving rise to the delay extends the actual completion of the Project past the Contract Time.

The parties acknowledge and agree that the District's exercise of its rights to order changes in the work, regardless of the extent and number of changes, or to suspend the work, is within the contemplation of the parties and shall not be the basis for any Claim for Compensable Delay. The



rights of the Contractor to adjustments of the Contract Time and the Contract Sum, based on changes ordered in the work or suspension of the work, shall be solely governed by this provision.

**40. FALSE CLAIMS:**

California Penal Code section 72, provides that any person who presents for payment with intent to defraud any district board or officer, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars (\$10,000.00) and/or imprisonment in the state prison.

Government Code sections 12650, et seq., pertains to civil penalties that may be recovered from persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any officer or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code sections 12650, et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs.

All Claims by Contractor, shall include the following certification, properly completed and executed by Contractor or an officer of Contractor:

I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

Submission of a Claim, in conformance with all of these requirements of this Contract, and rejection of all or part of said Claim by District, is a condition precedent to any action by Contractor against District, including but not limited to, the filing of a lawsuit or making demand for arbitration, if arbitration is expressly provided for in this Contract.

**41. CHANGES:**

The District may request that the Contractor provide the District with estimated costs for proposed changes to the work. The Contractor agrees to promptly provide District with detailed, itemized costs for proposed changes to the work and scheduling data demonstrating the impact, if any, of the proposed changes to the work on the Contract Time. Adjustments, if any, in the amount to be paid the Contractor by reason of any modifications of the work as set forth in a Contract Change Order, Construction Change Directive, or arising from Claims shall be determined by one or more of the following methods as elected by the District:

- A. Lump Sum Price - By an acceptable lump proposal from the Contractor.
- B. Unit Prices - By unit prices fixed by agreement between the District and the Contractor.

C. Force Account - By ordering the Contractor to proceed with the work and to keep and present in such form as the District may direct, a correct account of the cost of the change, together with all vouchers therefor. The Contractor will be paid for labor, materials, and equipment rental actually used on the Change Order work as follows:

(1) Labor - the Contractor will be paid the reasonable cost of labor for the workmen (including foremen when authorized by the District), used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

(1-1) Actual Wages - The actual wages paid shall include any reasonable employer payments to or on behalf of the workmen for health and welfare, pension, vacation, and similar purposes.

(1-2) Labor Surcharge - The labor surcharge to be added to the actual wages shall be the reasonable cost of all additional payments made to, or on behalf of the workers, other than actual wages, as required by State or Federal laws, including by way of example but not limited to, workers' compensation, SUTA, FUTA and FICA.

(1-3) Subsistence and Travel Allowance - The actual reasonable and necessary subsistence and travel allowance paid to such workers.

(2) Materials - The actual cost of the materials to the purchaser, whether the Contractor, a subcontractor, or other forces. If the Contractor does not furnish satisfactory evidence of the cost of such materials, it shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned delivered to the job site. The District reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs or profit on such District furnished materials.

(3) Equipment - The use of equipment shall be paid for at the rates listed for such equipment in the current compilation of rental rates of the State of California, Division of Highways, applicable to Sacramento District or competitive local rental rates of established rental agencies serving the area of the work, whichever, is less. If the equipment is not shown on the above-mentioned list, the Contractor shall be paid such hourly rental rates as are agreed upon by the Contractor and the District prior to use of the equipment, except that in no case shall such agreed hourly rate exceed the rental rates of established distributors or equipment rental agencies serving the area, plus thirty-three and one-third percent (33-1/3%) for the cost of fuel, oil, lubrication, and field repairs and maintenance.

If equipment is moved on to the work and used exclusively for extra work, the Contractor will be paid for the cost of transporting it to the job and returning it to its original location. The rental period shall begin when the equipment is unloaded at the site of the extra work, and shall include each day that the equipment is at the site of, and performing or utilized for, such extra work, excluding Saturdays, Sundays, and legal holidays, unless extra work is performed on such days, and shall terminate at the end of the day on which such extra work is completed or the District directs the Contractor to discontinue the use of such equipment.

The rental time to be paid for equipment already on the work, or which is used for other than such extra work, shall be the actual time the equipment is in operation on the

extra work, plus the time required to move the equipment to the site of the extra work and return it to its original location.

To the totals computed above, shall be added the following percentages for profit and overhead:

Labor	Ten Percent (10%)
Materials	Ten Percent (10%)
Equipment Rental	Ten Percent (10%)
Bond	Two Percent (2%)

D. For all Change Order work performed by a subcontractor, compensation for such work shall be based on all direct costs as listed in the subcontractor's portion of the proposal plus the above percentages. The Contractor may add five percent (5%) to the subcontractor's proposal for overhead and profit plus actual cost of subcontractor's bond when incurred not to exceed one percent (1%) markup. Overhead and profit for all tiers of Contractor and subcontractors shall in no event exceed fifteen percent (15%) of the cost of the work. Distribution of the overhead and profit among the Contractor and the subcontractors is the responsibility of the Contractor.

The allowances for overhead and profit as enumerated in the preceding subparagraphs shall include full compensation for any and all items of overhead including, but not limited to, superintendence, field overhead, home office overhead (absorbed and unabsorbed), clean-up, safety meetings, mandated programs and processing of Claim and Change Order documents.

