



## **PART 3: GENERAL CONDITIONS**



# ARTICLE 1

## DEFINITIONS AND GENERAL PROVISIONS

### 1.1 BASIC DEFINITIONS

#### 1.1.1 Architect

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 engineering consultants under the Architect’s direction and control.

#### 1.1.2 Change Order

“Change Order” shall refer to a written form of agreement, signed by the District, Architect and Contractor approved by the Division of the State Architect (“DSA”) (if required by law), modifying the Contract. The Change Order cannot be incorporated into the progress payments until it has been fully executed and accepted by DSA.

#### 1.1.3 Claim

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 District 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.

#### 1.1.4 Construction Change Directive

Construction Change Directive or CCD is a written order prepared by the Architect, and signed by the District and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.

#### 1.1.5 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. 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 not intended and shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. Except as expressly stated herein below, the Contract Documents are not intended and shall not be construed to benefit or create any benefits or



rights of performance whatsoever in any persons or entities other than the District and the Contractor.

#### 1.1.6 Contract Documents

The Contract Documents consist of the Construction Contract between District and Contractor (hereinafter the Agreement), General Conditions , Supplementary and Special Conditions, if any, Drawings, Specifications, addenda issued prior to bid, deferred approvals, the Notice Inviting Bids, accepted bid, Subcontractor List, Instructions to Bidders, Contractor’s Certification Regarding Workers’ Compensation and Payment and Performance Bonds, Non-Collusion Declaration, Bid Bond, Asbestos-Free Materials Certification, and any documents incorporated by or attached to said documents.

#### 1.1.7 Contract Sum or Contract Price

“Contract Sum” means the total compensation specified in the Contract. The Contract Sum may be adjusted by Change Order.

#### 1.1.8 Contract Time

“Contract Time” means the number of calendar days set forth in the Bid Form within which the full completion of the Contractor’s work must be achieved. The Contract Time may be adjusted by Change Order.

#### 1.1.9 Contractor

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 and masculine in gender. The term Contractor means the Contractor or his 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.

#### 1.1.10 Daily Reports

The Contractor shall cause, and require subcontractor’s to cause, the preparation of a daily report, describing salient job site progress and events in a format acceptable to the Architect. These daily reports from both the contractor and subcontractors shall be forwarded to the Architect at regular intervals. Please note: These daily reports will not be reviewed on a continuous basis, or even by the Architect. The Contractor is advised, therefore, these daily reports will not, and cannot, satisfy or supersede the Contractor’s obligation to give timely notice of added time or cost under the various paragraphs of the contract.

#### 1.1.11 Days

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

#### 1.1.12 Deferred Approvals

Deferred approval items are identified in the drawings and/or specifications that require the Contractor to prepare drawings and/or calculations and other data for submission to DSA for formal review and approvals requiring a structural engineer’s stamp and



calculations, a structural engineer licensed in the State of California shall be utilized in the submittal process. The contractor shall pay all costs associated with the preparation and approval of the deferred approval items.

#### 1.1.13 District

“District” means the Lodi Unified School District, its board members, officers, and employees.

#### 1.1.14 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.

#### 1.1.15 Inspector

“Inspector” shall mean the inspector or inspectors employed by the District and approved by the Division of the State Architect who will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations

#### 1.1.16 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.

#### 1.1.17 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 District or by separate Contractors.

#### 1.1.18 Project Site or Site

The physical location at which the Contractor undertakes the Project.

#### 1.1.19 Project Manual

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

#### 1.1.20 Retainage

Up to five (5%) percent of the Contract Sum which may be retained by the District in accordance with California Public Contract Code section 7201 and Subsection 9.9.2 below.

#### 1.1.21 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 section 4100 *et seq.*

#### 1.1.22 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.

#### 1.1.23 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.”

#### 1.1.24 Sub-Subcontractor

A Sub-Subcontractor is a person or entity who has a 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.

#### 1.1.25 Work

The Work shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial and continuing obligation of the Contractor before bidding the Project and thereafter throughout the Project to visit the Site of the proposed Work, and 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 to make such surface or subsurface investigation as is appropriate so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. The Contractor 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. Any Subcontractor or sub supplier of any tier which may submit a bid for any part of the Work shall be deemed to have assumed, as to be such part of the Work, the same obligations of investigation and familiarization. Failure to visit the site or examine the drawings, specifications and associated bid documents will not excuse either contractor, subcontractor or sub supplier from having knowledge that was reasonably inferable had these duties been faithfully performed.

## 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.

#### 1.2.1.2 Coverage of the Drawings and Specifications

The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings, and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either by 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 either the Drawings and/or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the installation of all items indicated, described, or implied in the portion of the Work to be performed by them. 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.

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

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

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

The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statements. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably be deemed to fall within the broadest possible scope of such general statement.

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

#### 1.2.1.3 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 location of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical location 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 District in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided thereunder prior to the construction of that portion of the Project.

- (i) Work of this Contract is subject to the requirements of Group 1, Chapter 4, Part I, Title 24, CCR as follows:
  - (1) Addenda and change orders per Section 4-338.
  - (2) Inspector approved by DSA. Inspector and continuous inspection of work per Section 4-333 (b) and 4-342.
  - (3) Special inspection per Section 4-333 (c)
  - (4) Contractor shall submit verified reports per Section 4-336 and 4-343 (c).

- (5) Administration of construction per Part I, Title 24, CCR; duties of Architect and structural engineer per Section 4-333 (a) and 4-341; duties of Contractor per section 4-343; verified reports per section 4-336.
- (6) Governing codes; Title 24, CCR.
- (7) A copy of Part I and II of Title 24 shall be kept and be available in the files during construction.
- (8) DSA shall be notified on start of construction per Section 4-331.
- (9) Supervision by DSA per Section 4-334.
- (10) Permits required by Rule 4002 – National Emissions Standards for Hazardous Air Pollutants.

#### 1.2.1.4 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 District 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 Price 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.

#### 1.2.2 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 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 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.

#### 1.2.3.2 Provide

“Provide” means “provide complete in place,” that is, furnished, installed, tested, and ready for operation and use.

#### 1.2.3.3 General Conditions

The General Conditions and any Supplementary and/or Special Conditions are hereby incorporated into each and every section of the Specifications.

#### 1.2.3.4 Abbreviations

In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Contractor shall,” “shall be,” etc., is 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.

#### 1.2.3.5 Plural

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

#### 1.2.3.6 Metric

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

#### 1.2.3.7 Standard Specifications

Any reference to standards, codes, specifications, recommendations and regulations of any society, organization, institute, association, or governmental authority is a reference to the organization’s standard specifications which are in effect at the date of the Contractor’s proposal, unless another date is implied by the suffix numbers of the standards referenced. 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.

#### 1.2.3.8 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.



#### 1.2.4 Rules of Document Interpretation

- A. In the event of conflict within the drawings, the following rules shall apply:
  - 1. General Notes, when identified as such, shall be incorporated into other portions of Drawings.
  - 2. Equipment and Material Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
  - 3. Larger scale drawings shall take precedence over smaller scale drawings.
  - 4. Figured, derived, or numerical dimensions shall govern. At no time shall the Contractor base construction on scaled drawings.
- B. Specifications shall govern as to materials, workmanship, and installation procedures.
- C. In the case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality, and greater quantity of Work shall apply.

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

The Drawings, Specifications, and other documents prepared on behalf of the District are instruments of the services of the Architect and its consultants and are the property of the District. 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. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, upon request upon completion of the Work. 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 District 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 District's property interest or other reserved right.

## ARTICLE 2

### THE DISTRICT

#### 2.1 INFORMATION AND SERVICES REQUIRED OF THE DISTRICT

##### 2.1.1 Site Survey

When required by the scope of the Project, the District will furnish, at its expense, a legal description and 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.

##### 2.1.2 Soils

###### 2.1.2.1 District Furnished Services

When required by the scope of the Project, the District will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services with 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.

###### 2.1.2.2 Contractor Reliance

Test borings and soils reports for the Project have been made for the District to indicate the subsurface materials that might be encountered at particular locations on the Project. The District 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 District 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. The Contractor is fully responsible for interpreting subsurface information made available and ascertaining Site conditions for the purposes of determining construction means and methods prior to construction. At the District's request, the Contractor shall make available to the District 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.

### 2.1.3 Utility Survey

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

### 2.1.4 Information

Upon the request of the Contractor, District will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from District's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.1.2 through 2.1.4 (except that the Contractor may not rely upon and must question in writing to the District and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project, and prior experience with school projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

### 2.1.5 Existing Utility Lines; Removal, Relocation

In accordance with Government Code Section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating existing main or trunk line utility facilities which are not indicated in the Drawings and Specifications with reasonable accuracy, and for the equipment on the Project necessarily idled during such work, provided that the Contractor shall first notify the District before commencing work on locating, repairing damage to, removing or relocating such utilities.

2.1.5.1 The Contractor shall take all precautions necessary to protect the existing utilities within the Project area. Any utilities damaged due to the Contractor's negligence shall be repaired or restored to their original condition at the Contractor's sole expense. Existing utilities shall be kept in service during the life of the Contract unless relocation, reconstruction, abandonment, or outage is specifically authorized by the Architect.

2.1.5.2 The Contractor shall provide and maintain such temporary supports as may be necessary to preserve the functions of the various utility systems. No wires, conduits and/or pipes shall be removed until all services therein have been made inoperable.

2.1.5.3 The Contractor shall notify the Architect and appropriate Regional Notification Center for operators of subsurface installations at least two (2) working days, but not more than fourteen (14) calendar days, prior to performing excavation or other work close to any underground pipeline, conduit, duct, wire and other



structures. The Contractor shall provide updated information to the Notification Center as required and on a periodic basis. The Regional Notification Center includes but is not limited to the Underground Service Alert-Northern California (USA) at (800) 642-2444. The Contractor is advised that the State of California does not participate in USA. The Contractor is required to notify CalTrans Permits Branch (916) 741-4036 for the location of State facilities.

2.1.5.4 The Contractor shall not proceed with work until utility facilities involved have been located, disconnected, or otherwise adjusted by utility representatives.

2.1.5.5 The District's Maintenance and Operations department, or its equivalent, will make repairs to all water service laterals and water mains damaged by the Contractor during the course of construction unless directed otherwise by the Architect. Except as otherwise provided in this Section, the Contractor shall be required to pay all labor, material and equipment costs incurred by the District's Maintenance and Operations department for the repairs made to damaged water service laterals and water mains. The District will bill the Contractor for the repairs and the bills will be paid by the Contractor prior to either the next monthly progress payment or prior to the final payment, whichever comes first. The Contractor shall provide to the Architect proof of payment of the repair bills prior to the issuance of either the monthly progress payment or final payment. The current labor and equipment rates for the District's Maintenance and Operations department will be made available to the Contractor at the preconstruction conference. The District shall have the right to deduct the total amount of any unpaid District repair bill from the money due or to become due the Contractor.

## 2.2 DISTRICT'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 District, after providing Notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the District 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 District to stop the Work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6. The District shall have the authority to suspend the work wholly or in part due to unsuitable prosecution of the Work, or for such time as it may deem necessary, due to the failure on the part of the Contractor to carry out orders given or to perform any provisions of the Contract or for any other reason. The Contractor shall immediately comply with such written order of the District to suspend the work wholly or in part. The suspended work shall be resumed only when conditions are favorable or methods are corrected, as ordered or approved in writing by the District.

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



shall not be entitled to any damages or compensation on account of such suspension or delay.

### 2.3 DISTRICT'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a three-day period after receipt of written notice or the time period expressly stated in the written notice from the District) to commence and continue correction of such default or neglect with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District 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 District.

## ARTICLE 3

### THE CONTRACTOR

#### 3.1 SUPERVISION AND CONSTRUCTION PROCEDURES

##### 3.1.1 Contractor

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and 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 District, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. 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 section 17309 in the manner prescribed by Title 24.

