

GENERAL CONDITIONS for CONTRACT OF CONSTRUCTION

Sacramento City Unified School District

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Public Notice to Contractors; Instructions to Bidders; Bid Form; Noncollusion Declaration; 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; the Contract form (also described herein as the “Agreement”); General Conditions; Supplemental Conditions, if any; Specifications, and drawings; certificates of insurance, additional insured endorsement and declarations page, Payment Bond; Faithful Performance Bond; Project Stabilization Agreement/Contractor Agreement to Be Bound; Project Stabilization Agreement/Subcontractor Agreement to Be Bound; any addenda issued; Change Orders; any other documents described as such within these Contract Documents; Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor.

1.1.3 THE WORK

The Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner’s representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents, including the character, quality, and quantity of the surface and subsurface materials or obstacles to be

encountered. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

1.1.4 THE PROJECT

The Project is the total construction of the Work performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

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

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 *Documents Complementary and Inclusive.* The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. 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.

1.2.1.2 *Coverage of the Drawings and Specifications.* The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities,

and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in the Drawings or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Contractor. 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.

1.2.1.3 Conflicts. In the event there is a discrepancy between the various Contract Documents, the Contract shall control. In the case of conflict or inconsistency where the Contract does not apply, the Supplementary Conditions (if any) shall control over the General Conditions, and the specifications shall control over the drawings. Without limiting Contractor's obligation to identify conflicts for resolution by the Architect, it is intended that the more stringent, higher quality, more costly or expensive interpretation and greater quantity of Work shall apply.

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

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall promptly notify Architect and Owner in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Project. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern.

If, as and to the extent that Public Contract Code section 1104 is deemed to apply after the Award of the Contract, Contractor shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications,

notwithstanding any other provision in the Contract Documents, except to the extent that Contractor discovered or should have discovered and reported any errors and omissions to the Architect or Owner, including but not limited to as the result of any review of the plans and specifications by Contractor required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Contractor.

1.2.1.5 Ambiguity. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Sum or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Sum or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

1.2.1.6 Execution. Execution of the Agreement Between Owner and Contractor by the Contractor is a representation that the Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 Addenda. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect ("DSA").

1.2.2.2 Deferred Approvals. The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 Titles. The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in

dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3.2 **As Shown, Etc.** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 **Provide.** "Provide" means "provided complete in place, all labor and materials" that is, furnished, installed, tested, and ready for operation and use.

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

1.2.3.5 **Abbreviations.** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

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

1.2.3.7 **Not used.**

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

1.2.3.9 **Absence of Modifiers.** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

The Drawings, Specifications, and other documents prepared on behalf of the Owner are

instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect.

ARTICLE 2

OWNER

2.1 DEFINITION

The term "Owner" means the person or entity identified as the District in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 INTENTIONALLY LEFT BLANK

2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor. 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.

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 or any one else will be replaced at the Contractor's expense

2.2.3 SOILS

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

2.2.3.2 *Contractor Reliance.* Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor or any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project, and prior experience with similar projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

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.

2.2.6.1 Removal, Relocation. Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

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

2.2.6.3 Notification. If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, Contractor shall immediately notify the Owner and the utility in writing.

2.2.6.4 Underground Utility Clearance. It shall be the Contractor's sole responsibility to notify all public and private utilities serving the Site no earlier than 14 calendar days and no later than two working days prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to the Owner. Contractor shall review District as-built drawings.

2.2.6.5 Failure to Comply. 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.

2.2.7 EASEMENTS

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

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any delays caused by factors beyond the Owner's control including but not limited to DSA's or any other local, State or federal agency's review of bids, change order requests, RFI or DCVR's or any other documents.

2.2.9 COPIES FURNISHED

The Contractor will be furnished two copies of Drawings and Project Manuals.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds). Approval authority is with Owner or Owner's representative as specified in Contract Documents.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, after providing Notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a three day period after receipt of written notice or the time period expressly stated in the written notice from the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have. In such case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect, or failure. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.5 PRECONSTRUCTION CONFERENCE.

Prior to the start of construction, a conference shall be called by the Owner 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 Owner. 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.

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The Contractor shall personally supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall assign to the Project a full-time superintendent approved by the District. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.2 CONTRACTOR RESPONSIBILITY

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 OBLIGATIONS NOT CHANGED BY ARCHITECT'S ACTIONS

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

3.2.4 CONTRACTOR RESPONSIBILITY FOR READINESS FOR WORK

The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work, attend Project meetings and have prior successful experience in similar projects. The superintendent shall represent the Contractor in the Contractor's absence, shall have complete authority to represent and act for the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Whenever the Superintendent or his assistants are not on site, the District may stop the work until they arrive.

3.3.2 STAFF

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

3.3.3 RIGHT TO REMOVE

If any person employed by, or an agent of, the Contractor shall fail or refuse to carry out the directions of the District, or if any person employed by, or an agent of, any subcontractor or supplier shall fail or refuse to carry out the directions of the Contractor; or, in the opinion of the District, any person working on the Site or the Work is incompetent, lacks diligence, brings or drinks alcohol on the Site, or is disorderly; uses threatening or abusive language to any person representing the District on the Work; or is otherwise unsatisfactory, upon District's request to Contractor, he or she shall be removed from the Work immediately, and shall not again be employed on the Work.

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

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

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.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so that work in accordance with the standards of construction set forth in the Contract Documents will result.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Contractor at no cost to the Owner.

3.4.4 DISCIPLINE

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

3.5 WARRANTY

The Contractor warrants to the Owner and Architect that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient

maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents.

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

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

3.7.2 COMPLIANCE

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

3.7.3 CONTRACT DOCUMENTS

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 RESPONSIBILITY

If the Contractor performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such Work, for all delays attributable thereto, and shall bear the attributable cost of correction or Project delay.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Contractor shall include in the Contract Sum allowances as stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.8.2 SCOPE

3.8.2.1 **Prompt Selection.** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 **Cost.** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 **Cost Included in Contract Sum.** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.4 **Contract Sum Adjustment.** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the Contractor's costs under paragraph 3.8.2.3.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

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) paper copies and one electronic copy in Microsoft Project format, 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 submit within 10 days 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.

The schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by Division 1 of the Specifications. Whenever in the Contract Documents Contractor is required to provide a schedule and/or schedule updates, the Contractor shall provide the schedule and updates in electronic format as well as hard copy.

3.9.2 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper schedules as required by this paragraph may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Agreement between Owner and Contractor.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor will be furnished, free of charge, two (2) copies of the Contract Documents. 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. The Contractor shall maintain at the Site for the Owner copies of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings.

Product Data, Samples, and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect for delivery to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

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

manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

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

3.11.1.3 ***Contractor's Responsibility.*** Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than thirty-five (35) days after the execution of the Agreement. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, "Substitutions." Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unreviewed by the Architect for resubmission by the Contractor.

3.11.1.4 ***Extent of Review.*** In reviewing shop drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect's review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor

has, in writing, called the Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 DRAWING SUBMISSION PROCEDURE

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

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

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

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

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

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

3.11.3.5 ***Equipment Manuals.*** Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring

binders. At the completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 **Owner's Property.** All shop drawings and samples submitted shall become the Owner's property.

3.11.4 SUBSTITUTIONS

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

3.11.4.2 **Two or More Products Specified.** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Owner. Contractor shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, the Contractor will be responsible for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution which fees may be deducted from progress payments to Contractor. If the District states two products are acceptable, then the Contractor is allowed to choose.

3.11.4.3 **Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner prior to the date of the bid opening. Any Requests submitted less than fourteen (14) days prior to the date of the bid opening will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including but not limited to all drawings, specifications, samples, performance data,

calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a requested substitution shall be on the requesting party.

3.11.4.4 ***List of Manufacturers and Products Required.*** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

3.11.5 **DEFERRED APPROVALS**

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 **CUTTING AND PATCHING**

3.12.1 **SCOPE**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.12.2 **CONSENT**

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 **STRUCTURAL MEMBERS**

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

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 CONTRACTOR'S RESPONSIBILITY

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work, clean out drainage ditches and structures and repair any fences or other property damaged during the Work to the satisfaction of the District. If Contractor fails or refuses to fulfill these obligations to the District's satisfaction during the Project or at final inspection, 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.

3.13.2 FAILURE TO CLEANUP

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and deducted from the next progress payment. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Contractor must do so.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after completion of its Work, then they shall be deemed

abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Contractor shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Contractor shall provide the Owner, the Architect and/or Construction Manager, and the Inspector, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.15.2 REVIEW

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

3.16 INDEMNIFICATION

3.16.1 SCOPE: CONTRACTOR

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Construction Manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors, from and against claims, damages, losses, and expenses (including, but not limited to attorneys' fees and costs including fees of consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Contractor's or its Subcontractor's use of the Site; the Contractor's or its Subcontractor's construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts

they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 **Indemnity.** The Subcontractors shall defend, indemnify, and hold harmless the Owner, the Architect, and the Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, and members of the Boards of Trustees and directors from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and costs, including consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

3.16.2.2 **Joint and Several Liability.** In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

3.16.3 NO LIMITATION

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work. The indemnities set forth shall not be limited by the insurance requirements set forth in these Contract Documents.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

4.1.2 MODIFICATION

Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

4.1.3 TERMINATION

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

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect and/or Construction Manager will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative(s) during construction, until final payment is due, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of The Owner/Architect Agreement. The Architect will have all responsibilities and power established by law including California Code of Regulations, Title 24.

4.2.2 SITE VISITS

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the

Contract Documents. Architect's agreement shall not be unreasonably withheld. However, the Architect will not be required to make exhaustive or continuous on-Site inspections to check quality or quantity of the Work. On the basis of its on-Site observations, the Architect will keep the Owner informed of the progress of the Work.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

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

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Owner or Owner's representative. Where direct communication is necessary between the Owner and the Contractor, the Architect shall be promptly informed, and shall receive copies of all written communications. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

4.2.5 PAYMENT APPLICATIONS

Pursuant to Article 9, based on the Architect's observations, the Architect's evaluation of the Contractor's Applications for Payment, and the stage of the Inspector of Record's approval of the Work, the Architect will review and make recommendations to the Owner regarding the amounts due the Contractor on the Applications for Payment. Owner shall issue the Certificates of Payment.

4.2.6 REJECTION OF WORK

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the

intent of the Contract Documents, the Architect will recommend to the Owner that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 CHANGE ORDERS

The Owner or Owner's representative will prepare change orders and construction change directives and may authorize minor changes in the Work as provided in paragraph 7.1.2.

4.2.8 WARRANTIES UPON COMPLETION

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

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

4.2.9 INTERPRETATION

The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or the Contractor. The Architect's response to such requests will be made with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 ***Architect's Interpretations and Decisions.*** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Contractor and will not show partiality to either. The Work shall be executed in conformity with, and the Contractor

shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

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

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

4.3 **INSPECTOR OF RECORD**

4.3.1 **GENERAL**

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

4.3.2 **INSPECTOR'S DUTIES**

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

methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK

The Inspector shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector may stop any Work which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 INSPECTOR'S FACILITIES

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities, 8' x 16' trailer, as required under Division 1 of the Specifications.

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

If at any time prior to the completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be deducted from the progress payments. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Contractor.
- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.

- F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 CLAIMS AND DISPUTES

4.5.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract Documents. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.5.2 DECISION OF ARCHITECT

Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in paragraph 4.6. A decision by the Architect, as provided in paragraph 4.6.4, shall be required as a condition precedent to any mediation, arbitration, litigation or other action or proceeding on a Claim between the Contractor and the Owner as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to any mediation, arbitration, litigation or other action or proceeding in the event: the position of Architect is vacant; the Architect has not received evidence or has failed to render a decision within agreed time limits; the Architect has failed to take action required under paragraph 4.6.4 within thirty (30) days after the Claim is made; forty-five (45) days have passed after the Claim has been referred to the Architect; or the Claim relates to a Stop Notice Claim.