The amount of payment agreed upon or, in the absence of agreement, selected by the District shall be set forth in the Change Order or Construction Change Directive.

If agreement on price or schedule can not be reached, the District has the unilateral right to order the Contractor to proceed with Force Account work or have other contractor(s) or District personnel do the work and deduct the cost of that work from this Contractor's contract.

#### **42. PAYMENTS:**

Within ten (10) calendar days after signing the Contract, but in any event prior to the first application for payment, Contractor shall submit to District a cost breakdown of the Contract Sum. The cost breakdown shall itemize, as separate line items, the cost of each work activity and all other costs, including warranties, record documents, insurance, bonds, overhead expenses, and the total allowance for profit, the total of which shall equal the Contract Sum. The cost breakdown, when accepted by the District, shall become the basis for determining the cost of work performed for the Contractor's applications for payment.

On or before the first (1st) day of the month, Contractor shall submit to District an itemized application for payment for the cost of the work in permanent place, as approved by the District, which has been completed in accordance with the Contract Documents as of the twentieth (20th) day of the preceding month, less amounts previously paid. The application for payment shall be prepared in a form acceptable to the District, and shall contain itemized amounts in accordance with the cost breakdown. The applications for payment shall not include requests for payment on account of changes which have not been authorized by Change Orders, or for amounts Contractor does not intend to pay a subcontractor because of a dispute or other reason.

If requested by the District, an application for payment shall be accompanied by a summary showing payment that will be made to subcontractors covered by such application, and

unconditional waivers and releases of claims and stop notices, from each subcontractor listed in the preceding application for payment covering sums disbursed pursuant to that preceding application for payment.

Contractor warrants that upon submittal of an application for payment, all work for which certificates of payment have been previously issued and payment has been received from District, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment related to the work.

Approval of all, or any part, of an application for payment may be withheld, a certificate of payment may be withheld, all or part of a previous certificate for payment may be nullified and that amount withheld from a current certificate for payment, on account of any of the following:

(a) Defective work not remedied;

(b) Third-party claims against Contractor or District arising from the acts or omissions of Contractor or subcontractors;

(c) Stop notices;

(d) Failure of Contractor to make timely payments due to subcontractors for material or labor;

(1) Contractor shall pay all transportation and utility services not later than the twentieth (20<sup>th</sup>) calendar day of the month following that in which the services are rendered.

(2) Contractor shall pay for a minimum of ninety percent (90%) of the cost of all materials, tools and other expendable equipment not later than the twentieth (20<sup>th</sup>) calendar day of the month following that in which the materials, tools, and equipment are delivered to the site of the Project, and the balance of the cost not later than the twentieth (20<sup>th</sup>) day following completion of that portion of work in which said materials, tools and equipment are incorporated or used, and

(3) Contractor shall pay to each of its Subcontractors, not later than the tenth (10<sup>th</sup>) calendar day following each payment to Contractor, the respective amounts allowed the Contractor on account of work performed by the respective Subcontractor to the extent of such Subcontractor's interest therein.

(e) A reasonable doubt that the work can be completed for the balance of the Contract Sum then unpaid;

(f) Damage to the District or others for which Contractor is responsible;

(g) Reasonable evidence that the work cannot be completed within the Contract Time, and the unpaid balance of the Contract Sum would not be adequate to complete the work and cover District's damages for the anticipated delay;

(h) Failure of Contractor to maintain, update, and submit record documents;

- (i) Failure of Contractor to submit schedules or their updates as required by the Contract Documents;
- (j) Performance of the work by Contractor without properly processed shop drawings;
- (k) Liquidated damages assessed;
- (l) Any other failure of Contractor to perform its obligations under the Contract Documents.

By resolution of the District's Board of Education, a fund has been established, money appropriated in the current budget, and assigned to the account which is the sole source of funds available for payment of the Contract Sum. Contractor understands and agrees that Contractor will be paid only from this special fund and if for any reason this fund is not sufficient to pay Contractor, Contractor will not be entitled to payment. The availability of money in this fund, and District's ability to draw from this fund, are conditions precedent to District's obligation to make payments to Contractor.

Within thirty (30) days of receipt of an approved certificate for payment, the District agrees to issue a warrant to pay the Contractor, subject to all of the terms and conditions of these Contract Documents, an amount equal to ninety percent (90%) of the sum of the following (less any amounts withheld as permitted by the Contract Documents):

- (a) Cost of the work in permanent place as of the end of the preceding month as set forth and approved on the certificate for payment;
- (b) Less amounts previously paid;
- (c) Less amounts withheld by District as allowed in the Contract Documents.

Within sixty (60) days of recordation of a Notice of Completion, District agrees to issue a warrant to pay Contractor, subject to all of the terms and conditions of these Contract Documents, the remaining contract balance, after all offsets and subject to the withholding of amounts due from Contractor.

**43. COST AND PRICING DATA:**

All cost and pricing data submitted by the Contractor to the District with respect to any change, prospective or completed, or any claim for extra compensation shall be a true, complete, accurate, and current representation of actual cost and pricing of the work. The District or his or her authorized representative may require a formal certification as to cost and pricing data submitted by the Contractor.

**44. PROCEED WITH WORK:**

Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, Contractor shall not cause any delay, cessation, or termination in or of Contractor's performance of the work, but shall diligently proceed with performance of the work in accordance with the Contract Documents.