Contractor shall assume responsibility for design of systems and fabrications needed to meet performance criterion described in the Contract Documents. Design by 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 criteria specified for each item. Contractor shall also assume responsibility for temporary structures used to implement construction, such as shoring and scaffolding. Where noted in the Contract Documents, or requested by the Architect, the Contractor will furnish design adequacy support stamped by appropriate, licensed California Engineers.



### 3.1.2 Contractor Responsibility

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

The 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 rules, regulations, 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 any State requirements.

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

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

### 3.1.3 Obligations not Changed by Architect's Actions

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

### 3.1.4 Acceptance/Approval of Work

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

### 3.1.5 Compliance with California Education Code Section 45125.2, as follows:

California Education Code section 45125.2 requires entities providing services to the District, where the employee of the entity or subcontractor will have contact with pupils, to ensure the safety of the pupils by one or more of the following methods:

1. The installation of a physical barrier at the Work Site, at the expense of Contractor, to limit contact with pupils.
2. Continual supervision and monitoring of Contractor and Subcontractors by an employee of Contractor whom the Department of Justice has ascertained has not been convicted of a violent or



serious felony. A violent felony is defined in Penal Code section 667.5(c) and a serious felony is defined in Penal Code section 1192.7(c).

All bidders shall submit at the time of bid opening a fully executed “Declaration Regarding Employee Fingerprinting and Criminal Background Check.” Although Education Code section 45125.2(a)(3) provides an option regarding District surveillance, the District does not provide this as an option to the Contractor. Sample of Certification form follows and is provided in the Bidding Documents.



**DECLARATION REGARDING EMPLOYEE  
FINGERPRINTING  
AND  
CRIMINAL BACKGROUND CHECK**

I, \_\_\_\_\_, declare as follows:

1. Where the employees will have contact with pupils, the safety of the pupils will be ensured by one or more of the following:
  - a) The installation of a physical barrier, at the expense of the Contractor, at the Work Site to limit contact with pupils.
  - b) Continual supervision and monitoring of all employees of Contractor and Subcontractor by an employee of Contractor whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I am a duly authorized representative of \_\_\_\_\_  
\_\_\_\_\_ for the purpose of providing this certification and declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.  
Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, California.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name/Title



## 3.2 SUPERINTENDENT

### 3.2.1 Full-Time Superintendent

The Contractor shall provide a competent, English-speaking superintendent and assistants as necessary who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

### 3.2.2 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 and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

### 3.2.3 Right to Remove

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

## 3.3 LABOR AND MATERIALS

### 3.3.1 Contractor to Provide

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, 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.

### 3.3.2 Quality

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, 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 Contract Documents will result. All work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshall; the Safety Orders of the Division of Industrial Safety; the California Electrical Code; the State Plumbing Code; the National Fire Protection Association; the Manual of Accident Prevention in Construction published by the Associated General Contractors of America; and other applicable state laws or regulations pertaining to locations. Nothing in these Drawings or Specifications shall be construed as permitting work not in accordance with these codes.



When specified brands or kinds of material are called for, they are mentioned merely as standards and the Contractor has the option of using any other brand of equal quality provided that Contractor shall have submitted to the Architect in timely fashion, proof that such other brand is in all respects equal in quality to the specified brand or material; and provided that Architect shall have approved such other brand or material as an acceptable substitution. All substitution submittals shall comply with Section 3.9. infra.

Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of Notice to Contractors, except as limited to type, class, or grade, or modified in such reference.

The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in these Specifications. These standards are not furnished to bidders, for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.

Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturers' instructions, directions, or specifications, it shall be construed to mean that said application or installation shall be in strict accordance with the printed instructions furnished by the manufacture of the materials considered for use under conditions similar to those at the job Site.

### 3.3.3 Replacement

Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and rejected by the District, in which case, they shall be removed and replaced by the Contractor. The Contractor shall protect and preserve the work from all damage or accident, providing any temporary roofs, window and door coverings, boxings, or other construction as required. This shall include any adjoining property of the District or others affected by the work of the Contractor.

The Contractor shall assume full responsibility for all glass and plastic glazing installed under this Contract against damage from any source during construction. The Contractor shall replace all broken, cracked or scratched glass or plastic without expense to the District until date of Final completion.

### 3.3.4 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 10.3.4 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.



### 3.4 WARRANTY

The District shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to said building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. The Contractor unqualifiedly warrants all work and materials to be free of defects whether performed or installed by it or by any subcontractor or supplier in the project which is the subject of the Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly warrants such lesser quality. Contractor further warrants that the work as performed by Contractor, subcontractor, or supplier will conform with the Plans and Specifications or any written authorized deviations therefrom.

### 3.5 TAXES

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

### 3.6 PERMITS, FEES AND NOTICES

#### 3.6.1 Payment

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are 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). District shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Special Conditions.

#### 3.6.2 Compliance

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

#### 3.6.3 Responsibility

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 and shall bear the attributable cost of correction or Project delay. If the Contractor wrongfully causes damage to the Work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the District on account of any damage alleged to have been caused by the Contractor, the District shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the District arises therefrom



the Contractor shall pay or satisfy it and shall reimburse the District for all attorneys' fees and court costs which the District has incurred.

The Contractor shall properly locate all buildings and other improvements off site or on site, and shall furnish all engineering required for such work, including the location and identification of bench marks, markers, property lines, lines and grades. The Contractor shall check floor elevations and grades against data shown on the drawings, and shall report any discrepancies to the Architect before laying out the work.

Where work of one trade joins or is on other work, there shall be no discrepancy when said is completed. In engaging one kind of work with another, marring or damaging same will not be permitted. Should improper work of any trade be covered by another that results in damage or defects, the whole work affected shall be made good by the Contractor without expense to the District.

The Contractor shall consult the other Contractors on the project, if any, and the Architect, regarding the installation of such other Contractor's work before starting the various phases of his work, in order to avoid the possibility of the removal of his work to permit others to install their work.

Assistance required by the Architect in obtaining measurements or information on the work shall be furnished fully and efficiently by the Contractor.

### 3.7 CONTRACTOR'S CONSTRUCTION SCHEDULES

#### 3.7.1 Requirements

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the District's and the Architect's information the construction schedule for the Work. The schedule shall not exceed the time limits under the Contract Documents and shall comply with all of the scheduling required by the Specifications. The Contractor, within ten (10) working days after being awarded the Contract, shall prepare and submit for the District's and Architect's information and approval, an estimated progress schedule for the Work. The schedule format shall be Graphic Critical Path Method as specified in the Specifications and or Standard Specifications.. The progress schedule shall be related to the entire project to the extent required by the Contract documents, and shall provide for the expeditious and practicable execution of the work. Contractor shall be obligated to perform the Work in accordance with the schedule, and any deviation from the schedule must first be approved by the Architect and the District.

The progress schedule shall be as follows:

1. Requirements included:
  - a) Procedures for Preparation and Submittal of Construction Progress Schedules and Periodical Updating.

- b) Before commencing work, the Contractor shall submit a complete plan and schedule of his proposed operations to the Architect for approval. In Preparation of this plan and schedule, the Contractor shall make due allowance for and include the following:
  - 1) Preparation of equipment and material submittals for review.
  - 2) Architect review of each submittal.
  - 3) Delivery lead times for equipment.

2. Format:

- a) Schedule format shall be Graphic Critical Path Method (CPM)
- b) The graphic schedule shall be revised and resubmitted monthly for review and approval by Architect and District and be kept reasonably current.
- c) Schedule: Schedule shall break down major trades, such as carpentry, millwork, concrete work, plumbing, electrical and heating and ventilation, to indicate rough and finish work. List all subcontractors, show time of material and equipment submittal for Architect's review.
- d) Monitoring: Schedule shall be monitored monthly to reflect changes.
- e) Scale and Spacing: To provide space for notations and revisions.

3. Content:

- a) Show complete sequence of construction by activity, with dates for beginning and completion of each element of construction.
- b) Identify each item by major Specification section number.
- c) Identify work of separate stages or separate floors, and other logically grouped activities.
- d) Show accumulated percentage of completion of each item, and total percentage of Work completed, as of the first day of each month.
- e) Provide separate schedule of submittal dates for shop drawings, product data, and samples, including District furnished products and dates reviewed submittals will be required from Architect. Show decision dates for selection of finishes.
- f) Show dates for when District-furnished products are required.

- g) Show all proposed shutdowns of utilities for review and approval of District. Information shall include location and duration of intended shutdown.
- h) Use a Critical Path Method (CPM), time scaled network diagram showing continuous flow from left to right, computer generated with a software program of Primavera Project Planner or Sure Track.
- i) Demonstrate adequate planning for the work including a practical plan to complete the work within the Contract Time.
- j) Identify all work activities which constitute the critical path.
- k) Identify all other 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 over time, 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.
- l) Indicate planned mobilization of materials, equipment and work force.
- m) Indicate planned sequence of early operations or procurement, including submittals.
- n) A minimum of three days shall be allowed for District's review of all submittals.
- o) Indicate all dependencies and logic between activities.
- p) Provide a brief description of each work activity, and duration in days, and identifying the trades performing the work.
- q) 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.

4. Revisions to Schedules:

- a) Indicate progress of each activity to date of submittal, and projected completion date of each activity.
- b) Identify schedule activities modified since previous submittal, major changes in scope, and other identifiable changes, including approved time extensions, as well as time extensions which are requested and awaiting approval. Show how the changes impact the critical path schedule and indicate if time is added to the completion of the project. Submittal of schedule information is a prerequisite to entitlement of time extensions.

- c) Provide narrative report to define problem areas, anticipated delays, and impact on Schedule. Report corrective action taken, or proposed, and its effect.
5. Submittals:
- a) Submit initial Schedules within ten (10) working days after date of Agreement. After review, resubmit required revised data within ten (10) working days.
  - b) Submit two opaque reproductions and one reproducible transparency.
  - c) District or District's representative will review the proposed progress schedule for compliance with these Contract Documents. If 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 Contractor fail or refuse for any reason to properly and timely submit to District, Contractor's proposed progress schedule, Contractor agrees it thereby waives any claim it may have then or that may arise in the future for delay, acceleration, impact, inefficiency, or the like no matter how characterized.
6. Distribution:
- a) Distribute copies of reviewed Schedules to job site file, subcontractors, suppliers, and other concerned entities.
  - b) Instruct recipients to promptly report, in writing, problems anticipated by projections shown in Schedules.

### 3.7.2 Failure to Meet Requirements

Failure of the Contractor to provide proper schedules as required by this paragraph may, at the sole discretion of District, constitute grounds to withhold, in whole or in part, progress payments to the Contractor.

### 3.7.3 Schedule Float Time

The Contractor acknowledges and agrees that District shall not be liable for any costs of delay to any schedule except to the extent that District causes delay beyond the Contract Time. Contractor acknowledges and agrees that Schedule Float shall not be for the exclusive use or benefit of either the Contractor or the District. Available Schedule Float (including any difference in negative float between a delayed activity and the most delayed activity if the project is delayed) may be appropriated by either party without thereby creating a compensable delay for the other party or affecting the right of the appropriating party to recover actual or liquidated damages for any delay by the other party.

### 3.8 DOCUMENTS AND SAMPLES AT THE SITE

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

### 3.9 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

#### 3.9.1 Submittals defined

##### 3.9.1.1 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.

##### 3.9.1.2 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.

### 3.9.1.3 Contractor's Responsibility

Contractor shall obtain and shall submit all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) calendar days after the execution of the Contract. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the District, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be 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 3.9.4, "Substitutions." Review by District and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. 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 will be returned unreviewed by the Architect for resubmission by the Contractor.

### 3.9.1.4 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 within 30 days of the Architect's receipt of said shop drawings, product data and sample submittal. Provided, however, the case of large or complex submittals, such as, but not limited to, structural steel shop drawings, mechanical equipment, electrical equipment and special system components, the Architect may require additional review time. The Contractor shall breakdown critical submittals into separate packages so as to expedite the review process of each package. The coordination and prioritization of the overall set of submittals shall be the responsibility of the Contractor. 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. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or equipment and material 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 any quantities, which may be shown on the shop drawings.