4.5.3 TIME LIMIT ON CLAIMS

Claims by either party must be made within seven (7) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to provide the required Notice within the specified time shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively. Contractor

hereby expressly waives any Claims of which Contractor was aware 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.

4.5.4 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim including mediation, arbitration, or litigation, unless otherwise agreed to in writing, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make any undisputed payments in accordance with the Contract.

4.5.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.5.1 *Trenches or Excavations Less Than Four Feet Below the Surface.* If conditions are encountered at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Contract Time, or both. If the Architect determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within seven (7) days after the Architect has given notice of the decision. If the Owner and the Contractor cannot agree on an adjustment in the Contract Sum or the Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to other proceedings pursuant to paragraph 4.6.

4.5.5.2 *Trenches or Excavations Greater Than Four Feet Below the Surface.* Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.5.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, 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 the provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(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.

4.5.5.2.2 The public entity shall promptly investigate 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 under the procedures described in the Contract.

4.5.5.2.3 In the event that a dispute arises between the public entity 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 provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties. Nothing contained within this section or the Contract Documents relieves the Contractor of its obligations herein.

4.5.6 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Each Claim for additional cost must include any claim for additional time and its associated costs, and all facts supporting the claim and a current schedule showing the impact on the critical path of any claimed delay and that the delay will extend the Work beyond the contractual completion date, including, but not limited to copies of written computations of delay damages and supporting documentation including but not limited to any relevant job cost, bidding and home office overhead information. Prior notice is not required for claims relating to an emergency endangering life or property arising under paragraph 10.4.1. If the Contractor believes additional cost is involved for reasons, including, but not limited to the following: a written interpretation from the Architect, an order by the Owner to stop the Work where the Contractor was not at fault, a written order for a minor change in the Work issued by the Architect, failure of payment by the Owner, termination of the Contract by the Owner, the Owner's suspension of the Work, or other reasonable grounds, a claim shall be filed in accordance with the procedure established herein.

4.5.7 CLAIMS FOR ADDITIONAL TIME

4.5.7.1 *Notice and Extent of Claim.* If the Contractor wishes to make a claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include the cost associated with the extension, if any, all facts supporting the claim and a current schedule showing the impact on the critical path of any claimed delay and that the delay will extend the Work beyond the contractual completion date. In the case of a continuing delay, only one (1) claim is necessary.

4.5.7.2 *Adverse Weather Claims.* If unusually severe weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and place, could not have been reasonably anticipated, and had an adverse effect on the critical path of the scheduled construction.

4.5.7.3 *No Reservation Allowed.* In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension or additional cost later than as required by paragraph 4.5.3 unless the Owner agrees in writing to allow such reservation.

4.5.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be made as provided in paragraphs 4.5.6 or 4.5.7.

4.5.9 SUBMISSION UNDER PENALTY OF PERJURY

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.

The Contractor shall certify, at the time of submission of a claim, as follows:

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 cost and/or extension of time, and know its contents, and said claim is made in good faith; the supporting data is truthful, accurate and complete; that the amount requested accurately reflects the adjustment for which the Contractor believes the Owner is liable; and further, that I am familiar with California Penal Code section 72 and 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.

By: _____

Contractor understands and agrees that any claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner's representatives, may reject the claim on that basis and that unless Contractor properly and timely files the claim with the certification, Contractor cannot further pursue the claim in any forum. A condition precedent will not have been satisfied.

4.6 RESOLUTION OF CLAIMS AND DISPUTES

4.6.1 ARCHITECT'S REVIEW

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

4.6.2 DOCUMENTATION IF RESOLVED

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

4.6.3 ACTIONS IF NOT RESOLVED

If a claim has not been resolved, the party making the claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: submit additional supporting data requested by the Architect; modify the initial claim; or notify the Architect that the initial claim stands.

4.6.4 ARCHITECT'S WRITTEN DECISION

If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days. Upon expiration of such time period, the Architect will render to the parties its written decision relative to the claim,

including any change in the Contract Sum or Contract Time or both. The Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.7 ALTERNATE DISPUTE RESOLUTION OF CLAIMS OF \$375,000 OR LESS

4.7.1 CLAIMS LESS THAN \$375,000

Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contracts Code sections 20104, et seq. "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner.

4.7.2 SUBMISSION OF CLAIMS LESS THAN \$375,000

The Contractor shall submit its claim of \$375,000 or less to the Owner in writing, within the time frames established under paragraph 4.5.3, but no later than before the final payment is made. The Owner shall respond within the time provided by statute. If the Contractor disagrees with the response or the Owner fails to respond within the time permitted, the Contractor shall notify the Owner of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference as detailed in paragraph 4.8.1. The Owner shall schedule a meet-and-confer conference within thirty (30) days of the demand. If not resolved at the meet-and-confer conference, then the claim shall be submitted to mediation pursuant to the procedures set forth in paragraph 4.9. If the dispute is not resolved at the mediation, the Contractor may initiate a civil action as set forth in Public Contract Code sections 20104, et seq.

4.7.3 TIME LIMITS NOT EXTENDED

Nothing in Subdivision (a) of Public Contract Code section 20104.2 shall extend the time limit or supersede the notice requirements provided in the Contract Documents for filing claims by the Contractor.

4.8 DISPUTE RESOLUTION OF CLAIMS IN EXCESS OF \$375,000

As a condition precedent to the initiation of litigation and subsequent to the fulfillment of the claims procedures established in paragraph 4.5 of this Article, disputes in excess of a total value of \$375,000 shall first be submitted to mediation pursuant to the procedures set forth in paragraph 4.9.