**45. ACCESS TO RECORDS:**

The District, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to Contractor and subcontractors' books, documents and accounting records, including but not limited to, bid worksheets, bids, subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, cancelled checks,

profit and loss statements, balance sheets, project correspondence, project files, scheduling information, and other records of the Contractor and all subcontractors directly or indirectly pertinent to the work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any Change Order, prospective or completed, or any Claim for which additional compensation has been requested or notice of potential Claim has been tendered.

Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, and photocopies at District's cost.

The parties agree that in the event Contractor fails to comply with this section, it would be difficult for the District to determine its actual damages; therefore, Contractor agrees to pay District, as liquidated damages, the sum of Two hundred Dollars (\$200.00), which Contractor agrees is reasonable under the circumstances, for each and every calendar day which Contractor (or its subcontractors) fails or refuses to provide the District, and/or its authorized representatives, access to the materials specified in this section.

Contractor agrees to impose upon its subcontractors by appropriate subcontract provision, the obligations of this section of the General Conditions.

**46. DISMISSAL OF UNSATISFACTORY EMPLOYEES:**

If any person employed by the Contractor, or any subcontractor, shall fail or refuse to carry out the directions of the District; or, in the opinion of the District, is incompetent, unfaithful, intemperate, or disorderly; uses threatening or abusive language to any person representing the District on the work; or is otherwise unsatisfactory, he or she shall be removed from the work immediately, and shall not again be employed on the work.

**47. TERMINATION OF UNSATISFACTORY SUBCONTRACTS:**

When any portion of the work which has been subcontracted by the Contractor is not being prosecuted in a satisfactory manner, the subcontract for such work shall be terminated immediately by the Contractor upon written notice from the District, and the subcontractor shall not again be employed on the type of work in which his or her performance was unsatisfactory.

**48. TEMPORARY SUSPENSION OF WORK:**

The District shall have the authority to suspend the work wholly or in part for such period as it may deem necessary, due to unsuitable weather, or to any other conditions it considers unfavorable for the suitable prosecution of the work, or for such time as it may deem necessary, due to the failure on the part of the Contractor to carry out orders given or to perform any provisions of the Contract, or for any other reason. The Contractor shall immediately comply with such written order of the District to suspend the work wholly or in part. The suspended work shall be resumed only when conditions are favorable or methods are corrected, as ordered or approved in writing by the District.

If a suspension of the work is ordered by the District due to the failure on the part of the Contractor to carry out orders or to perform any provisions of the Contract, the days on which the suspension order is in effect shall be considered working days, and shall not in any way modify or invalidate any of the provisions of this Contract, and the Contractor shall not be entitled to any damages or compensation on account of such suspension or delay.

**49. TERMINATION OF CONTRACT:**

**A. Termination for Default:** The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default:

- (i) If the Contractor refuses or fails to prosecute the Work with diligence as will insure Substantial Completion of the Work within the Contract Time, or fails to substantially Complete the Work within the Contract Time;
- (ii) If the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within 10 (ten) days of receipt of a request for such assurance from the District;
- (iii) If the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
- (iv) If the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment;
- (v) If the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work;
- (vi) If the Contractor disregards proper directives of the District's Project Manager, Architect, designated representative Construction Manager, or Project Inspector, under the Contract Documents;
- (vii) If the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or
- (viii) If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents.

Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

In the event that the Contract is terminated, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. The District shall also have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

If the Contract is terminated pursuant to this Article, District may exercise the option to demand that the Surety take over and complete the Work. District may require that in so doing, the Surety not

utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, District may take over the Work and prosecute it to completion as provided for above.

If terminated under under the provisions stated above, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the District.

The Contractor and the Surety shall be liable for all damage sustained by the District resulting from, in any manner, the termination of Contract under this Article, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.

In the event the Contract is terminated under this Article, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with the provisions defined in paragraph B.

The termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this article are in addition to, and not in lieu of, any other rights and remedies provided by law or otherwise under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

**B. Termination for Convenience.**

The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for:

- (i) Work actually performed and in place as of the effective date of such termination for convenience, plus fifteen percent (15%) for profit and overhead on such Work,
- (ii) Reasonable costs associated with demobilization that represent excess demobilization costs above what would have normally been expected if the contract had been completed, or as defined in the Contractors Schedule of Values, plus fifteen percent (15%) for profit and overhead for such demobilization costs, and;
- (iii) Reasonable termination expenses for protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District. The District may, in its sole discretion, elect to have subcontracts assigned after exercising the right hereunder to terminate for the District's convenience.

**50. FINAL INSPECTION, FIELD ACCEPTANCE, AND ACCEPTANCE:**



The Contractor shall notify the District in writing of the completion of the work, and the District shall promptly inspect the work. At least fifteen (15) days prior to a final inspection, Contractor shall submit three (3) copies of complete operations and maintenance manuals for review. All such information, manuals, and drawings shall be submitted in 8½" x 11" binders, with a table of contents listing all items within. The binder shall also include a list of Subcontractors, with their addresses and phone numbers, and names of persons to contact in case of emergencies. Before calling for a final inspection, Contractor shall determine that the following work has been performed:

- (1) General Construction has been completed.
- (2) The facility shall be connected to water, gas, sewer, and electric service, as necessary to the Project, complete and ready for use.
- (3) Mechanical and electrical work is complete, fixtures in place, connected and ready to test.
- (4) Electrical circuits scheduled in panels and disconnect switches labeled.
- (5) Painting and special finishes are complete, and all finished and decorative work shall be cleaned and have marks, dirt, and superfluous labels removed.
- (6) Doors are complete with hardware, and tops and bottoms are sealed.
- (7) Project area is cleared of Contractors equipment, debris, trash, broken glass, etc. Work is cleaned, free of stains, scratches or other foreign matter, and damaged or broken material is replaced.