### 3.9.2 Drawing Submission Procedure

#### 3.9.2.1 Transmittal Letter and Other Requirements

All shop drawings shall 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.

#### 3.9.2.2 Copies Required

Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints 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. Digital submissions of drawings and other materials may be accepted upon the written approval of both the District and Architect. 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.

#### 3.9.2.3 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.

#### 3.9.2.4 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 District and approved by Architect unless specifically directed in writing by the District. All such portions of the Work shall be in accordance with approved shop drawings and samples.

### 3.9.3 Sample Submissions Procedure

#### 3.9.3.1 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.

#### 3.9.3.2 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.

#### 3.9.3.3 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.

#### 3.9.3.4 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 District 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 District 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 District, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work. The Contractor must update the record drawings as work progresses. At the end of each month the Architect, and project inspector shall, review the record drawings. If the records are incomplete, or incorrect, an appropriate amount of dollars, equivalent to the cost of uncovering the work to determine



the locations of piping and the like, may be deducted from the next progress payment. The deducted sum will be withheld until the record drawings are updated and/or corrected.

#### 3.9.3.5 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 District through the Architect.

#### 3.9.3.6 District's Property

All shop drawings and samples submitted shall become the District's property.

### 3.9.4 Substitutions

#### 3.9.4.1 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. When specified brands or kinds of material are called for, they are mentioned merely as standards and the Contractor has the option of using any other brand of equal quality if approved by the Architect. Any materials named in the Specifications, or which may be substituted, must, if so desired by the Architect be tested or examined for compliance with the project requirements at the expense of Contractor.

Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of Notice to Contractors, except as limited to type, class, or grade, or modified in such reference.

The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in these Specifications. These standards are not furnished to

bidders, for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.

Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturers' instructions, directions, or specifications, it shall be construed to mean that said application or installation shall be in strict accordance with the printed instructions furnished by the manufacture of the materials considered for use under conditions similar to those at the job site.

#### 3.9.4.2 [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 Contractor. Contractor shall utilize the same product throughout the Project. If the required notice is not provided and an "or equal" substitution is requested, the District, at its sole discretion, may refuse to consider the substitution unless the product specified is no longer commercially available. If the District allows the substitution to be proposed despite the lack of proper notice, the Contractor will be invoiced by the District for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution.

#### 3.9.4.3 [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 District within thirty-five (35) calendar days of the execution of the established date for the start of construction stated in the Notice to Proceed. Any Requests submitted after the thirty-five (35) days will not be considered. 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 District; 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 all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the District in determining whether the proposed substitution is acceptable. The final decision shall be the District's. The written approval of the District, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. District may condition its approval of the substitution upon delivery to District 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.

#### 3.9.4.4 [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.

### 3.9.5 Deferred Approvals

Deferred approvals shall be submitted and processed pursuant to the requirements of the Specifications. Deferred approval items may require longer or multiple reviews. The Contractor shall apply skill and knowledge to expedite the deferral approval items from preparation to final approval. The Contractor shall schedule the project activities in order to avoid critical path delays as a result of the deferred approval process. 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.

### 3.9.6 Conformance With Codes and Standards

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

### 3.9.7 Noise

At existing school sites or when construction activity extends into the period when school is occupied, the contractor shall minimize construction noise and disallow radio, music and other auditory distractions that will disrupt teaching in a classroom. When tests are given in a school, the contractor may be asked to reschedule work to disallow disruption in the classroom.

### 3.9.8 Smoking and Alcoholic Beverages

Smoking, drugs and alcoholic beverages of any kind are not allowed on school grounds at any time.

## 3.10 CUTTING AND PATCHING

### 3.10.1 Scope

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

### 3.10.2 Consent

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the District 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 District or a separate contractor except with written consent of the District and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the District 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.

### 3.10.3 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.

### 3.10.4 Subsequent Removal

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

## 3.11 CLEANING UP

### 3.11.1 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. At completion of work, remove all marks, stains, fingerprints, dust, dirt, and paint drippings from all surfaces. Wash tile, plumbing and other fixtures clean. Clean and polish all hardware and other unpainted metals. Remove all temporary labels, tags and paper coverings. Cleaning, polishing, sealing, waxing and all other such finish operations indicated on the Drawings or required in the Specifications shall be taken to indicate the required condition at the time of acceptance of all work under the Contract.

Before final acceptance, employ professional window cleaners to clean all plastic and glass surfaces and mirrors of putty, paint materials, stains and dirt, without scratching or injuring the plastic and glass. Leave the work bright, clean and polished.

### 3.11.2 Failure to Cleanup

If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be 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 may do so and back-charge the Subcontractor.

### 3.11.3 Construction Buildings

When directed by the District 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 District can dispose of them for its own benefit in whatever way it deems appropriate.

## 3.12 ACCESS TO WORK

The Contractor shall provide the District, the Architect, and the Inspector, access to the Work in preparation and progress wherever located.

## 3.13 ROYALTIES AND PATENTS

### 3.13.1 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 District and the Architect harmless 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.

### 3.13.2 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.

## 3.14 OVERLOADING

### 3.14.1 The Contractor Shall Determine Safe Loading

The Contractor shall determine safe loading capacities and shall not overload any structure beyond its safe capacity during construction or remodeling.

In addition to assuming full responsibility for bodily injury resulting from any such overloading, the Contractor shall repair to the Architect's satisfactory or reimburse the District for the cost of repairing damage resulting therefrom.

## ARTICLE 4

### ADMINISTRATION OF THE CONTRACT

#### 4.1 ARCHITECT

##### 4.1.1 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 District and Architect which shall not be unreasonably withheld.

##### 4.1.2 Termination

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

#### 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

##### 4.2.1 Status

The Architect will provide administration of the Contract as described in the Contract Documents and will be the District's representative 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 District. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the District/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 District 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. The Architect's design consultants may also visit the Site as necessary in the judgment of the Architect. However, neither the Architect, nor its consultants, will 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 District 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 District of furniture, furnishings, and equipment at the time of their delivery to the premises and installation. This shall not be construed to change the Architect's authority or responsibility relative to Section 4-333 and 4-341 of Title 24, Part 1 CCR.

#### 4.2.4 [Communications Facilitating Contract Administration](#)

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the District and the Contractor shall communicate through the Architect. Where direct communication is necessary between the District and the Contractor, the 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 Contractor's Applications for Payment, and the Inspector's approval, the Architect will review and make recommendations to the District regarding the amounts due the Contractor on the Certificates for 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 District that the District reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect may recommend to the District that the District require additional inspection or testing of the Work in accordance with paragraph 13.5.5, 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 Architect 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 District for the District's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

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

#### 4.2.9 Interpretation

The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the District or the Contractor. Should it appear that the work to be done, is not sufficiently detailed or explained in the Contract Documents, or in the event of any doubt or question arising respecting the true meaning of the Contract Documents, the Contractor shall apply to the Architect for such further explanations as may be necessary, and the Architect shall render his or her decisions thereon. The Contractor shall review any Requests for Information (RFI's) or Design Clarifications/ Verification Requests [DCVR's] submitted by subcontractors prior to submission to the Architect to determine whether such RFI's and DCVR's are already clearly and unambiguously answered in the Contract Documents. Contractor represents to District and Architect, that by submission of an RFI or DCVR, Contractor has familiarized himself with the RFI or DCVR, and thoroughly reviewed the Contract Documents, and determined that the RFI or DCVR pertains to an unforeseen condition or circumstance that is not described in the Contract Documents, that there is a conflict or discrepancy in the Contract Documents, or there is an omission in the Contract Documents. In the event any RFI and/or DCVR is clearly answered or inferable from the Contract Documents, Contractor agrees to pay the Architect and District the reasonable cost for their time and expenses associated with reviewing RFI's and DCVR's which are already clearly answered or inferable from the Contract Documents. In the event of a disagreement over such compensation, the judgment of the District's construction representative shall prevail. The Architect's response to such request 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 and decisions, the Architect will endeavor to secure faithful performance by both the District and the Contractor, and will not show partiality to either. The Architect will not be liable for the result of interpretations or decisions so rendered in good faith. 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, or not reasonably inferable, Architect shall supply them on request. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

### 4.3 INSPECTOR OF RECORD

#### 4.3.1 General

One or more project inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties will be as specifically defined in Title 24. Whenever the Contractor arranges to work at night or any time when work is conducted other than the normal 40-hour week, or to vary the period during which work is carried on each day the Contractor shall give the District a minimum of 48-hours' notice so that inspection may be provided. Additional inspection costs incurred because of overtime or night work shall be paid by the District and backcharged to the Contractor.

Authorized representatives and agents of the State of California or the federal government shall be permitted to inspect all work, materials, payrolls, records, and shall be given access to the Site at all times for such inspection.

#### 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. The Inspector shall comply with the inspection card duties required under sections 4-330 through 4-344, Title 24 of the California Code of Regulations and DSA Procedure 13-01.

#### 4.3.4 Inspector's Facilities

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

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

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

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



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

#### 4.5 CLAIMS AND DISPUTES

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 District 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. This Contract does not recognize the term potential claim.

##### 4.5.1 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 submitting the Claim for resolution pursuant to Section 4.7, and is required for all Claims between the Contractor and the District related to 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 submitting the Claim for resolution pursuant to Section 4.7, 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 limit; the Architect has failed to take action required under paragraph 4.6.4 within thirty (30) calendar days after the Claim is made, forty-five (45) calendar days have passed after the Claim has been referred to the Architect; or the Claim relates to a Stop Notice Claim.



#### 4.5.2 Time Limit on Claims

Claims by either party must be made within ten (10) calendar days after occurrence of the event giving rise to such Claim or within ten (10) calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. If an initial claim has been implemented by Change Order, the Change Order will be considered full and final compensation and no additional claim will be considered. The failure of the Contractor to provide the required Notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

#### 4.5.3 Personal Certification of All Claims

PERSONAL CERTIFICATION OF ALL CLAIMS: must be submitted with all claims in the following format on Contractor's letterhead:

I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE DISTRICT IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650-12655, 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.

#### 4.5.4 Continuing Contract Performance

Pending final resolution of a Claim pursuant to Section 4.7., or by litigation, unless otherwise agreed to in writing, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract. Contractor hereby waives, for itself and all Subcontractors, any and all rights of rescission or work stoppage based on District's failure to pay for disputed items included in or to be included in any Claim.

#### 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 twenty-one (21) calendar 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 District and the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) calendar days after the Architect has given notice of the decision. If the District 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:

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

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.

Subsurface or latent physical conditions at the Site differing from those indicated by the Contract Documents.

Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The District shall promptly 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 will issue a change order under the procedures described in the Contract.

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

#### 4.5.6 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 affected Work. Each Claim for additional cost must include any claim for additional time and its associated costs. 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 District 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 District, termination of the Contract by the District, the District'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 and substantiating schedule related data as provided herein shall be given. The Contractor's claim shall include the cost associated with the extension and effect of delay on progress of the Work. In the case of a continuing delay, only one (1) claim is necessary.

##### 4.5.7.2 Adverse Weather Claims

If adverse 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, could not have been reasonably anticipated, and had an adverse effect on the Project Critical path. Adverse weather conditions shall be considered only as those conditions that exceed the average annual number of rain days and rain quantities for the county where the work is located as established by the Annual Local Climatological Summary and NOAA National Technical Memorandum NWS WR-65 (Revised) as published by the United States Government, National Weather Service, National Climate Center, Asheville, North Carolina.

##### 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 later than as required by paragraph 4.5.2 unless the District agrees in writing to allow such reservation.

#### 4.5.8 Delay in the Work – Timely Extension

4.5.8.1 The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work or thereof within the time limits fixed therein. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time

specified in the Contract, or any extension thereof, or fails to complete said work within such time, the District may exercise the termination provisions set forth below.