4.8.1 MEET AND CONFER CONFERENCE

Following action by the Architect under paragraph 4.6, the parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the

controversy. The party disputing the Architect's action shall give the other party written notice of the dispute. Within ten (10) days after delivery of said notice, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within twenty (20) days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) days, either party may initiate mediation of the controversy or claim under paragraph 4.9.

4.9 **MEDIATION PROCEDURES**

4.9.1 **NEGOTIATIONS BEFORE MEDIATION**

Negotiations to resolve disputes before Mediation is initiated are for settlement purposes only and are not binding.

4.9.2 **MEDIATION**

4.9.2.1 **Authorization.** In the event of a dispute or issue that cannot be resolved by negotiation, the Owner and the Contractor agree to attempt to resolve the matter by Mediation. Said Mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary Mediation shall not be construed or interpreted as mandatory arbitration.

4.9.2.2 **Initiation of Mediation.** Either party may initiate Mediation by notifying the other party or parties in writing.

4.9.2.3 **Request for Mediation.** A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the Mediation.

4.9.2.4 **Selection of Mediator.** Within fourteen (14) days after execution of the Contract, the parties will meet-and-confer to select an appropriate Mediator agreeable to all parties and two (2) alternate mediators, who will serve for the entire project.

4.9.2.5 **Qualifications of a Mediator.** Any Mediator selected shall have expertise in the area of the dispute and be knowledgeable in the Mediation process. No person shall serve as a Mediator in any dispute in which that person has any financial or personal interest in the result of the Mediation. Before accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties shall meet and confer and decide whether to select another Mediator.

4.9.2.6 **Vacancies.** If any Mediator shall become unable or unwilling to serve, the First Alternate Mediator shall be selected unless the parties agree otherwise.

4.9.2.7 Representation. Any party may be represented by persons of its choice, who shall have full authority to negotiate. The names and addresses of such persons shall be communicated in writing to all parties and to the Mediator.

4.9.2.8 Time and Place of Mediation. The Mediator shall set the time of each Mediation session. The Mediation shall be held at any convenient location agreeable to the Mediator and the parties, as the Mediator shall determine. All reasonable efforts will be made by the parties and the Mediator to schedule the first session within thirty (30) days after initiation of Mediation.

4.9.2.9 Identification of Matters in Dispute. At least ten (10) days before the first scheduled Mediation session, each party shall provide the Mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. If a party so chooses, it may send its memoranda to other parties.

At the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue presented. The Mediator may require each party to supplement such information.

4.9.2.10 Authority of Mediator. The Mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The Mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the Mediator or the parties, as the Mediator shall determine.

The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further efforts at Mediation would not contribute to a resolution of the dispute between the parties.

4.9.2.11 Privacy. Mediation sessions are private. The parties and their representatives may attend Mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

4.9.2.12 Confidentiality. Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the Mediation shall not be divulged by the Mediator. All records, reports, or other documents received by a Mediator while serving as Mediator shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to the Mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in any arbitration, judicial, or other proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the Mediation proceedings; proposals made or views expressed by the Mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

4.9.2.13 ***No Stenographic Record.*** There shall be no stenographic record of the Mediation.

4.9.2.14 ***Termination of Mediation.*** The Mediation shall be terminated: by the execution of a Settlement Agreement by the parties; by a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.

4.9.2.15 ***Exclusion of Liability.*** No Mediator shall be a necessary party in judicial proceedings related to the Mediation. No Mediator shall be liable to any party for any act or omission in connection with any Mediation conducted hereunder.

4.9.2.16 ***Interpretation and Application of These Mediation Provisions.*** The Mediator shall interpret and apply these Mediation provisions insofar as they relate to the Mediator's duties and responsibility.

4.9.2.17 ***Expenses.*** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the Mediation, including, required travel and other expenses of the Mediator, the expenses of any witness called by the Mediator, and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by all parties to the Mediation.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a "Specialty Contractor" as defined in section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

In accordance with Public Contract Code sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 GROUNDS FOR SUBSTITUTION

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written Contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written Contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the prime contractor;
- B. When the listed Subcontractor becomes bankrupt or insolvent;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code section 4108.
- E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;

- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- I. When the awarding authority determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 No Change in Contract. Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of time for the completion of the Project.

5.2.2.2 Substitution Due to Clerical Error. The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefor. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code section 4107. The determination by the awarding authority shall be final.

5.3 SUBCONTRACTUAL RELATIONS

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of paragraph 5.3 above.

5.5.1 SUPERVISION BY SUBCONTRACTORS

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall

bear the full risk of loss of all of its property.

5.5.2 DISCIPLINE AND ORDER

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Contractor, the Architect or other Subcontractors as Contractor elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

5.5.4 SUBCONTRACTOR INFORMATION

Each Subcontractor shall submit to the Contractor promptly when requested by the Contractor, Owner, Construction Manager, or Architect, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

5.5.5 TEMPORARY STRUCTURES

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 CHARGES TO SUBCONTRACTOR

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 FINES IMPOSED

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 PROJECT SIGNS

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

5.5.10 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor

shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

5.5.11 APPLICATION FOR PAYMENT

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 COMPLIANCE WITH PROCEDURES

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 Owner's Rights

The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance. Upon the election to perform Work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

6.1.2 DESIGNATION AS CONTRACTOR

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner/Contractor Agreement.

6.1.3 CONTRACTOR DUTIES

The Contractor shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor or property owners in the area with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised.

6.1.4 OWNER OBLIGATIONS

Unless otherwise provided in the Contract Documents, when the Owner performs Work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 NOTICE BY CONTRACTOR

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 COSTS INCURRED

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's Work shall be borne by the parties responsible. Should any Contractor cause damage to the Work or property of any separate contractor on the Project, or cause any delay to any such contractor, the Contractor shall defend, indemnify and hold Owner harmless for such damage or delay. Owner may backcharge Contractor for delay or damage to another contractor's Work or damage to another contractor's property.