The Contractor, or Contractor's representatives, may be present at the final inspection. The Contractor will be notified in writing of any defects or deficiencies to be remedied prior to final acceptance. Within ten (10) calendar days of such notification, the Contractor shall proceed to correct such defects or deficiencies. When notified that this work has been completed, the District will again inspect the work to satisfy himself that all work has been done in accordance with the Contract Documents, and will issue a final acceptance letter, and will recommend to the District that they formally accept the work.

Final acceptance by the District shall cause the commencement of guarantee periods, but shall not bind the District to formal acceptance nor relieve the Contractor from the responsibility of completing or correcting any work. Within ten (10) days of acceptance by the District, a Notice of Completion will be filed with the County Recorder of Sacramento County.

**51. CLEANING UP:**

Throughout the construction period, the Contractor shall keep the site of the work in a presentable condition, dispose of any surplus materials, clean out all drainage ditches and structures, and repair any fences or other property damaged during the progress of the work, to the satisfaction of the District.

Upon completion of the work, and prior to requesting final inspection, the Contractor shall thoroughly clean the site of the work of all rubbish, excess material, and equipment, and all portions of the work shall be left in a neat and orderly condition. The final inspection will not be made until this has been accomplished.

If Contractor fails or refuses to fulfill these obligations to the District's satisfaction, District may, at its option, undertake these obligations, and withhold the cost of performing these obligations, plus an additional fee of twenty-five (25%) for administrative costs, from payments to Contractor.

**52. COMPLIANCE WITH LAWS AND REGULATIONS:**

The Contractor shall keep himself fully informed of, and shall observe and comply with, and shall cause any and all persons, firms, or corporations employed by Contractor or under him, to observe and comply with all State and national laws, and County and municipal ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work. Particular attention is called to the following:

A. HOURS OF LABOR - Eight hours of labor shall constitute a legal days' work, and the Contractor or any subcontractor under him, in the performance of the Contract, shall not require more than eight hours of labor in any calendar day, and forty hours of labor in any calendar week, from any person employed by Contractor in the performance of the work under this Contract, except as permitted under the provisions of Section 1815 of the Labor Code of the State of California. The Contractor shall forfeit, as penalty to the District, Fifty Dollars (\$50.00) for each workman employed by Contractor or any subcontractor under Contractor in the performance of the Contract for each calendar day during which any workman is required or permitted to labor more than eight hours and for each calendar week during which any workman is required or permitted to labor more than forty hours, in violation of the provisions of such Labor Code.

No work other than overtime and shift work shall be done between the hours of 6:00 PM and 6:00 AM, except such work as is necessary for the proper care and protection of the work already performed or except in case of an emergency; excepting that overtime and shift work may be established by the Contractor with reasonable notice and the written permission of the District.

B. PREVAILING WAGE - Pursuant to Section 1770, and following, of the California Labor Code, the Contractor shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of Sacramento City Unified School District, Planning and Construction Branch, 425 First Avenue, Sacramento CA 95818, which copies shall be made available to any interested party on request.

The Contractor shall forfeit, as penalty to the District, Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing rates for any work done under the Contract by Contractor or by any subcontractor under him, in violation of the provisions of such Labor Code.

C. LABOR DISCRIMINATION - Contractor shall comply with Section 1735 of the Labor Code of the State of California, which prohibits discrimination in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

D. APPRENTICES - Attention is directed to Section 1777.5 of the Labor Code of the State of California concerning employment of apprentices, and the Contractor is required to comply with the provisions of said Section.

E. TRAVEL AND SUBSISTENCE PAYMENTS - Attention is directed to the requirements of Section 1773.8 of the Labor Code of the State of California. The Contractor shall make travel and subsistence payments to each workman needed to complete the work in accordance with the requirements in said Section 1773.8.

F. WORKERS' COMPENSATION - Pursuant to the requirements of Section 1860 of the Labor Code, the Contractor is required to secure the payment of Workers' Compensation to Contractor's employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to the commencement of work, the Contractor shall sign and file with the District a certification in the following form:

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

Said certification is included in the Contract, and signature and return of the Contract as provided in Paragraph 16 of these General Conditions, "Signing of Contract," shall constitute signing and filing of the said certificate.

G. USE OF PESTICIDES - The Contractor shall comply with all rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations, and all other agencies which govern the use of pesticides required in the performance of the work on the Contract.

Pesticides shall include, but shall not be limited to, herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliant, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes, or intended for use as a plant regulator, defoliant, or desiccant shall be considered a pesticide.

H. PAYROLL RECORDS - Attention is directed to Section 1776 of the California Labor Code, a portion of which is quoted below. Regulations implementing said Section 1776 are located in Section 16000, and Sections 16401 through 16403 of Title 8, California Administrative Code. The Contractor shall be responsible for compliance by Contractor's subcontractors.