4.5.8.2 Excusable Delays. Excusable delays shall be delays in the Contractor's work due to Force Majeure such as war, insurrection, riot, acts of the public enemy, fire, earthquake, flood, casualty, epidemic, quarantine, restriction, strike, lockout, freight embargo, lack of transportation, or archaeological occurrences as described in Section 13.9, weather of an unusually severe nature, governmental actions or restrictions, injunction, or acts of God, beyond the Contractor's control, or by delay authorized by the District, or by any cause which the District shall decide to justify the delay. Once the site development work is completed or substantially completed, the Contractor will not generally be granted time extensions for weather conditions which are normal conditions for the time of year in the area where the Project is located according to the U.S. Weather Bureau Records. Except as provided in Section 14.2.7 below, in the event of an excusable delay, the time of completion shall be extended for such reasonable time as the District may decide. The Contractor's right to an extension of time for an excusable delay is expressly subject to Contractor's giving written notice of such claim within the time periods required by Section 4.5.7. Failure to give such notice shall be construed as a waiver of such right. It is understood and agreed that extensions of time and auditable costs directly related to an excusable delay shall be the Contractor's sole and exclusive remedy for said excusable delay.

4.5.8.3 The Contractor and the District understand and agree that the Contract time for the completion of this Project is a very important part of the Contract. Extensions of time will only be granted as provided above when events actually cause the Contractor to be delayed in the performance of the progress of the work. When acts or omissions occur which could cause delay, the Contractor will take all reasonable means in order to be able to continue to work as scheduled without any delay, or as short a delay as possible. Additionally, if inclement weather causes accumulation of standing water on the work site or other conditions which might cause delay, the Contractor shall take all measures reasonably necessary to permit work to continue as quickly as possible.

4.5.8.4 Unexcused delays shall be delays in the Contractor's work due to acts or neglect of the Contractor, its employees, subcontractors or those under it by contract or otherwise. In the event of an unexcused delay, the Contractor expressly agrees that it shall not be entitled to either an extension of time or recovery of its costs.

4.5.8.5 A request for an extension of time, or the granting of an extension of time, shall not constitute a basis for any claim against the District for additional compensation or damages unless caused by the District or another contractor employed by the District.

#### 4.5.9 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.

#### 4.6 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 Contract Code section 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 District.



#### 4.7.2 Submission of Claims Less than \$375,000

The Contractor shall submit its claim of \$375,000 or less to the District in writing, within the time frames established under paragraph 4.5.2, but no later than before the final payment is made. The District shall respond within the time provided by statute. If the Contractor disagrees with the response or the District fails to respond within the time permitted, the Contractor shall notify the District 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 District shall schedule a meet-and-confer conference within thirty (30) days of the demand. If not resolved at the meet-and-confer conference, the Contractor may initiate a civil action as set forth in Public Contract Code section 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 this Contract 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, disputes in excess of a total value of \$375,000 shall first be submitted to the claims procedures set forth in paragraph 4.5.

#### 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 civil action of the controversy or claim.

## ARTICLE 5

### SUBCONTRACTORS

#### 5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

##### 5.1.1 Assignment or Substitution - Consent of District

In accordance with Public Contract Code sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the District: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit



any such Subcontractor to be assigned or transferred, or allow work 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 (.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.

#### 5.1.2 Grounds for Substitution

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 as provided for in Public Contract Code section 4107.

### 5.2 SUB CONTRACTUAL 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 District and the Architect. Each subcontract agreement shall preserve and protect the rights of the District and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, 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 District. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

Assignment is effective only after termination of the Contract with the Contractor by the District for cause pursuant to Article 14 and only for those subcontract agreements which the District accepts by notifying the Subcontractor in writing; and

Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

## ARTICLE 6

### CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

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

##### 6.1.1 District's Rights

The District reserves the right to perform work related to the Project with the District's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site. Upon the election to perform work with its own forces or by separate contracts, the District shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the District, 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 District/Contractor Agreement.

##### 6.1.3 Contractor Duties

In the event that separate contract are awarded for different portions of the Project or other construction or operations on the Site, the Contractor shall participate with other separate contractors and the District in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the District until subsequently revised.

#### 6.2 MUTUAL RESPONSIBILITY

##### 6.2.1 Delivery and Storage

The Contractor shall afford the District 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 District or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent 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 District'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 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 District or separate contractors.

### 6.3 DISTRICT'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the District as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.13, the District 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 District for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by executed Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the District, the Architect, the Contractor, and the DSA.

##### 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 District and the Contractor. The Contractor shall carry out such written orders promptly.

## 7.2 CHANGE ORDERS (“CO”)

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

- (1) A change in the Work;
- (2) the amount of the adjustment in the Contract Sum, if any; and
- (3) the extent of the adjustment in the Contract Time, if any.

## 7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)

### 7.3.1 Authorized

The District 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 including changes to the Contract Sum and Contract Time.

### 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”)

### 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.

### 7.4.2 Scope

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. Issuance of or response to an RFI does not, *per se*, modify the Contract Cost, Contract Time, or the Contract Documents.

### 7.4.3 Response Time

The Architect will respond to a RFI within fourteen (14) calendar days after receiving such request. If the Architect’s response results in a change in the Work, then such change shall be effected by a written CO or CCD. If the Architect cannot respond to the RFI within fourteen (14) calendar days, the Architect shall notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.

### 7.4.4 Costs Incurred



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

## 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 District and the Architect an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

### 7.5.2 Scope

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

## 7.6 CHANGE ORDER REQUEST (“COR”)

### 7.6.1 Definition

A COR is a written request prepared by the Contractor asking the District 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 Price due to proposed change or claim.

### 7.6.3 Changes in Time

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

## 7.7 COST OF CHANGE ORDERS

### 7.7.1 Scope

Within ten (10) calendar days or such lesser period of time as may be required by District after a request is made for a change that impacts the Contract Sum or the Contract Time, the Contractor shall provide to the District and the Architect in writing an estimate of the effect of the proposed CO upon the Contract Price 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 District by an appropriate written



CO, or, at the District's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

#### 7.7.2 Determination of Cost

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

- (1) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2) Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the District and the Contractor;
- (3) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (4) By cost of labor and materials and percentage thereof as overhead and profit.

#### 7.7.3 Lump Sum Proposal

If the District elects to have the Change in the Work performed on a lump sum basis, such election shall be based on a lump sum proposal which shall be submitted by the Contractor within ten (10) calendar days of the District's request therefor. Request for a lump sum proposal shall not be deemed an election to have the work performed on a lump sum basis. The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the change (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any subcontractors which will perform any portion of the change, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the contractor's estimate of the time required to perform said changes or additional work.

The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is anticipated, Social Security, federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as field and home office overhead, and profit for the Contractor or any Subcontractor, as applicable (said overhead and profit to include all supervision except foremen). But in no case will the aggregate mark-up for the Contractor and Subcontractor total more than 15% of the direct material costs, and 5% of the equipment rental costs, as defined above. These costs shall not include charges for listed equipment or major tools with a new cost of \$500.00 or less. No time charges shall be allowed except for equipment actually used for the proper and efficient performance or completion of the authorized change in the Work.

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or its Subcontractors for materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any Subcontractor (said overhead and profit to include all small tools). The lump sum proposal may further include the Contractor's and any Subcontractors' reasonably anticipated rental costs in connection with the Change in the Work (either actual rates or discounted local published rates), plus up to five percent (5%) thereof as overhead and profit for the Contractor or any Subcontractors, as applicable. The lump sum proposal may not include charges for listed equipment or major tools with a new cost of \$500.00 or less. If any of the items included in the lump sum proposal are covered by the unit prices contained in the Contract Documents, the District may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use the unit prices in lieu of the similar items included in the lump sum proposal in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum proposal may include up to six percent (6%) of the amount which the Contractor will pay to any of its Subcontractors for the Change in the Work as a commission to the Contractor.

#### 7.7.4 Labor and Material

If the District elects to have the Change in the Work performed on the basis of the cost of labor and materials the following requirements shall apply:

1. Daily Reports by Contractor.
  - a) General: At the close of each working day, the Contractor shall submit a daily report to the Inspector, on forms approved by the District, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.
  - b) Labor: Show names of workers, classifications, and hours worked.
  - c) Materials: Describe and list quantities of materials used.

- d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.
2. Basis for Establishing Costs.
- a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

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

- c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$500 or less.

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

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

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned

to its rental source at less expense to the District than holding it at the work Site, it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the District.

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

- d) Other Items. The District may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.
- e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the District may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.
- f) Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty duration, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs but at no time shall the combined profit and overhead exceed fifteen percent (15%) of the total cost.

#### 7.7.5 No Overhead and Profit

No overhead and profit will be paid by the District on account of a change in the Work except as specifically provided in sections 7.7.3 and 7.7.4. Overhead and profit shall be deemed to include all costs and expenses which the Contractor or any of its subcontractors may incur in the performance of the change in the Work and which are not otherwise specifically recoverable by them pursuant to said sections.

#### 7.7.6 No Cost for Deleted Work

The Contractor agrees that it shall not be entitled to claim damages for anticipated profits on any portion of Work that may be deleted. The amount of any adjustment for Work deleted shall be estimated at the time deletion of Work is ordered and the estimated adjustment will be deducted from the subsequent monthly pay estimates.

#### 7.7.7 Accounting Records and Books

Contractor shall maintain books, records and accounts of all costs incurred in connection with the Project in accordance with generally accepted accounting principles and practices. The District and its authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

1. The Contract is terminated for any reason in accordance with the provisions of the Contract Documents in order to arrive at equitable termination costs;
2. In the event of a disagreement between the Contractor and the District over the amount due the Contractor under the terms of the Contract;
3. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, backcharges, or others, as may be provided for in this contract; and/or
4. If it becomes necessary to determine the District's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the District;
5. To determine any difference in cost occasioned by a permissible substitution;
6. For any other reason in the District's reasonable judgment.

If any of the conditions 1 through 6 are satisfied, Contractor shall provide the District (or its representative), unlimited, reasonable access during working hours to the Contractor's books and records under the conditions stated above. The District's audit rights shall be liberally construed in the District's favor.

The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the District for review for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor (but without any charge to the District), all Contractor's books, records, documents, photographs, micro-photographs, and other evidence bearing on the costs and expenses of the Contract under the Contract and relating to the work hereunder. Such preservation and right of review shall (without



limitation) extend to Contractor’s estimate for the Project (include all calculations and take-offs) and any budget prepared thereon.

#### 7.7.8 Project Records Preservation

The District’s right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include the provisions of sections 7.7.7 through 7.7.8 in all subcontracts issued by Contractor and shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the District’s rights hereunder, Contractor shall be liable to the District for all costs, expenses and attorney’s fees which the District may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise have been available to the District from said persons under this clause. Such audit may be conducted by the District or its authorized representative.

#### 7.7.9 Project Records Termination

The District’s right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include the provisions of sections 7.7.7 through 7.7.8 in all subcontracts issued by Contractor and shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the District’s rights hereunder, Contractor shall be liable to the District for all costs, expenses and attorney’s fees which the District may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise have been available to the District from said persons under this clause. Such audit may be conducted by the District or its authorized representative.

#### 7.7.10 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.

## ARTICLE 8

### LEGAL RELATIONS AND RESPONSIBILITY

#### 8.1 COMPLIANCE WITH LAWS – PERMITS, REGULATIONS, TAXES

The Contractor is an independent contractor and shall, at the Contractor's sole cost and expense, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, pay at its expense all construction related taxes including but not limited to manufacturers' taxes, sales taxes, use taxes, processing taxes, and all Federal and State taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to the Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. The Contractor shall also pay, at its expense, all property tax assessments on materials or equipment used until acceptance by the District. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in the Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Architect in writing. It shall also protect, defend and indemnify the District and all of the District's officers, agents, and servants against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor himself or by his employees. Particular attention is called to the following:

8.1.1 Without limitation, materials furnished and performance by the Contractor hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable Federal regulations.

8.1.2 The Contractor, upon request, shall furnish evidence satisfactory to the District and the Architect that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the District that it is licensed by all applicable governmental bodies to perform the Contract and will remain so licensed throughout the progress of the Work, and that it has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable performance under the Contract.