6.2.4 CORRECTION OF DAMAGE

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.13, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Architect for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. Any change order shall be approved by the Owner's Board of Education before work is performed. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by Owner's representative and shall become effective when executed by the Owner, the Architect, the Contractor, DSA, and ratified by the Board of Education.

7.1.2 ARCHITECT AUTHORITY

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

7.2 CHANGE ORDERS ("CO")

A CO is a written instrument prepared by the Architect and signed by the Owner, the Contractor, the Architect, and the DSA, stating their agreement upon all of the following:

- A. a change in the Work;
- B. the amount of the adjustment in the Contract Sum, if any; and
- C. the extent of the adjustment in the Contract Time, if any.

7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")

7.3.1 DEFINITION

A CCD is a written order prepared by the Architect and signed by the Owner and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 USE TO DIRECT CHANGE

A CCD shall be used in the absence of agreement on the terms of a CO.

7.4 REQUEST FOR INFORMATION ("RFI OR DCVR")

7.4.1 DEFINITION

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

The Contractor shall thoroughly review all 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 of a disagreement over such compensation, the judgment of the District's construction representative shall prevail.

7.4.2 SCOPE

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

7.4.3 RESPONSE TIME

The Owner and Contractor agree that an adequate time period for the Architect to respond to an RFI or DCVR is generally seven (7) calendar days after the Architect's receipt of an RFI or DCVR, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than seven 7 days, as is necessary in the Architect's professional judgment to permit adequate review and evaluation of the RFI or DCVR. The total time required for the Architect to respond is subject to the complexity of the RFI or DCVR, the number of RFI or DCVR's submitted concurrently and the reprioritization of pending RFI or DCVR's submitted by the Contractor, among other things. Contractor shall submit a revised and updated priority schedule with each RFI or DCVR. The Architect shall endeavor to follow the Contractor's requested order of priorities. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or CCD. No presumption shall arise as to the timeliness of the response if the response is more than seven (7)

days after the Architect's receipt of the RFI or DCVR. If the Architect cannot respond to the RFI or DCVR within fourteen (14) calendar days, the Architect shall notify the Contractor, with a copy to the Inspector and the Owner, of the amount of time that will be required to respond. Contractor shall review the Contract Documents before submitting an RFI or DCVR to ensure that the information is not already in the Contract Documents. For each RFI or DCVR where the information was already in the Contract Documents, Owner may deduct \$100 from the next progress payment.

7.4.4 COSTS INCURRED

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI or DCVR requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

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

7.5.2 SCOPE

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

7.6 CHANGE ORDER REQUEST ("COR")

7.6.1 DEFINITION

A COR is a written request prepared by the Contractor asking the Owner and the Architect to incorporate a proposed change called for in an RFP or a claim per paragraph 7.7.6 into a CO.

7.6.2 CHANGES IN PRICE

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

7.6.3 CHANGES IN TIME

A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in paragraph 3.9 and Division 1 of the Specifications.

7.7 COST OF CHANGE ORDERS

7.7.1 SCOPE

Within ten (10) days or such lesser period of time as may be required by Owner after a request is made for a change that impacts the Contract Sum or the Contract Time, the Contractor shall provide to the Owner and the Architect in writing an estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO. Changes may be made by Owner by an appropriate written CO, or, at the Owner's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

7.7.2 DETERMINATION OF COST

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 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 therefore. 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.

(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.

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

7.7.3 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract. Cost limitations apply as per Section 7.7.2.

	EXTRA	CREDIT
A. Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
B. Labor (attach itemized hours and rates)	_____	_____
C. Equipment (attach invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Sub-contractor.	_____	_____
F. Subtotal	_____	_____
G. General Contractor's Overhead and Profit.	_____	_____
H. Subtotal	_____	_____
I. Bond	_____	_____
J. TOTAL		

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project. Any costs or expenses not included are deemed waived. All cost and pricing data submitted by the Contractor to the District shall be a true, complete, accurate, and current representation of actual cost and pricing of the work. The District or its authorized representative may require a formal certification as to cost and pricing data submitted by the Contractor.

7.7.4 DISCOUNTS, REBATES, AND REFUNDS

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount

thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.5 ACCOUNTING AND OTHER RECORDS

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on a daily basis.

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 damages as defined in the contract documents, 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.

7.7.6 NOTICE REQUIRED

If the Contractor desires to make a claim for an increase in the Contract Sum, or any extension in the Contract Time for completion, it shall give the Owner and the Architect written notice thereof within seven (7) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Contract Time. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with paragraph 10.4 hereof. No claim shall be considered unless made in accordance with this Subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Sum. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Sum or extension of the Contract Time resulting from such claim shall be authorized by a CO.

7.7.7 **APPLICABILITY TO SUBCONTRACTORS**

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

ARTICLE 8

TIME

8.1 **DEFINITIONS**

8.1.1 **CONTRACT TIME**

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

8.1.2 **NOTICE TO PROCEED**

The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 **DAYS**

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

8.2 **HOURS OF WORK**

8.2.1 **SUFFICIENT FORCES**

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

8.2.2 **PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 **LABOR CODE APPLICATION**

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any

worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

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. Work may be done by written permission of the District on Sundays or legal holidays. Written permission must be obtained two working days in advance.

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.

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Contractor.

If the Owner allows the Contractor to do work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Contractor by the Owner and deducted from the next

Progress Payment. Contractor shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Contractor elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Contractor by the Owner and deducted from the next Progress Payment.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

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

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 EXPEDITIOUS COMPLETION

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 EXCUSABLE DELAY

The Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the Work due to acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, unusually severe weather, or delays of subcontractors due to such causes.

8.4.2 NOTICE BY CONTRACTOR REQUIRED

The Contractor shall within seven (7) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under paragraph 8.4.1 shall be an extension of the Contract Time at no cost to the Owner.

8.4.3 CONDITIONS FOR EXTENSION OF TIME

If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, the Architect, an employee of either, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, or unavoidable casualties, by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner or Owner's representative may determine. Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

8.4.4 EARLY COMPLETION

Regardless of the cause therefore, the Contractor may not maintain any claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete its work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the work on the Project.