(a) Each Contractor and Subcontractor shall keep accurate payroll records showing the name, address, Social Security number, work classification, 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 conjunction with the public work. The Contractor and Subcontractors shall also provide any additional information on the certified payroll records as may be required by the District or their designated representative.

(b) The payroll records enumerated under subdivision (a) shall be certified and 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 enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection and copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, 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), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) Each contractor shall maintain on file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within ten (10) days after receipt of a written request.

(d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and Social Security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.

(e) The Contractor shall inform the District of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days provide a notice of a change of location and address.

(f) In the event of noncompliance with the requirements of this section, the contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. Should noncompliance still be evident after the ten-day period, the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit Twenty-Five Dollars (\$25.00) 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.

The penalties specified in subdivision (f) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

I. REPORTING REQUIREMENTS AND SANCTIONS - Failure to deliver to the District specific information, records, reports, certifications, or any other documents required for compliance with these Contract Documents shall be considered noncompliance. The minimum documents required include the following:

1. Certified Payroll Reports:  
Due within seven (7) days of the ending date of the payroll period.
2. Fringe Benefit Statement:  
Due with first payroll report and any time fringe benefits change.
3. Apprenticeship Dispatch Request (DAS 140) Form:  
Due with first payroll report.
4. Apprenticeship Training Fund Contribution Form:  
Due with first payroll report.

Other documentation may be required depending on the source of funding for the project.

Contractors found by the District to be in noncompliance are to be advised of the specific deficiencies and urged to make immediate corrections. They should also be advised that monetary deductions may be made for failure to effect corrections or delinquencies.

If the Contractor fails to correct a deficiency within ten (10) days after notification, a deduction may be made. The deduction shall be ten percent (10%) of the estimated value of the work done during the month, except that the deduction will not exceed Ten Thousand Dollars (\$10,000.00), nor be less than One Thousand Dollars (\$1,000.00), and shall be deducted from the next progress payment.

Deductions for noncompliance will be in addition to all other deductions provided for in this Contract, and will apply irrespective of the number of instances of noncompliance. Deductions may be made separately and additively for each estimate period in which a new deficiency appears. When all deficiencies for a period have been corrected, the deduction covering that period will be released on the next progress payment. Otherwise, the deduction will be retained.

J. LABOR COMPLIANCE PROGRAM (LCP) – If this project is funded by either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Public Education Facilities Bond Act of 2004, each Contractor and Subcontractor shall comply with the labor compliance program requirements set forth in Education Code Section 1771.7.

Contractors and Subcontractors obligations and duties shall include, but are not limited to the following:

- (1.) Maintaining and furnishing on a weekly basis, a certified copy of each weekly payroll containing a statement of compliance with all prevailing wage requirements, signed under penalty of perjury.

(2.) Providing District immediate access to verify compliance with these requirements.

(3.) The District will conduct a labor compliance pre-job meeting (“Job Start Meeting”) which is mandatory for all contractors and subcontractors to discuss the District’s LCP. The Job Start Meeting agenda will include the payment of prevailing wages, apprenticeship training, penalties, certified payroll records as well as non-discrimination in employment, kickbacks, acceptance of prohibited fees, proper licensing, unfair competition, and worker’s compensation insurance. Follow up web conference training sessions may be required and should be planned by each Contractor and Subcontractor in advance of submitting certified payroll records.

(4.) The District or District Representative shall make periodic site visits to observe and interview workers regarding the payment of prevailing wages and proper work classifications. The Contractor and each Subcontractor shall cooperate and coordinate with the District or District Representative and provide unaccompanied access to workers on the job site.

(5.) Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under it. It is a requirement that all Contractors and Subcontractors employ apprentices on public work projects, or show a good faith effort why they were unable to employ apprentices.

The District shall, as required by law, withhold contract payments to the Contractor when payroll records are delinquent or inadequate.

The District shall, as required by law, withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

**53. RESPONSIBILITY OF THE CONTRACTOR:**

The Contractor shall do all of the work and furnish all labor, materials, tools, equipment, and appliances, except as otherwise herein expressly stipulated, necessary, or proper for performing and completing the work herein required, including any Change Order work, disputed work or extra work directed by the District, within the time specified.

If the Contractor discovers any discrepancies during the course of the work between the Contract Documents and conditions in the field, or any errors or omissions in the Contract Documents and conditions in the field, or any errors or omissions in the Contract drawings, specifications, or layout given by stakes, points, or instructions, it shall be the Contractor's duty to inform the District immediately, and the District shall promptly verify the same. Any work done after such discovery until authorized in writing by the District will be done at the Contractor's risk.

In no case shall the use of subcontractors in any way alter the position of the Contractor or Contractor's sureties with relation to this Contract. When a subcontractor is used, the responsibility for every portion of the work shall still remain with the Contractor. The Contractor shall pay, when due, all valid claims of subcontractors, suppliers, and workmen with respect to the project.

The mention herein of any specific duty or responsibility imposed upon the Contractor shall not be construed as a limitation or restriction of any other responsibility or duty imposed upon the

Contractor by the Contract, said reference being made herein merely for the purpose of explaining the specific duty or responsibility.