8.1.3 The Contractor is required to insure that material safety data sheets (MSDS's) for any material requiring a material safety data sheet pursuant to any Federal or State law are available in a readily accessible place on the Project premises. The Contractor is also required to insure (i) the proper labeling of any substance brought onto the Project premises by the Contractor or any subcontractors, and (ii) that the person(s) working with the material, or within the general area of the material, are appropriately informed about the hazards of the substance and follow proper handling and protection procedures.

8.1.4 The Contractor is required to comply with the provisions of California Health and Safety Code section 25249 *et seq.* (Proposition 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

8.1.5 The Contractor shall comply in all respects with the District's labor compliance program as required by State Law.



8.1.6 Contractor shall comply with and shall ensure that all subcontractors comply with District's contract employee fingerprint requirements through the Department of Justice prior to employee(s) beginning work on the Project. Contractor must contact District Facility Department for the necessary forms.

## 8.2 PREVAILING WAGE

8.2.1 The Contractor shall forfeit as penalty to the District the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Contractor or any Subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775 which is incorporated herein by reference. Copies of the current schedules for prevailing wages are on file in the District's office, and the contents of those schedules are included herein as if set forth in full.

8.2.2 Effective March 1, 2015, all bidders must have registered with the California State Department of Industrial Relations pursuant to Labor Code section 1725.5 prior to submitting a bid. Furthermore, effective April 1, 2015, a constructor must be registered pursuant to Labor Code section 1725.5 before entering into a contract to work on a public project.

8.2.3 The District will not recognize any claims for additional compensation because of the payment of the wages set forth in these General Conditions. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its proposal, and will not under any circumstances, other than delays caused by the District, the Architect, or the District's agents, be considered as the basis of a claim against the District.

8.2.4 The Contractor agrees to follow the instructions of the District's labor compliance officer until notified otherwise in writing by the District.

8.2.5 Contractor agrees that the Work is subject to monitoring and enforcement of prevailing wage requirements by the Division of Labor Standards Enforcement as set forth in Chapter 1 of Part 7 of Division 2 of the California Labor Code (commencing at section 1720) and the accompanying regulations at Subchapter 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing at section 16450). The Contractor and each subcontractor performing any portion of the Work shall comply with California prevailing wage laws. The Director of the Department of Industrial Relations of the State of California has determined the general prevailing rate of wages of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract. Copies of the applicable prevailing wage rate determinations are made available to the Contractor and Subcontractor at the Pre-Job Conference Meeting. The Contractor shall post a copy of this document at the prevailing wages at each job site, (available at



[www.dir.ca.gov/Public-Works/Forms\\_Publications\\_and\\_Resources.html](http://www.dir.ca.gov/Public-Works/Forms_Publications_and_Resources.html), the office of the DLSE), printed on 8 1/2" X 11" paper or larger, in accordance with California Code of Regulations, Title 8, section 16451(d). It shall be mandatory upon the Contractor and upon any Subcontractor under him or her, to pay not less than the said specified prevailing rates of wages to all workers employed by them under the Contract.

### 8.3 PREVAILING WAGE RECORDS

8.3.1 The Work is subject to monitoring and enforcement of prevailing wage requirements by the Department of Industrial Relations and the following provisions will apply:

8.3.1.1 Contractor and subcontractors shall maintain and furnish to the Department of Industrial Relations, a certified copy of each weekly payroll (but no less often than monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports in PDF form shall be transmitted electronically to the Department of Industrial Relations after first registering at <https://apps.dir.ca.gov/eCPR/DAS/altlogin>. The provisions of Labor Code section 1776 are incorporated herein by reference.

8.3.1.2 The DISTRICT and the Department of Industrial Relations shall review, including by way of job site inspections, and, if appropriate, audit payroll records to verify compliance with the public works requirements of the Labor Code. The Department of Industrial Relations will notify the Contractor or Subcontractor(s), as appropriate) of any noncompliance, in order for all such Contractor or Subcontractor(s) to correct the noncompliance.

8.3.1.3 The District shall withhold payments when payroll records are delinquent or inadequate.

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

8.3.1.5 The District shall cooperate with the Department of Industrial Relations and DLSE in any investigation of suspected violations of prevailing wage requirements.

8.3.1.6 As directed by the Labor Commissioner, the District shall withhold Contract payments equal to the payments due or estimated to be due to the Contractor or Subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against such Contractor or Subcontractors. The Contractor shall be required to withhold payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured such delinquency or deficiency.



8.3.1.7 These payroll records shall be made available to the District's representatives. These records shall be maintained during the course of the Work. The Contractor and all subcontractors shall make the certified payroll records available for inspection by District representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

8.3.1.8 The Contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower tier subcontractors.

8.3.1.9 The Project will not be accepted as complete by the District nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.

8.3.1.10 A pre-construction conference shall be conducted before commencement of the Work with the Contractor and subcontractors at which time the prevailing wage requirements will be reviewed and agreed to by all parties.

### 8.3.2 Labor Discrimination

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

### 8.3.3 Eight-Hour Day Limitation

8.3.3.1 In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, incorporated herein by reference, eight hours labor shall constitute a day's work, and no worker in the employ of said Contractor, or any Subcontractor, doing or contracting to do any part of the work contemplated by the Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code Section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.

8.3.3.2 The Contractor and each Subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the Work. This record shall be open at all reasonable hours to



the inspection of the District, State and Federal officers and agents. It is hereby further agreed that, except as provided in (a) above, the Contractor shall forfeit as a penalty to the District the sum of twenty-five dollars (\$25) for each worker employed in the performance of the Contract by the Contractor or by any of its Subcontractors for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in and one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.

#### 8.3.4 Compliance with State Requirements for Employment of Apprentices.

8.3.4.1 The Contractor's attention is directed to Section 1777.5 of the Labor Code. Provisions of said Section pertaining to employment of registered apprentices are hereby incorporated by reference into these Specifications. As applicable, the Contractor or any Subcontractor employed by the Contractor in the performance of the Work shall take such actions as necessary to comply with the provisions of Section 1777.5.

#### 8.3.5 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 District.

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

### 8.4 PROGRESS AND COMPLETION

#### 8.4.1 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.

#### 8.4.2 No Commencement without Insurance

The Contractor shall not knowingly, except by agreement or instruction of the District, 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.

#### 8.4.3 Expeditious Completion

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



## ARTICLE 9

### PAYMENTS AND COMPLETION

#### 9.1 CONTRACT SUM

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

#### 9.2 COST BREAKDOWN

##### 9.2.1 Required Information

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

Within ten (10) calendar days of the award of the Contract, a detailed breakdown of the Contract Price (Schedule of Values) for each Project or Site;

Within ten (10) calendar days of the award of the Contract, 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 District may require;

Five (5) calendar days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;

Within ten (10) calendar days, 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 District Approval Required

The District shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be approved by the Inspector, Architect, and District, in that order, before becoming the basis of any payment.

#### 9.3 APPLICATIONS FOR PAYMENT

##### 9.3.1 Procedure

On or before the fifth (5<sup>th</sup>) 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:

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;  
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;

The balance that will be due to each of such entities after said payment is made; A certification that the Record Drawings and Annotated Specifications are current; The additions to and subtractions from the Contract Price and Time;

A summary of the retention (each Application shall provide for retention, as set out in Article 9.6, of the amount due until completion of the Work of the Contractor and Final Acceptance thereof by District);

Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

The percentage of completion of the Contractor's Work by line item; and

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.

### 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 District, to assure that there will be no delays, payment by the District for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and District 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 District, 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 District to establish the District's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the District'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 District 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 District 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 District 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 District 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 review by the Architect 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 District 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 District may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required by paragraph 9.4.2 cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of:

Defective Work not remedied;

Stop Notices filed, unless the Contractor at its sole expense provides a bond or other security satisfactory to the District in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the District, which protects the District against such claims;

Liquidated damages assessed against the Contractor;

Reasonable doubt that the Work can be completed for the unpaid balance of any Contract Price or by the completion date;

Damage to the District, another contractor, or subcontractor;

Unsatisfactory prosecution of the Work by the Contractor;

Failure to store and properly secure materials;

Failure of the Contractor to 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;

Failure of the Contractor to maintain record drawings;

Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

Unauthorized deviations from the Contract Documents; or

Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.



### 9.5.2 Written Reasons for Withholding Provided

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

### 9.5.3 Payment After Cure

When the grounds for declining approval are removed, payment will be made for amounts withheld because of them. No interest shall be due 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 approval of the Request for Payment, Contractor shall be paid a sum equal to ninety five percent (95%) of the value of the Work performed 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 District 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 District concerning the Work, or any portion thereof, remains uncompleted with. At any time after fifty percent (50%) of the Work has been completed, if the District, by action of its governing body, finds that satisfactory progress is being made, the Contractor may request, and District may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as the District may find appropriate based on the Contractor's progress. Such amount shall hereafter be referred to as "retainage". Under this Contract, the Contractor has the option of permissible substitution of securities as provided for in section 22300 of the Public Contract Code.

### 9.6.2 Payments to Subcontractors

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 District 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 District, on account of portions of the Work done by such Subcontractor.

#### 9.6.4 No Obligation of District for Subcontractor Payment

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

#### 9.6.5 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, a progress payment, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of work not in accordance with the Contract Documents.

### 9.7 COMPLETION OF THE WORK

#### 9.7.1 Close-Out Procedures

When the Contractor considers that the Work, or a portion thereof which the District agrees to accept separately, is complete, the Contractor shall prepare and submit to the District 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 District will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the District's inspection discloses any item, whether or not included on the Contractor's list, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before District's issuance of the Notice of Completion, complete or correct such item. The Contractor shall then submit a request for an additional inspection by the District to determine Completion. When the Work, or designated portion thereof, is complete, the District will prepare a Notice of Completion which shall establish the date of Completion, establish the responsibilities of the District 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 District and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

#### 9.7.2 Costs of Multiple Inspections

More than two (2) requests of the District 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 District's Rights

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

It is understood and agreed that the District shall have the right to occupy the building or use the improvement contemplated by the Contract prior to the completion of the entire work, and that such occupancy or use shall not operate as an acceptance of any part of the work, nor shall the Contractor be entitled to, or make demand for, additional compensation or extension of time because of such occupancy

In case that the Contractor has not completed the work and the contract time, including authorized time extensions, has expired, the District reserves the right to occupy any portion of the Work at any time before completion and while work is in progress. In the event of such occupancy, the Contractor shall provide, without additional cost to the District, suitable protection by means of fencing, barriers, posted signs or other method as required to prevent persons other than those directly connected with the Work from entering remaining areas where continuing Work is being conducted, vehicles are operating, or materials are stored.

Occupancy by the District prior to final acceptance shall not be deemed to constitute a waiver of existing claims in behalf of the District or Contractor against each other. If the Contractor fails to complete all of the project in the time frame agreed upon, including any approved time extensions, the Contractor shall not enter into any occupied areas to complete the Work until after those areas are vacated each day by district personnel and or students.

The metered cost of electricity, water, fuel, etc., for the occupied portion and the cost of operating the heating and air conditioning systems for the occupied portion will be borne by the Contractor until final completion.

Use and occupancy by the District prior to final acceptance shall not relieve the Contractor of his responsibility to provide and maintain all insurance and bonds required of the Contractor under the contract until the Final Completion of the Work.

### 9.8.2 Inspection Prior to Occupancy or Use

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



### 9.8.3 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.

## 9.9 COMPLETION AND FINAL PAYMENT

### 9.9.1 Final Inspection

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 will inspect the Work and will submit to Contractor and District a final inspection report noting the work, if any, required in order to complete the Work in accordance with the Contract Documents.

Upon completion of the Work contained in the final inspection report, the Contractor shall so notify the Architect, who will again inspect such Work. If the Architect finds the Work contained in such final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it will 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 will issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The District will thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete, the District will record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from District, pay the amounts due Subcontractors.