8.4.5 LIQUIDATED DAMAGES

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.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any delays or damages related to the time required to obtain local, state or federal agency approvals.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Contractor shall furnish the following:

- A. Within ten (10) days of the mailing, faxing or delivering of the Notice of Selection, a detailed breakdown of the Contract Sum (Schedule of Values) for each Project or Site. The Schedule of Values 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.
- B. Within ten (10) days of the mailing, faxing or delivering of the Notice of Selection, a schedule of estimated monthly payment requests (cash flow) due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the Owner may require;
- C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;
- D. Within ten (10) days of the mailing, faxing or delivering of the Notice of Selection, the name, address, telephone number, fax number, license number, and classification of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such

subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.2.2 **OWNER APPROVAL REQUIRED**

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

9.3 **APPLICATIONS FOR PAYMENT**

9.3.1 **PROCEDURE**

On or before the twenty-first (21st) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

- A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;
- E. The Owner approved additions to and subtractions from the Contract Sum and Time;
- F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of completion of the Contractor's Work by line item; and
- I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment. Such applications shall not include requests for payment of amounts not authorized by

Change Order or that the Contractor does not intend to pay to subcontractors or others because of a dispute or other reason.

- J. 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.

9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Architect and the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

9.3.3 WARRANTY OF TITLE

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 OWNER APPROVAL

The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in paragraph 9.5.1.

9.4.2 ARCHITECT'S REVIEW

The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's opinion, the representations to the Owner required by paragraph 9.4.2 cannot be made. The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of:

- A. Defective Work not remedied;
- B. Stop Notices filed, unless the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim. Any stop notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties;

- C. Liquidated damages assessed against the Contractor;
- D. Reasonable doubt that the Work can be completed for the unpaid balance of any Contract Sum or by the completion date;
- E. Damage to the property or work of the Owner, another contractor, or subcontractor;
- F. Unsatisfactory prosecution of the Work by the Contractor;
- G. Failure to store and properly secure materials or performance without properly processed shop drawings;
- H. Failure of the Contractor to maintain, update and submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports. The District may, but is not required to, choose liquidated damages as a reasonable amount to be charged if the Contractor does not submit progress schedules or other such required submittals in accordance with the Contract Documents;
- I. Failure of the Contractor to maintain record drawings;
- J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents; or
- L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.
- M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Certificate for Payment;
- N. Failure to pay subcontractors or materialmen;
- O. Breach of any provision of the Contract Documents.

9.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED

Upon request of the Contractor whose payment is deferred, the Contractor shall be given a written copy of Owner's reasons for withholding payment.

9.5.3 **PAYMENT AFTER CURE**

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

9.6 **PROGRESS PAYMENTS**

9.6.1 **PAYMENTS TO CONTRACTOR**

Within thirty (30) days after receipt of a Request for Payment, Contractor shall be paid a sum equal to ninety percent (90%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplied with. Payment shall not be a waiver of any such direction.

9.6.2 **Payments to Subcontractors**

Without creating any rights in favor of the subcontractors in this Agreement, no later than ten (10) days after receipt, pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 **PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION**

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

9.6.4 **NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT**

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

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

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

9.6.7 JOINT CHECKS

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

9.7 COMPLETION OF THE WORK

9.7.1 CLOSE-OUT PROCEDURES

When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is complete, the Contractor shall prepare and submit to the Owner a comprehensive list of minor items to be completed or corrected (Punch List). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Notice of Completion, complete or correct such item. The Contractor shall then submit a request for an additional inspection by the Owner to determine Completion. When the Work, or designated portion thereof, is complete, the Owner will prepare a Notice of Completion which shall establish the date of Completion, establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Notice of Completion. Warranties required by the Contract Documents shall commence on the date of

Completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion. The Notice of Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

9.7.2 PAYMENT UPON COMPLETION

Upon Completion of the Work, or designated portion thereof, and upon application by the Contractor, the Owner shall make payment reflecting adjustment in retainage, if any, for such Work, or portion thereof, as provided in the Contract Documents in absence of any stop notices, liens or claims by Owner for liquidated damages or other damages.

9.7.3 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests of the Owner to make inspections required under paragraph 9.7.1 shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 OWNER'S RIGHTS

The Owner may occupy or use any completed or partially completed portion of the Work at any stage. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents for the portion occupied or used. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the Owner as provided under paragraph 9.7.1. If the Contractor and the District are unable to agree upon the matters set forth 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.

9.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE

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

9.8.3 NO WAIVER

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

9.9 COMPLETION AND FINAL PAYMENT

9.9.1 FINAL INSPECTION

Contractor shall immediately upon receipt of the Punch List, initiate work on all items therein related to Contractor's Work and diligently complete the same. At least fifteen (15) days prior to 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. All portions of the Work shall be left in a neat and orderly condition. The final inspection will not be made until this is accomplished.

Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect shall inspect the Work and shall submit to Contractor and Owner a final inspection report noting the work, if any, required in order to complete the Work in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed. Within ten (10) calendar days of such notification, the Contractor shall correct such defects or deficiencies.

Upon completion of the Work contained in the final inspection report, the Contractor shall so notify the Owner, who shall again inspect such Work. If the Owner finds the Work contained in

such final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall so notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The Owner may thereupon inspect such Work and shall either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (which, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the Owner shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from Owner, pay the amounts due Subcontractors. Final acceptance by the District shall not bind the District to formal acceptance nor relieve the Contractor from the responsibility of completing or correcting any work.

9.9.2 RETAINAGE

The retainage, less any amounts disputed by the Owner or which the Owner has the right to withhold, shall not be paid until after approval of the Contractor's final Certificate of Payment referred to in section 9.9.1 and acceptance by the Board of Education and, after satisfaction of the conditions set forth in paragraph 9.9. Owner may hold the retainage for at least sixty (60) days after recording of the Notice of Completion by Owner. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement and General Conditions between the Owner and the Contractor pursuant to Public Contract Code section 22300.