**54. INDEMNIFICATION:**

The Contractor shall defend, indemnify, and save harmless the District, including their inspectors, project managers, trustees, officers, agents, members, employees, affiliates, consultants, subconsultants, and representatives, and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses, or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, Contractor's operations to be performed under this Contract, including, but not limited to:

1. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, District, or any subcontractor, or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor, District, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
2. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor;
3. Alleged infringement of any patent rights which may be brought arising out of the Contractor's work;
4. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages from such claims or liens;
5. Contractor's failure to fulfill any of the covenants set forth in these Contract Documents;
6. Failure of Contractor to comply with the provisions of the Contract Documents relating to insurance; and,
7. Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.

The indemnities set forth in this section shall not be limited by the insurance requirements set forth in these Contract Documents.

The Contractor's indemnification of the District will not include indemnification for claims which arise as the result of the active negligence of the District, or the sole negligence or willful misconduct of the District, its agents, servants or independent contractors who are directly responsible to the District, or for defects in design furnished by such persons.

**55. PERMITS AND LICENSES:**

The Contractor shall procure all permits and licenses necessary for the normal conduct of its business and construction operations, and all costs associated therewith shall be paid by Contractor.

The Environmental Quality Act of 1970 may be applicable to permits, licenses, and other authorizations which the Contractor must obtain from local agencies in connection with performing the work of the Contract. The Contractor shall comply with the provisions of said statutes in

obtaining such permits, licenses, and other authorizations, and they shall be obtained in sufficient time to prevent delays to the work.

In the event that the District has obtained permits, licenses, or other authorizations applicable to the work in conformance with the requirements in said Environmental Quality Act of 1970, the Contractor shall comply with the provisions of said permits, licenses, and other authorizations.

**56. PROTECTION OF DISTRICT AGAINST PATENT CLAIMS:**

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work.

**57. PROTECTION OF WORKERS:**

The Contractor shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety and any other governing body having jurisdiction over the work. The Contractor shall immediately replace or repair any unsafe ladder, scaffolding, shoring, or bracing, or correct any other dangerous or hazardous situation that may exist or that the District may indicate. Failure of the District to suspend the work or notify the Contractor of the inadequacy of the safety precautions or noncompliance with the law shall not relieve the Contractor of this responsibility.

The Contractor is warned that when the work involves existing sewers and appurtenances that have been exposed to sewage and industrial wastes, these facilities shall be considered contaminated with disease-causing organisms. Personnel in contact with contaminated facilities, debris, waste water, or similar items shall be advised by the Contractor of the necessary precautions that must be taken to avoid becoming diseased. It is the Contractor's responsibility to urge his/her personnel to observe a strict regimen of proper hygienic precautions, including any inoculations recommended by the local public health officer.

Because of the potential danger of solvents, gasoline, and other hazardous material in the existing sewers and storm drain pipes, these areas shall be considered hazardous. The Contractor shall be aware of these dangers and shall comply with Article 108, "Confined Spaces," of the General Industrial Safety Orders contained in Title 8 of the California Administrative Code.

In the event that this Contract requires the excavation of any trench or trenches in excess of five feet in depth, Contractor shall prepare a detailed design plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trenches. Said detailed design plan and subsequent excavating operations shall fully comply with all local, state and federal regulations including, but not limited to, the Construction Safety Orders, Section 1539, Permits and Section 1540 et seq., Excavation.

**58. PROTECTION OF MATERIALS AND EQUIPMENT:**

The Contractor shall protect the work, materials, and equipment from damage due to the nature of the work, the action of the elements, trespassers, or other causes. The Contractor shall properly store materials and equipment, and erect such temporary structures as are required to protect them from damage, including, but not limited to, construction fencing. Only equipment which is to be used directly in the Work shall be brought to and stored on the Project premises by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project premises. If for any reason equipment to be used on the Project must be stored off site, it shall be stored only in a bonded warehouse. Protection of equipment whether stored on or off of the Project premises is solely the responsibility of the Contractor.



**59. SANITARY PROVISIONS:**

The necessary sanitary conveniences for the use of the workers on the project, properly obscured from public observance, shall be constructed and maintained by the Contractor.

**60. EXISTING UTILITIES:**

It is recognized by the Contractor that the location of existing utility facilities as shown on Contract drawings and specifications are approximate; their exact location is unknown.

There may be additional utilities existing on the property unknown to either party to the Contract. Location of utilities as shown on drawings and specifications represent the best information obtainable from utility maps and other information furnished by the various agencies involved. The District warrants neither the accuracy nor the extent of actual installations as shown on the drawings and specifications.

Because of this uncertainty, it may become necessary for the District to make adjustments in the line or grade of sewers or storm drains. Installation of such adjusted lines shall be made at the regular unit price bid for the work, and no additional compensation will be paid therefor, unless the scope and character of the work has been changed.

The Contractor agrees and is required to coordinate and fully cooperate with the District and utility owners for the location, relocation, and protection of utilities. The Contractor's attention is directed to the existence of utilities, underground and overhead, necessary for normal house and commercial service for all buildings along the line of work. The Contractor shall make arrangements with utility owners for the location of house and commercial services lines in advance of the actual construction and for the relocation of such facilities, if necessary, by the utility owner or the Contractor.