### 9.9.2 Retainage

The retainage, less any amounts disputed by the District or which the District has the right to withhold, will be paid after approval of the District of the Architect's Certificate of Payment referred to in paragraph 9.9.1, after the satisfaction of the conditions set forth in paragraph 9.9, and within sixty (60) calendar days after the acceptance of the Work and recording of the Notice of Completion by District. No interest shall be due or paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code 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 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 District 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 District.

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 District required under the Contract.

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.

The Contractor shall deliver to the Architect all certificates, warranties, final reports, approvals and DSA documents along with 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.

Architect shall have issued a Final Certificate of Payment.

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

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.

### 9.10 SUBSTITUTION OF SECURITIES

In accordance with section 22300 of the Public Contract Code, the District will permit the substitution of securities for any monies withheld by the District 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 District, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor.



Upon satisfactory 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 District.

The Contractor shall be the beneficial District 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 provided by the District.

## **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 First-Aid Supplies at Site**

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

#### **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.
- D. Upon request by the district the contractor shall provide material sheets and data sheets, Material Safety Data Sheets (MSDS) on all products and/or components used on this project.

#### 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 Districts and users of adjacent sites and utilities.

#### 10.2.4 Use or Storage of Hazardous Material

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

### 10.3 PROTECTION OF WORK AND PROPERTY

#### 10.3.1 Protection from Elements

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

#### 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 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 District.

#### 10.3.4 Subcontractor Enforcement of Rules

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

#### 10.3.5 Site Access

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

#### 10.3.6 Protection of Materials

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and 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).

### 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 District all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal



injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger 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 District and the Architect in writing, whether or not such material was generated by the Contractor or the District. The Work in the affected area shall not thereafter be resumed, except by written agreement of the District and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the District and the Contractor.

### 10.5.2 Hazardous Material Work Limitations

In the event that the presence of hazardous materials is suspected or discovered on the Site, the District shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by District, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

## ARTICLE 11

### INSURANCE, INDEMNITY, AND BONDS

#### 11.1 CONTRACTOR'S LIABILITY INSURANCE

##### 11.1.1 Insurance Requirements

Contractor shall procure and maintain, at its own expense, for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, his agents, representatives, employees, Subcontractors, or Sub-Subcontractors. The cost of such insurance shall be included in the Contractor's Proposal.

11.1.1.1 Neither the Contractor nor any Subcontractors shall commence any work until all required insurance has been obtained at their own expense.



Such insurance must have the approval of the District as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.

11.1.1.2 Any insurance bearing on adequacy of performance shall be maintained after completion of the Project for the full guarantee period.

11.1.1.3 Prior to execution of the Contract, the Contractor shall furnish the District with original endorsements effecting coverage for all policies required by the Contract. The Contractor shall not permit any Subcontractor identified in the Designation of Subcontractors form to commence work on this project until such Subcontractor has furnished the District with original endorsements effecting coverage for all insurance policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms mutually agreed to between Contractor and its insurers and the District. The District may require the Contractor or any Subcontractor to furnish complete certified copies of all insurance policies effecting the coverage required by the Contract.

11.1.1.4 All of the Contractor's policies shall contain an endorsement providing that written notice shall be given to the District at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

11.1.1.5 Any policy or policies of insurance that the Contractor elects to carry as insurance against loss or damage to its construction equipment and tools shall include a provision therein providing a waiver of the insurer's right to subrogation against the District and the Architect.

11.1.1.6 The requirements as to the types, limits, and the District's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

11.1.1.7 In addition to any other remedy the District may have, if the Contractor or any of the subcontractors fails to maintain the insurance coverage as required in this Section, the District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the District may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.

11.1.1.8 The Contractor and all Subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the District. The maintenance by the Contractor and all Subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of the Contractor or any Subcontractor to maintain or renew coverage or to provide evidence of renewal may be treated by the District as a material breach of this Contract.

## 11.1.2 Worker's Compensation and Employer's Liability Insurance

11.1.2.1 Worker's Compensation. The Contractor and all Subcontractors shall maintain insurance to protect the Contractor or subcontractor from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Workers' Act. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable State and Federal statutes and regulations. The Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the General Construction Provisions. If an injury occurs to any employee of the Contractor or any of the Subcontractors for which the employee or its dependents, in the event of its death, may be entitled to compensation from the District under the provisions of the said Acts, or for which compensation is claimed from the District, there will be retained out of the sums due the Contractor under this Contract, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the District is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due, the Contractor.

### 11.1.3 Commercial General and Automobile Liability Insurance

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

- (i) Form and Amount. Coverage for commercial general liability and automobile liability shall be at least as broad as the following: (1) Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01 04 13); (2) Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01 63 01 Symbol 1). The amount of insurance coverage shall not be less than \$5,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and property damage, or any combination of the three. Any deductibles must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses.

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

- (i) Form and Amount. Coverage for commercial general liability and automobile liability shall be at least as broad as the following: (1) Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01 04 13); (2) Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01 03 10 Symbol 1). The amount of

insurance coverage shall not be less than \$1,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and property damage, or any combination of the three. Any deductibles must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the subcontractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses.

11.1.3.3 The Contractor's commercial general and automobile liability insurance coverage shall include the following:

- (i) ISO CG 20 10 07 04 additional insured endorsement, or equivalent, naming the District and District's officers, employees, and agents, each as additional insureds with respect to any potential liability arising out of the performance of any work under the Contract, and providing that such insurance is primary insurance as respects the interests of the District and District's officers, employees, and agents and that any other insurance, risk pool membership, or other liability protection maintained by the District is excess to the insurance required hereunder, and will not be called upon to contribute to any loss unless and until all limits available under the contractor's and subcontractor's insurance policy/policies have been paid;
- (ii) No exclusion of coverage for suits by the District against the Contractor for otherwise covered risks;
- (iii) Broad Form Property Damage, Personal Injury, Contractual Liability, Protective Liability, and Completed Operations coverages, and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards;
- (iv) ISO CG 20 37 07 endorsement or equivalent naming the District and the District's officers, employees and agents, each as additional insureds under the Broad Form Property Damage and Completed Operations coverage for any potential covered liability arising from the Contract.
- (v) The Contractor's insurance shall contain a provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract, including, without limitation, that set forth in Section 11.4 Indemnity and Litigation Costs;
- (vi) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall

not affect coverage provided to the District, its officers, officials, employees, or volunteers; and

- (vii) The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.1.3.4 Builder's Risk or Installation Floater "All-Risk" Insurance. Before commencement of the Work, the Contractor shall submit written evidence that it has obtained for the period of the Contract, Builder's Risk "All-Risk" Completed Value Insurance and/or Inland Marine "All-Risk" Installation Floater Insurance, as may be applicable, upon the entire project which is the subject of the Contract, including completed work and work in progress. The policy or policies of insurance shall name the Contractor and the District as insureds as their respective interests may appear, and shall include an insurer's waiver of subrogation rights in favor of each. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the District. The Builder's Risk policy will exclude coverage for earthquake and flood and the risk of loss of these casualties shall not be borne by the Contractor.

## 11.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with Article 9 shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The District 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.

## 11.3 OTHER INSURANCE

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

## 11.4 INDEMNITY AND LITIGATION COST

11.4.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the District, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, 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 Indemnities; 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 thereunder. This indemnity shall imply no reciprocal right of the Contractor in any action on the Contract pursuant to California Civil Code Section 1717 or Section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by the Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or Subcontractor's agents, employees and representatives, resulting in claim or liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the District.

11.4.2 In any and all claims against the District and District's officers, employees and agents by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.

## 11.5 COMPLIANCE

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

## 11.6 SURETY QUALIFICATION

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

## 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.

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

#### 12.2 CORRECTION OF WORK

##### 12.2.1 Correction of Rejected Work

The Contractor shall promptly correct the Work rejected by the Inspector or the District upon recommendation of the Architect 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 Two-Year Warranty Corrections

If, within two (2) years after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established under paragraph 9.7.1, 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 District to do so unless the District has previously given the Contractor a written acceptance of such condition. This period of two (2) years 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. The obligation under this paragraph shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.



### 12.2.3 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 District.

### 12.2.4 District's Rights if Contractor Fails to Correct

If the Contractor fails to correct nonconforming Work within a reasonable time, the District may correct it in accordance with paragraph 2.3. 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 District through the Architect, the District 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) calendar days after written notice, the District 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 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 District.

### 12.2.5 Cost of Correcting the Work

The Contractor shall bear the cost of correcting destroyed or damaged construction of the District 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 section 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: that all such improper work should be removed, remade, and replaced, that all work disturbed by these changes be made good at the Contractor's expense, and that the District 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 District, at its option, may pursue either course unless correction is required by law.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### 13.1 GOVERNING LAW

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

#### 13.2 SUCCESSORS AND ASSIGNS

The District and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### 13.3 WRITTEN NOTICE

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

#### 13.4 RIGHTS AND REMEDIES

##### 13.4.1 Duties and Obligations Cumulative

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

##### 13.4.2 No Waiver

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

#### 13.5 TESTS AND INSPECTIONS

##### 13.5.1 Compliance



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

#### 13.5.2 Independent Testing Laboratory

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

#### 13.5.3 Advance Notice to Inspector

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

#### 13.5.4 Testing Off-Site

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

#### 13.5.5 Additional Testing or Inspection

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

#### 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 District, invoiced to the Contractor, and deducted from the next Progress Payment.

#### 13.5.7 Costs for Premature Test

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the District for all costs and expenses resulting from that testing or inspection, including, but not limited to,



the Architect's fees and expenses, and the amount of the invoice of shall 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 INTEREST

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### 13.7 TRENCH EXCAVATION

#### 13.7.1 Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the 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 ASSIGNMENT OF ANTITRUST AND UNFAIR BUSINESS PRACTICE CLAIMS

#### 13.8.1 Application

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to the Contract, the Contractor and all Subcontractors shall offer and agree to assign to the District all rights, title, and interest in and to all causes of action it



may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgement by the parties.

### 13.9 GENERAL CONTRACTOR'S LICENSE NOTICE

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, 3132 BRADSHAW ROAD, SACRAMENTO, CALIFORNIA. MAILING ADDRESS: P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

### 13.10 HISTORICAL, SCIENTIFIC AND ARCHEOLOGICAL DISCOVERIES

13.10.1 All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity that may be uncovered by the General Contractor during the progress of work, shall become District property. Such findings shall be reported immediately to the Architect who will determine the method of removal, where necessary, and the final disposition thereof.

## ARTICLE 14

### TERMINATION OR SUSPENSION OF THE CONTRACT

#### 14.1 SUSPENSION OF WORK

14.1.1 The District may at any time, by notice in writing to the Contractor, suspend any part of the Work for such period of time as may be necessary to prevent improper execution of the Work on the Project by the Contractor, his Subcontractors or agents, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.

14.1.2 The District may at any time suspend any part or all of the Work upon ten (10) days written notice to the Contractor, who shall thereupon discontinue all work suspended except for all operations to prevent loss or damage to work already executed as may be directed by the District. Work shall be resumed by the Contractor after such suspension on written notice from the District.

14.1.3 In the event of any suspension of the Work in whole or in part under subsection (b) above, the Contractor shall be entitled to an extension of time

wherein to complete the Work to the extent of the delay caused the Contractor thereby and reasonable compensation for all resulting damage such suspension caused.