9.9.3 PROCEDURES FOR APPLICATION FOR FINAL PAYMENT

The Application for Final Payment shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

- A. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all Stop Notices or a Stop Notice Release Bond from a surety acceptable to the Owner as defined by the Contract Documents, including a release of Stop Notice in recordable form, in connection with the Work obtained by Contractor from each person to receive a payment thereunder, which waivers of Stop Notice shall be in a form as approved by Owner. Any stop notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties;

- B. The Contractor shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.
- C. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.
- D. The Contractor shall deliver to the Owner reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work "as built," with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, all guarantees, and operation and maintenance instructions for equipment and apparatus.
- E. Owner shall have issued a Final Certificate of Payment.
- F. The Contractor shall have delivered to the Owner all manuals and materials required by the Contract Documents.
- G. The Contractor shall have removed, or caused to be removed, all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any subcontractor, shall have cleaned, or caused to be cleaned, all glass surfaces, and shall have left the Work broom-clean, except as otherwise provided in the Contract Documents.
- H. Contractor shall provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

Acceptance of final payment shall constitute a waiver of claims by payees except for those previously identified in writing and identified by that payee as unsettled at the time of Final Application for Payment.

9.10 SUBSTITUTION OF SECURITIES

In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner.

The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this Section shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 CONTRACTOR RESPONSIBILITY

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.2 SUBCONTRACTOR RESPONSIBILITY

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

10.1.3 COOPERATION

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

10.1.4 ACCIDENT REPORTS

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

10.1.5 FIRST-AID SUPPLIES AT SITE

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

10.1.6 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.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 THE CONTRACTOR

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

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

10.2.2 CONTRACTOR NOTICES

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

10.2.3 SAFETY BARRIERS AND SAFEGUARDS

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

Any shutdown of utilities shall be coordinated with the Owner.

10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL

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

10.2.5 AIR, WATER AND SOUND

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.

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.

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.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 PROTECTION OF WORK

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

10.3.2 PROTECTION FOR ELEMENTS

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 SHORING AND STRUCTURAL LOADING

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the appropriate Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The shoring plan shall be certified by the structural engineer. The Contractor shall

take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

The Contractor shall confine its own and its subcontractors' construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES

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

10.3.6 SITE ACCESS

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

10.3.7 PROTECTION OF MATERIALS

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work (including through fencing and constructing temporary structures) and Subcontractors shall promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage). 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.

10.4 EMERGENCIES

10.4.1 EMERGENCY ACTION

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

10.4.2 ACCIDENT REPORTS

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

10.4.3 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. The 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:

NOTICE-RESTRICTED WORK SITE

“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.”

- 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. (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.)
- 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 a superintendent who has been fingerprinted and cleared by DOJ present at the work site at all times 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.

10.5 HAZARDOUS MATERIALS

10.5.1 DISCOVERY OF HAZARDOUS MATERIALS

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such material was generated by the Contractor or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor. No cost or time extension shall be granted.

10.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or

determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR

In the event the presence of hazardous materials on the Project Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any and shall compensate Contractor for any additional costs incurred or Project delay in accordance with the applicable provisions of Article 7 herein. In addition, Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material.

10.5.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR

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

10.5.5 TERMS OF HAZARDOUS MATERIAL PROVISION

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

10.5.6 ARCHEOLOGICAL MATERIALS

In the event the Contractor encounters or reasonably suspects the presence on the Site of archeological materials, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Contractor's receipt of written notice from the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

11.1.1 LIABILITY INSURANCE REQUIREMENTS

11.1.1 Before the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;

11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;

11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and

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

11.1.1.5 claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and

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

If commercial general liability insurance or another insurance form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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) 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.

11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance in like amounts.

11.1.3 OWNER'S INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The Contractor shall name, on any policy of insurance, the Owner, its trustees, officers, employees, agents, inspectors, project managers, consultants, including the Architect, subconsultants, their employees and each of them as additional insureds. Subcontractors shall name the Contractor, the Owner and the Architect as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to

provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the contractor fails to maintain such insurance, the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Contractor being injured or killed, and deduct and retain the amount of the premium for such insurance from any sums due the contractor.

11.1.6 BUILDER'S RISK/"ALL RISK" INSURANCE

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, earthquake (for projects not solely funded through revenue bonds, limited to earthquakes equivalent to or under 3.5 on the Richter Scale in magnitude), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

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

This policy shall be jointly in the name of the District and the Contractor, payable as their respective interest may appear.

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.

11.1.7 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with

respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.1.8 FIRE INSURANCE

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.9 OTHER INSURANCE

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

11.1.10 PROOF OF CARRIAGE OF INSURANCE

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

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

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

- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- (c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.

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

11.1.11 COMPLIANCE

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

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds, on the forms contained in the Contract Documents, for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. The bond shall contain a provision that the surety thereon waives the provisions of sections 2819 and 2845 of the California Civil Code.

To the extent, if any, that the Contract Sum is increased in accordance with the Contract Documents, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate the Contract for cause.

11.2.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the Work is covered contrary to the Inspector's request, the Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Sum or Time.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

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

12.2 CORRECTION OF WORK

12.2.1 CORRECTION OF REJECTED WORK

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

12.2.2 ONE-YEAR WARRANTY CORRECTIONS

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

termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. 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.

12.2.3 REMOVAL OF NONCONFORMING WORK

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner.

12.2.4 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT

If the Contractor fails to correct nonconforming Work within three (3) days, the Owner may correct it in accordance with paragraph 2.4. In addition, if the Contractor does not proceed with correction of such nonconforming Work within the time fixed by written notice from the Inspector or the Owner through the Architect, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. 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.

12.2.5 COST OF CORRECTING THE WORK

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work.