In accordance with Section 4215 of the Government Code of the State of California, District shall make provisions to compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such main and trunk line utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. Compensation will be in accordance with Paragraph 41, Changes, and subject to all of the requirements of Paragraph 39, Claims, of the General Conditions. In the event the Contractor discovers utilities not identified in the Contract Documents, the Contractor shall immediately notify the District and the utility owner by the most expeditious means available and later confirm in writing.

It is understood and agreed that the failure of the Contractor or its subcontractor to comply fully with these provisions constitutes failure of the Contractor to exercise reasonable care and precludes Contractor's recovery from District for any related costs or damages.

**61. COOPERATION WITH OTHERS:**

The District or adjacent property owner may perform other work adjacent to or within the project area, concurrent with the Contractor's operations. The Contractor shall conduct operations to minimize interference with the work of other forces or contractors performing such work. This work performed by a second contractor may include work which is incomplete or in dispute with the Contractor.

Any disputes or conflicts which may arise between the Contractor and any other forces or contractors retained by the District, causing delays or hindrance to each other, shall be referred to the District for resolution.

If the work of the Contractor is delayed because of any acts or omissions of any other forces or contractor, the Contractor shall on that account have no claim against the District other than for an extension of time.

**62. AIR POLLUTION CONTROL:**

Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the Contract, including any air pollution control regulations, rules, ordinances, and statutes specified in Section 11017 of the Government Code. Unless otherwise provided in the Contract Documents, material to be disposed of shall not be burned.

**63. WATER POLLUTION:**

The Contractor shall comply with all rules, regulations, ordinances, and statutes which apply to water pollution, including Section 7-1.G of the State specifications.

**64. SOUND CONTROL REQUIREMENTS:**

The Contractor shall comply with all sound control and noise level rules, regulations, and ordinances which apply to any work performed pursuant to the Contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

**65. UNFAVORABLE WEATHER AND OTHER CONDITIONS:**

During unfavorable weather and other conditions, the Contractor shall pursue only such portions of the work as will not be damaged thereby. No portions of the work the satisfactory quality or efficiency of which will be affected by any unfavorable conditions shall be constructed while these conditions remain, unless, by special means or precautions approved by the District, the Contractor shall be able to overcome these conditions.

**66. WEEKEND, HOLIDAY, AND NIGHT WORK:**

No work shall be done between the hours of 6:00PM and 6:00AM, or on Sundays or legal holidays, except with written permission of the District. Requests to work between 6:00PM and 6:00AM, or on Sundays or legal holidays, must be submitted in writing at least two working days in advance of the intended work. In case of an emergency, the Contractor will be allowed to work at night or on Sundays or legal holidays, but must notify the District immediately. An emergency shall be considered an unforeseen event that poses a danger to the public or to the uncompleted work.

It is understood, however, that two or three shift operations may be established as a regular procedure by the Contractor if the Contractor first obtains written permission from the District. Such permission may be revoked by the District at any time, without cause, or if the Contractor fails to maintain adequate force and equipment for reasonable prosecution and to justify inspection of the work, or fails to provide sufficient artificial light to permit the work to be carried on properly and safely and to permit proper inspection.

The Contractor shall give the District two working days prior written notice of any work to be done on a Saturday, with the location and type of work to be done specified; and any work done without such notice and without the supervision of an inspector may be ordered removed and replaced at the Contractor's expense.

**67. OVERLOADING:**

The Contractor shall determine safe loading capacities and shall not overload any structure beyond its safe capacity during construction. In addition to assuming full responsibility for bodily injury resulting from any such overloading, the Contractor shall repair to the District's satisfaction or reimburse the District for the costs of repairing damage resulting therefrom.

**68. SUBCONTRACTING AND ASSIGNMENT:**

The performance of the Contract may not be assigned except upon written consent of the District, and no assignment shall be permitted which would relieve the original Contractor or Contractor's surety of their responsibilities under the Contract.

**69. NON-RECOGNITION OF SUBCONTRACTORS:**

No subcontractor will be recognized as such, and all persons engaged in the work under this Contract will be considered as employees of the Contractor, and their work shall be subject to all the provisions of the Contract. The District and its representatives will deal only with the Contractor, who shall be responsible for the proper performance of the entire work.

**70. LANDS AND RIGHTS OF WAY:**

The District shall provide the lands, rights of way, and easements upon which the work under this Contract is to be done, and such other lands as may be designated on the Contract drawings for the use of the Contractor, and the Contractor shall confine their operations to within these limits. The Contractor shall provide, at their own expense, any additional land and access thereto that may be required for temporary construction facilities or storage of materials.

**71. LIABILITY OF DISTRICT OFFICIALS:**

Neither the District, nor officers, employees, agents, or representatives of the District, nor any of them, shall be responsible for any liability arising under this Contract, except such obligations as are specifically set forth herein.

**72. CONTRACTOR NOT AN AGENT OF THE DISTRICT:**

The right of general supervision shall not make the Contractor an agent of the District, and the liability of the Contractor for all damages to persons or to public or private property arising from the performance of the work shall not be lessened because of such general supervision.

**73. THIRD-PARTY CLAIMS:**

The Contractor shall be responsible for all third-party claims, and for costs or injuries incurred by a third party which result from the operations of the Contractor, or its performance under the Contract.

**74. GUARANTEE:**

Should any failure of the work occur within a period of one year after acceptance of the project or portions thereof by the District, which can be attributed to faulty materials, poor workmanship, or defective equipment, the Contractor shall promptly make the needed repairs at Contractor's expense. At the discretion of the District, approximately ten (10) months after completion of the project a representative of the District and the Contractor shall meet and inspect the project to determine if any work performed by the Contractor is defective and requires repair.