14.1.4 In the event the entire work shall be suspended by order of the District, as herein above provided, and shall remain so suspended for a period of sixty (60) consecutive days, through no fault of the Contractor, and notice to resume the Work has not been served on the Contractor as herein above provided, the Contractor may, at its option, by written notice to the District, terminate the Contract pursuant to the termination provisions found in the Contract and the District shall have no claim for damages because of such termination of the Contract

## 14.2 TERMINATION UPON DEFAULT

14.2.1 In the event of any default by the Contractor as described below, the District may, after giving ten (10) days written notice to the Contractor, terminate the Contractor's right to proceed with the Work or any part of the Work in the District's sole discretion. Events of default include:

14.2.1.1 A substantial failure or refusal to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or failure to complete said work within such time;

14.2.1.2 Filing of bankruptcy by the Contractor, or the making of a general assignment for the benefit of its creditors, or appointment of a receiver on account of the Contractor's insolvency without discharge of the receiver within ten (10) days after its appointment;

14.2.1.3 A substantial failure to make prompt payments to Subcontractors or suppliers;

14.2.1.4 A substantial persistent disregard of laws, ordinances, or the instructions of the Architect, or other substantial violation of any provision of the Contract; or

14.2.2 The rights and remedies of the District provided in this Section are in addition to any of the rights and remedies provided by law or under the Contract.

14.2.3 The District agrees that prior to declaring an event of default under subsections 12.3.1.1, 14.3.1.3, or 14.3.1.4, it shall allow the Contractor a period of two weeks commencing from delivery of written notification to the Project Representative as an opportunity to cure.

14.2.4 (d) The Contractor shall have no claim for damages for such termination, nor any claim for anticipated profits on the Work thus dispensed, with unless it is determined that the termination due to default was improper.

### 14.3 TERMINATION FOR CONVENIENCE

If at any time before completion of the Work, the District determines that it is either impossible or against the interests of the District to complete the Work, or if the Work is stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the District may, upon ten (10) days written notice to the Contractor, discontinue the Work and terminate the Contract. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as described below. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor any other actually performed up to the time of discontinuance, including any Extra Work ordered by the Architect or the District to be done, nor for any claim for liquidated damages.

Termination of the Contract for convenience and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

14.3.1 The District will issue the Contractor a written notice signed by the District, specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the District, the Contractor shall:

14.3.1.1 Stop all Work under the Contract except that specifically directed to be completed prior to Acceptance;

14.3.1.2 Perform Work the District deems necessary to secure the project for termination;

14.3.1.3 Remove equipment from the site of the Work;

14.3.1.4 Take such action as is necessary to protect materials from damage;

14.3.1.5 Notify all Subcontractors and suppliers that the Contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the District;

14.3.1.6 Provide the District with an inventory list of all material previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the District may request;

14.3.1.7 Dispose of material not yet used in the Work as directed by the District. It shall be the Contractor's responsibility to provide the District with good title to all materials purchased by the District hereunder, including material for which partial payment has been made and with bills of sale or other documents of title for such materials;

14.3.1.8 Subject to the prior written approval of the District, settle all outstanding liabilities and all claims arising out of subcontracts or orders for material terminated hereunder. To the extent directed by the District, the Contractor shall assign to the District all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder;

14.3.1.9 Furnish the District with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract; and

14.3.1.10 Take such other actions as the District may direct.

14.3.2 Termination of the Contract shall not relieve the Contractor of responsibility for damage to materials except as follows:

14.3.2.1 The Contractor's responsibility for damage to materials for which partial payment has been made and for materials furnished by the District for use in the Work and unused shall terminate when the District certifies that such materials have been stored in the manner and at the locations directed by the District;

14.3.2.2 The Contractor's responsibility for damage to materials purchased by the District subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of such materials has been taken by the District; and

14.3.2.3 When the Architect determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the Project for termination, the Architect will recommend that the District formally accept the Project, and immediately upon and after such Acceptance by the District, the Contractor will not be required to perform any further Work thereon and shall be relieved of its contractual responsibilities for injury to persons or damage to property which occurs after the formal Acceptance of the Project by the District.

14.3.3 The total compensation to be paid to Contractor shall include the following: (a) all amounts owing to it under the Contract for Work completed in accordance with the Plans and Specification as of the date on which the termination notice is delivered; (b) all amounts owing under the Contract for additional Work performed pursuant to Section 14.4.1 above; (c) any costs incurred by Contractor in canceling orders and contracts relative to this Contract that Contractor had placed or entered into prior to receipt of the cancellation notice and all reasonable costs of demobilization. All records of Contractor and the subcontractors, necessary to determine compensation in accordance with this Section shall be open to inspection or audit by representatives of the District at all times after issuance of the notice that the Contract is to be terminated and for a period of three (3) years, and such records shall be retained for that period.



14.3.4 The provisions of this Section shall be included in all subcontracts.

#### 14.4 RIGHTS OF DISTRICT UPON TERMINATION

14.4.1 In the event the right of the Contractor to proceed with the Work, or any portion thereof, has been terminated because of the fault of the Contractor and the Contractor has been given ten (10) days' notice to cure such fault and has not done so, the District may take over the Work and prosecute the same to completion by contract or any other method the District deems expedient, and may take possession of and utilize in completing the Work such materials, appliances, equipment and plant as may be on the site of the Work and necessary therefore. In such event, the Contractor and its sureties shall be liable for all damages including costs of managerial and administrative services, architect, legal and other consultant fees, and liquidated damages sustained or incurred by the District in enforcing the provisions of the Contract and in completing or causing to complete the Contract work.

14.4.2 Upon termination, the Contractor shall not be entitled to receive any further payment until the Work is finished. If upon completion of the Work the total cost to the District, including architect, legal and other consultant fees, costs of managerial and administrative services, construction costs, and liquidated damages shall be less than the amount which would have been paid if the Work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the District on account of termination of the Contract and subsequent completion of the Work by the District by whatever method the District may deem expedient shall exceed said amount which the Contractor would otherwise have been paid, the Contractor and his sureties shall be liable to the District for the full amount of such excess expense.

14.4.3 The rights and remedies of the District provided in this Section are in addition to any of the rights and remedies provided by the law or under the Contract.

#### 14.5 FAILURE TO TIMELY COMPLETE THE WORK – LIQUIDATED DAMAGES

14.5.1 Liquidated Damages. It is agreed by the parties to the Contract that time is of the essence. In the event all the Work is not completed before or upon the expiration of the time limit as set in the Contract and/or Progress Schedule, or within any time extensions that may have been granted, damage will be sustained by the District; and that it may be impracticable to determine the actual amount of damage by reason of such delay. Accordingly, it is agreed that the Contractor shall pay to the District as damages the amount set forth in the Supplementary and Special Conditions for each and every day's delay in finishing the Work in excess of the number of days specified. The parties expressly agree that this liquidated damage clause is reasonable



under the circumstances existing at the time the Contract was made. The District shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.

14.5.2 Exclusions. Notwithstanding the provisions of subsection 14.6.2, the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the District or the District of the utility under Government Code Section 4215.

Article 1	DEFINITIONS AND GENERAL PROVISIONS.....	3-2
1.1	BASIC DEFINITIONS .....	3-2
1.1.1	Architect.....	3-2
1.1.2	Change Order .....	3-2
1.1.3	Claim.....	3-2
1.1.4	Construction Change Directive.....	3-2
1.1.5	Contract.....	3-2
1.1.6	Contract Documents.....	3-3
1.1.7	Contract Sum or Contract Price .....	3-3
1.1.8	Contract Time .....	3-3
1.1.9	Contractor .....	3-3
1.1.10	Daily Reports .....	3-3
1.1.11	Days .....	3-3
1.1.12	Deferred Approvals.....	3-3
1.1.13	District.....	3-4
1.1.14	Drawings .....	3-4
1.1.15	Inspector.....	3-4
1.1.16	Notice to Proceed.....	3-4
1.1.17	Project .....	3-4
1.1.18	Project Site or Site .....	3-4
1.1.19	Project Manual .....	3-4
1.1.20	Retainage.....	3-4
1.1.21	Specialty Contractors .....	3-4
1.1.22	Specifications.....	3-5
1.1.23	Subcontractor .....	3-5
1.1.24	Sub-Subcontractor.....	3-5
1.1.25	Work .....	3-5
1.2	EXECUTION, CORRELATION AND INTENT .....	3-6
1.2.1	Correlation and Intent .....	3-6
1.2.1.1	Documents Complementary and Inclusive .....	3-6
1.2.1.2	Coverage of the Drawings and Specifications .....	3-6
1.2.1.3	Conformance With Laws .....	3-7
	(i) Work of this Contract is subject to the requirements of Group 1, Chapter 3-4, Part I, Title 24, CCR as follows: .....	3-7
1.2.1.4	Ambiguity .....	3-8
1.2.2	Addenda and Deferred Approvals .....	3-8
1.2.2.1	Addenda .....	3-8
1.2.2.2	Deferred Approvals.....	3-8
1.2.3	Specification Interpretation.....	3-8
1.2.3.1	As Shown, Etc.....	3-8
1.2.3.2	Provide .....	3-9
1.2.3.3	General Conditions .....	3-9
1.2.3.4	Abbreviations.....	3-9
1.2.3.5	Plural .....	3-9
1.2.3.6	Metric .....	3-9



1.2.3.7	Standard Specifications.....	3-9
1.2.3.8	Absence of Modifiers.....	3-9
1.2.4	Rules of Document Interpretation.....	3-10
1.3	OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS .....	3-10
Article 2	the District.....	3-11
2.1	INFORMATION AND SERVICES REQUIRED OF THE DISTRICT .....	3-11
2.1.1	Site Survey .....	3-11
2.1.2	Soils.....	3-11
2.1.2.1	District Furnished Services .....	3-11
2.1.2.2	Contractor Reliance .....	3-11
2.1.3	Utility Survey.....	3-12
2.1.4	Information .....	3-12
2.1.5	Existing Utility Lines; Removal, Relocation .....	3-12
2.2	DISTRICT’S RIGHT TO STOP THE WORK.....	3-13
2.3	DISTRICT’S RIGHT TO CARRY OUT THE WORK .....	3-14
Article 3	THE CONTRACTOR.....	3-14
3.1	SUPERVISION AND CONSTRUCTION PROCEDURES .....	3-14
3.1.1	Contractor .....	3-14
3.1.2	Contractor Responsibility .....	3-15
3.1.3	Obligations not Changed by Architect’s Actions .....	3-15
3.1.4	Acceptance/Approval of Work .....	3-15
3.1.5	Compliance with California Education Code Section 45125.2, as follows: 3-15	
3.2	SUPERINTENDENT .....	3-18
3.2.1	Full-Time Superintendent .....	3-18
3.2.2	Staff.....	3-18
3.2.3	Right to Remove .....	3-18
3.3	LABOR AND MATERIALS .....	3-18
3.3.1	Contractor to Provide.....	3-18
3.3.2	Quality.....	3-18
3.3.3	Replacement.....	3-19
3.3.4	Discipline .....	3-19
3.4	WARRANTY .....	3-20
3.5	TAXES.....	3-20
3.6	PERMITS, FEES AND NOTICES .....	3-20
3.6.1	Payment.....	3-20
3.6.2	Compliance .....	3-20
3.6.3	Responsibility .....	3-20
3.7	CONTRACTOR’S CONSTRUCTION SCHEDULES .....	3-21
3.7.1	Requirements .....	3-21
3.7.2	Failure to Meet Requirements.....	3-24
3.7.3	Schedule Float Time .....	3-24
3.8	DOCUMENTS AND SAMPLES AT THE SITE .....	3-25
3.9	SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES .....	3-25
3.9.1	Submittals defined .....	3-25