12.2.6 NO TIME LIMITATION

Nothing contained in this paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

If it is found at any time before or after completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Architect shall make a recommendation: (1) that the improper work be accepted or (2) that it be removed, remade, and replaced at Contractor's expense, with all work disturbed by the changes made good at the Contractor's expense. With the first choice the Owner may deduct from any amount due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Architect shall determine such difference in value. The Owner, at its option, may pursue either course unless correction is required by law. No structural, fire, life, or safety related work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of California and local laws applicable to the property where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. No assignment shall be permitted which would relieve the original Contractor or Contractor's surety of their responsibilities under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail or electronically to the last business address known to the party giving notice or, for the Contractor, to the Contractor's office in the vicinity of the Work. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

13.4 **RIGHTS AND REMEDIES**

13.4.1 **DUTIES AND OBLIGATIONS CUMULATIVE**

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

13.4.2 **NO WAIVER**

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

13.5 **TESTS AND INSPECTIONS**

13.5.1 **COMPLIANCE**

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

13.5.2 **INDEPENDENT TESTING LABORATORY**

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

13.5.3 **ADVANCE NOTICE TO INSPECTOR**

The Contractor shall notify the Inspector 24 hours in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector 48 hours in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

13.5.4 **TESTING OFF-SITE**

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

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the Inspector, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under paragraph 13.5.1, the Inspector will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in paragraph 13.5.6.

13.5.6 COSTS FOR RETESTING

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

13.5.7 COSTS FOR PREMATURE TEST

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

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 LIMITATION OF LIABILITY

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. 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.

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE FEET

Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.7.2 EXCAVATION SAFETY

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

13.7.3 NO TORT LIABILITY OF OWNER

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

13.7.4 NO EXCAVATION WITHOUT PERMITS

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

13.8 WAGE RATES

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's governing board or at the office of Sacramento City Unified School District, Planning and Construction Branch, 425 First Avenue, Sacramento CA 95818, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

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

13.8.4 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

13.8.5 FORFEITURE AND PAYMENTS

Pursuant to Labor Code section 1775, the Contractor and any subcontractor under the Contractor shall as a penalty to the Owner, forfeit not more than Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor; and (2) whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Contractor or subcontractor.

13.8.6 MINIMUM WAGE RATES

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

13.8.7 PER DIEM WAGES

Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, and vacation pay.

13.8.8 POSTING OF WAGE RATES

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

13.9 RECORD OF WAGES PAID: INSPECTION

13.9.1 APPLICATION OF LABOR CODE

Pursuant to section 1776 of the Labor Code:

(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project

(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 or for copies thereof. However, 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 the preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she 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. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

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.

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.

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.

13.10 **APPRENTICES**

13.10.1 **APPRENTICE WAGES AND DEFINITIONS**

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4

(commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

13.10.2 APPRENTICE LABOR POOL

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for

every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of

not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 JOURNEYMAN/APPRENTICE RATIO

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

13.10.4.1 *Apprenticeable Craft or Trade.* "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.5 RATIO EXEMPTION

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to

submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.6 APPRENTICE FUND

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Project, to which fund or funds other contractors in the area of the site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

13.10.7 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with paragraph 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this paragraph 13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

13.10.9 NO BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

13.10.10 VIOLATION OF LABOR CODE

Pursuant to Labor Code section 1777.7, in the event a Contractor or Subcontractor willfully fails to comply with the provisions of this paragraph 13.10 and Labor Code section 1777.5:

- (a) . . . the Chief of the Division of Apprenticeship Standards may deny to the contractor or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date

the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship.

(b) A contractor or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of one hundred dollars (\$100) for each full calendar day of noncompliance. Notwithstanding section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from the contract progress payments then due or to become due.

(c) In lieu of the penalty provided for in this subdivision, the Chief may for a first time violation and with the concurrence of an apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor may perform work on a public works project with a subcontractor who is ineligible to perform work on the project pursuant to sections 1777.1 or 1777.7 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Pursuant to Government Code section 4552, 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 Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

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

13.12 STATE AUDIT

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

13.13 STORM WATER DISCHARGE PERMIT

If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

14.1.1 GROUNDS FOR TERMINATION

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

- A. issuance of an order of a court or other public authority having jurisdiction which requires all work to be stopped;

- B. an act of government, such as a declaration of national emergency, making material unavailable which requires all work to be stopped;
- C. if repeated suspensions, delays, or interruptions by the Owner as described in paragraph 14.3 constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

14.1.2 NOTICE OF TERMINATION

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

14.1.3 NOTICE OF TERMINATION - OWNER FAULT

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-Subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters essential to the progress of the Work, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner as provided in paragraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 GROUNDS FOR TERMINATION

The Owner may terminate the Contract if the Contractor:

- A. refuses or fails to supply enough properly skilled workers or proper materials;
- B. fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;
- C. disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- D. otherwise is in substantial breach of a provision of the Contract Documents.

14.2.2 NOTIFICATION OF TERMINATION

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

- A. take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. accept assignment of subcontracts pursuant to paragraph 5.4; and
- C. complete the Work by whatever reasonable method the Owner may deem expedient, with or without bidding. In the event the District takes bids, 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.

14.2.3 PAYMENTS WITHHELD

If the Owner terminates the Contract for one of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete.

14.2.4 PAYMENTS UPON COMPLETION

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

14.2.5 Additional Terms. 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 14.2.6.

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.

14.2.6 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. Upon receipt of written notice from the Owner of such suspension for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice; and
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work.

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.

14.3 **SUSPENSION BY THE OWNER FOR CONVENIENCE**

14.3.1 **SUSPENSION BY OWNER**

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 **Adjustments.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. that performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible or 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; or

- B. that an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 *Adjustments for Fixed Cost.* Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.4 **TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS**

The Owner reserves the right to terminate this Contract should the Owner determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.5. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.5 **MUTUAL TERMINATION FOR CONVENIENCE**

The Contractor and the Owner may mutually agree in writing to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.