The District is authorized to make such repairs if the Contractor fails to make or undertake with due diligence the aforesaid repairs within ten (10) days after Contractor is given written notice of such failure and without notice to the surety provided, however, that in case of emergency

where, in the opinion of the District, delay would cause serious loss or damages, or a serious hazard to the public, the repairs may be made or lights, signs, and barricades erected, without prior notice to the Contractor or surety, and the Contractor shall pay the entire costs thereof.

**75. ASSIGNMENT OF ANTITRUST ACTIONS:**

Pursuant to Section 4552 of the Government Code of the State of California, the following provisions shall be a part of this Contract:

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 awarding body 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. Sec. 15), or under Cartwright Act (Chapter 2, commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the 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 acknowledgement by the parties.

**76. LEGAL ADDRESS OF THE CONTRACTOR:**

Both the address given in the proposal and the Contractor's office in the vicinity of the work are hereby designated as places to either of which drawings, letters, notices, or other articles or communications to the Contractor may be mailed, transmitted electronically or delivered. The mailing, electronic transmission or delivery at either of these places shall be deemed sufficient notice thereof upon the Contractor. Nothing herein contained shall be deemed to preclude the service of any drawing, letter, notice, article, or communication to, or upon, the Contractor or Contractor's representative personally. The address named in the proposal may be changed at any time by written notice from the Contractor to the District.

**77. SURVEYS:**

When so stated in the Contract Documents, the Contractor shall be responsible to do all necessary staking and engineering services to layout and control the work to the elevations, lines, and dimensions shown on the plans. Any deviations must receive prior written approval of the District. All staking and engineering services affecting the line or elevation of underground drainage, sewers, or utilities, and all other work within public rights of way or easements shall be performed by or under the direction and supervision of a Registered Civil Engineer or Licensed Land Surveyor, licensed by the state of California.

The Contractor shall keep the District informed, at least two working days in advance, of the times and places at which the Contractor will need lines, elevations, and reference points. Unless authorized by the District, any work done without line and grade will be done at the Contractor's risk. The Contractor shall be responsible for the accuracy of Contractor's own layout work, and shall be liable for preserving all established lines and grades. Stakes damaged or destroyed by the operations of the Contractor will be replaced at the Contractor's expense.

**78. MATERIALS OR EQUIPMENT SPECIFIED BY NAME:**

When any materials or equipment is indicated or specified by patent or proprietary name or by the name and catalogue number of the manufacturer, it shall be considered as used for convenience in describing the material or equipment desired. The use of an alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be permitted. Request for such substitution shall be made in writing by the Contractor within thirty-five (35) days after the award of the contract. Failure by the Contractor to request substitution within thirty-five (35) days of the contract award constitutes an agreement by Contractor to furnish only

the materials or equipment listed in the Contract Documents. Until and unless such substitutions are approved by the District, no deviations from the specifications shall be allowed. The burden of proof as to the quality and suitability of the alternative shall be upon the Contractor. The District shall be the sole judge as to the quality and suitability of alternative materials or equipment, and his or her decision shall be final.

**79. PROPERTY RIGHTS IN MATERIAL:**

Nothing in this Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been installed, attached, or affixed to the work, but all such materials shall be the property of the Contractor and the District jointly as their interest may appear, and cannot be removed from the work without the consent of the District.

**80. CONTRACTOR'S EQUIPMENT:**

The Contractor shall provide adequate and suitable equipment and means of construction to meet all the requirements of the work, including completion within the time allotted. Only equipment suitable to produce the quality of work required will be permitted to operate on the project, and specific types of equipment may be requested on component parts of the work.

In any case where the use of a particular type or piece of equipment has been banned, or in cases where the District has condemned for use on the work, any piece or pieces of equipment, the Contractor shall promptly remove such equipment from the site of the work. Failure to do so within a reasonable time may be considered a breach of contract.

**81. MISCELLANEOUS PROVISIONS:**

This Contract shall bind and inure to the heirs, devisees, assignees, and successors in interest of the Contractor, and to the successors in interest of the District, in the same manner as if such parties had been expressly named herein.

This Contract shall be governed by the laws of the State of California.

If any one or more of the provisions contained in the Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

This Contract constitutes the full and complete understanding of the parties, and supersedes any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may only be modified by a written instrument signed by both parties. No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising said Contract.

Contractor hereby assigns to District all its first-tier subcontracts now or hereafter entered into by Contractor for performance of any part of the work. The assignment will be effective upon acceptance by District in writing, and only as to those subcontracts which District designates in writing. Such assignment is part of the consideration to District for entering into the Contract with Contractor, and may not be withdrawn.

**82. PUBLIC CONTRACT CODE SECTION 20104, ET SEQ.:**

Public Contract Code section 20104, et seq., requires that the following language be set forth the specifications:

§ 20104. Application of article; provisions included in plans and specifications

(a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specification for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

#### § 20104.2. Claims; requirements; tort claims excluded

For any claim subject to this article, the following requirements apply:

(e) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(f)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(g)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing,

within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(h) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(i) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(j) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(k) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(l)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil

Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(4) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments

(m) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

1. In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.