3.9.1.1	Shop Drawings.....	3-25
3.9.1.2	Samples .....	3-25
3.9.1.3	Contractor’s Responsibility .....	3-26
3.9.1.4	Extent of Review.....	3-26
3.9.2	Drawing Submission Procedure.....	3-27
3.9.2.1	Transmittal Letter and Other Requirements .....	3-27
3.9.2.2	Copies Required.....	3-27
3.9.2.3	Corrections.....	3-27
3.9.2.4	Approval Prior to Commencement of Work.....	3-27
3.9.3	Sample Submissions Procedure .....	3-27
3.9.3.1	Samples Required .....	3-28
3.9.3.2	Labels and Instructions .....	3-28
3.9.3.3	Architect’s Review.....	3-28
3.9.3.4	Record Drawings and Annotated Specifications .....	3-28
3.9.3.5	Equipment Manuals .....	3-29
3.9.3.6	District’s Property.....	3-29
3.9.4	Substitutions.....	3-29
3.9.4.1	One Product Specified .....	3-29
3.9.4.2	Two or More Products Specified .....	3-30
3.9.4.3	Substitution Request Form.....	3-30
3.9.4.4	List of Manufacturers and Products Required .....	3-30
3.9.5	Deferred Approvals.....	3-31
3.9.6	Conformance With Codes and Standards .....	3-31
3.9.7	Noise .....	3-31
3.9.8	Smoking and Alcoholic Beverages.....	3-31
3.10	CUTTING AND PATCHING .....	3-31
3.10.1	Scope.....	3-31
3.10.2	Consent .....	3-32
3.10.3	Structural Members.....	3-32
3.10.4	Subsequent Removal.....	3-32
3.11	CLEANING UP .....	3-32
3.11.1	Contractor’s Responsibility .....	3-32
3.11.2	Failure to Cleanup.....	3-32
3.11.3	Construction Buildings .....	3-33
3.12	ACCESS TO WORK.....	3-33
3.13	ROYALTIES AND PATENTS .....	3-33
3.13.1	Payment and Indemnity .....	3-33
3.13.2	Review .....	3-33
3.14	OVERLOADING .....	3-33
3.14.1	The Contractor Shall Determine Safe Loading.....	3-33
Article 4	ADMINISTRATION OF THE CONTRACT .....	3-34
4.1	ARCHITECT .....	3-34
4.1.1	Modification.....	3-34
4.1.2	Termination.....	3-34
4.2	ARCHITECT’S ADMINISTRATION OF THE CONTRACT .....	3-34
4.2.1	Status.....	3-34

4.2.2	Site Visits .....	3-34
4.2.3	Limitations of Construction Responsibility .....	3-34
4.2.4	Communications Facilitating Contract Administration .....	3-35
4.2.5	Payment Applications .....	3-35
4.2.6	Rejection of Work.....	3-35
4.2.7	Change Orders .....	3-35
4.2.8	Warranties Upon Completion .....	3-36
4.2.9	Interpretation.....	3-36
4.2.10	Additional Instructions.....	3-36
4.2.10.1	Architect’s Interpretations and Decisions .....	3-36
4.2.10.2	Typical Parts and Sections .....	3-37
4.2.10.3	Dimensions .....	3-37
4.3	INSPECTOR OF RECORD .....	3-37
4.3.1	General .....	3-37
4.3.2	Inspector’s Duties .....	3-37
4.3.3	Inspector’s Authority to Reject or Stop Work .....	3-38
4.3.4	Inspector’s Facilities .....	3-38
4.4	RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES .....	3-38
4.5	CLAIMS AND DISPUTES .....	3-39
4.5.1	Decision of Architect .....	3-39
4.5.2	Time Limit on Claims .....	3-40
4.5.3	Personal Certification of All Claims.....	3-40
4.5.4	Continuing Contract Performance .....	3-40
4.5.5	Claims for Concealed or Unknown Conditions .....	3-40
4.5.5.1	Trenches or Excavations Less Than Four Feet Below the Surface ...	3-40
4.5.5.2	Trenches or Excavations Greater Than Four Feet Below the Surface... 3-	41
4.5.6	Claims for Additional Cost .....	3-42
4.5.7	Claims for Additional Time .....	3-42
4.5.7.1	Notice and Extent of Claim.....	3-42
4.5.7.2	Adverse Weather Claims .....	3-42
4.5.7.3	No Reservation Allowed.....	3-42
4.5.8	Delay in the Work – Timely Extension .....	3-42
4.5.9	Injury or Damage to Person or Property .....	3-43
4.6	RESOLUTION OF CLAIMS AND DISPUTES .....	3-44
4.6.1	Architect’s Review.....	3-44
4.6.2	Documentation if Resolved.....	3-44
4.6.3	Actions if Not Resolved.....	3-44
4.6.4	Architect’s Written Decision .....	3-44
4.7	ALTERNATE DISPUTE RESOLUTION OF CLAIMS OF \$375,000 OR LESS .....	3-44
4.7.1	Claims Less Than \$375,000.....	3-44
4.7.2	Submission of Claims Less than \$375,000 .....	3-45
4.7.3	Time Limits Not Extended.....	3-45
4.8	DISPUTE RESOLUTION OF CLAIMS IN EXCESS OF \$375,000.....	3-45



4.8.1 Meet and Confer Conference ..... 3-45

Article 5 SUBCONTRACTORS ..... 3-45

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK ..... 3-45

5.1.1 Assignment or Substitution - Consent of District ..... 3-45

5.1.2 Grounds for Substitution ..... 3-46

5.2 SUB CONTRACTUAL RELATIONS ..... 3-46

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS ..... 3-46

Article 6 CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS 3-47

6.1 DISTRICT’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS ..... 3-47

6.1.1 District’s Rights ..... 3-47

6.1.2 Designation as Contractor ..... 3-47

6.1.3 Contractor Duties ..... 3-47

6.2 MUTUAL RESPONSIBILITY ..... 3-47

6.2.1 Delivery and Storage ..... 3-47

6.2.2 Notice by Contractor ..... 3-47

6.2.3 Correction of Damage ..... 3-48

6.3 DISTRICT’S RIGHT TO CLEAN UP ..... 3-48

Article 7 CHANGES IN THE WORK ..... 3-48

7.1 CHANGES ..... 3-48

7.1.1 No Changes Without Authorization ..... 3-48

7.1.2 Architect Authority ..... 3-48

7.2 CHANGE ORDERS (“CO”) ..... 3-49

7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”) ..... 3-49

7.3.1 Authorized ..... 3-49

7.3.2 Use to Direct Change ..... 3-49

7.4 REQUEST FOR INFORMATION (“RFI”) ..... 3-49

7.4.1 Definition ..... 3-49

7.4.2 Scope ..... 3-49

7.4.3 Response Time ..... 3-49

7.4.4 Costs Incurred ..... 3-49

7.5 REQUEST FOR PROPOSAL (“RFP”) ..... 3-50

7.5.1 Definition ..... 3-50

7.5.2 Scope ..... 3-50

7.6 CHANGE ORDER REQUEST (“COR”) ..... 3-50

7.6.1 Definition ..... 3-50

7.6.2 Changes in Price ..... 3-50

7.6.3 Changes in Time ..... 3-50

7.7 COST OF CHANGE ORDERS ..... 3-50

7.7.1 Scope ..... 3-50

7.7.2 Determination of Cost ..... 3-51

7.7.3 Lump Sum Proposal ..... 3-51

7.7.4 Labor and Material ..... 3-52

7.7.5 No Overhead and Profit ..... 3-54

7.7.6 No Cost for Deleted Work ..... 3-54

7.7.7	Accounting Records and Books.....	3-55
7.7.8	Project Records Preservation .....	3-56
7.7.9	Project Records Termination .....	3-56
7.7.10	Discounts, Rebates, and Refunds.....	3-56
<b>Article 8 LEGAL RELATIONS AND RESPONSIBILITY .....</b>		<b>3-56</b>
8.1	Compliance with Laws – Permits, Regulations, Taxes.....	3-56
8.2	Prevailing Wage.....	3-58
8.3	Prevailing Wage Records.....	3-59
8.3.1	The Work is subject to monitoring and enforcement of prevailing wage requirements by the Department of Industrial Relations and the following provisions will apply: .....	3-59
8.3.2	Labor Discrimination .....	3-60
8.3.3	Eight-Hour Day Limitation.....	3-60
8.3.4	Compliance with State Requirements for Employment of Apprentices.....	3-61
8.3.5	Costs for After Hours Inspections.....	3-61
8.4	<b>PROGRESS AND COMPLETION .....</b>	<b>3-61</b>
8.4.1	Time of the Essence .....	3-61
8.4.2	No Commencement without Insurance.....	3-61
8.4.3	Expeditious Completion.....	3-61
<b>Article 9 PAYMENTS AND COMPLETION .....</b>		<b>3-62</b>
9.1	<b>CONTRACT SUM .....</b>	<b>3-62</b>
9.2	<b>COST BREAKDOWN .....</b>	<b>3-62</b>
9.2.1	Required Information.....	3-62
9.2.2	District Approval Required.....	3-62
9.3	<b>APPLICATIONS FOR PAYMENT .....</b>	<b>3-62</b>
9.3.1	Procedure .....	3-62
9.3.2	Purchase of Materials and Equipment .....	3-63
9.3.3	Warranty of Title.....	3-64
9.4	<b>REVIEW OF PROGRESS PAYMENT .....</b>	<b>3-64</b>
9.4.1	District Approval .....	3-64
9.4.2	Architect’s Review.....	3-64
9.5	<b>DECISIONS TO WITHHOLD PAYMENT .....</b>	<b>3-65</b>
9.5.1	Reasons to Withhold Payment.....	3-65
9.5.2	Written Reasons for Withholding Provided.....	3-66
9.5.3	Payment After Cure .....	3-66
9.6	<b>PROGRESS PAYMENTS.....</b>	<b>3-66</b>
9.6.1	Payments to Contractor.....	3-66
9.6.2	Payments to Subcontractors .....	3-66
9.6.3	Percentage of Completion or Payment Information .....	3-66
9.6.4	No Obligation of District for Subcontractor Payment .....	3-67
9.6.5	Payment to Suppliers .....	3-67
9.6.6	Payment Not Constituting Approval or Acceptance.....	3-67
9.7	<b>COMPLETION OF THE WORK.....</b>	<b>3-67</b>
9.7.1	Close-Out Procedures .....	3-67
9.7.2	Costs of Multiple Inspections .....	3-67
9.8	<b>PARTIAL OCCUPANCY OR USE.....</b>	<b>3-68</b>



9.8.1	District’s Rights .....	3-68
9.8.2	Inspection Prior to Occupancy or Use .....	3-68
9.8.3	No Waiver .....	3-69
9.9	COMPLETION AND FINAL PAYMENT .....	3-69
9.9.1	Final Inspection.....	3-69
9.9.2	Retainage.....	3-69
9.9.3	Procedures for Application for Final Payment .....	3-70
9.10	SUBSTITUTION OF SECURITIES .....	3-70
Article 10	PROTECTION OF PERSONS AND PROPERTY.....	3-71
10.1	SAFETY PRECAUTIONS AND PROGRAMS .....	3-71
10.1.1	Contractor Responsibility .....	3-71
10.1.2	First-Aid Supplies at Site .....	3-71
10.2	SAFETY OF PERSONS AND PROPERTY.....	3-71
10.2.1	The Contractor .....	3-71
10.2.2	Contractor Notices .....	3-72
10.2.3	Safety Barriers and Safeguards.....	3-72
10.2.4	Use or Storage of Hazardous Material.....	3-72
10.3	PROTECTION OF WORK AND PROPERTY .....	3-72
10.3.1	Protection from Elements .....	3-72
10.3.2	Protection for Elements.....	3-72
10.3.3	Shoring and Structural Loading.....	3-72
10.3.4	Subcontractor Enforcement of Rules .....	3-73
10.3.5	Site Access .....	3-73
10.3.6	Protection of Materials.....	3-73
10.4	EMERGENCIES.....	3-73
10.4.1	Emergency Action .....	3-73
10.4.2	Accident Reports.....	3-73
10.5	HAZARDOUS MATERIALS .....	3-74
10.5.1	Discovery of Hazardous Materials.....	3-74
10.5.2	Hazardous Material Work Limitations .....	3-74
Article 11	INSURANCE, INDEMNITY, AND BONDS.....	3-74
11.1	CONTRACTOR’S LIABILITY INSURANCE .....	3-74
11.1.1	Insurance Requirements.....	3-74
11.1.2	Worker's Compensation and Employer's Liability Insurance.....	3-75
11.1.2.1	Worker's Compensation .....	3-76
11.1.3	Commercial General and Automobile Liability Insurance.....	3-76
11.2	Consent of Insurer for Partial Occupancy or Use .....	3-78
11.3	OTHER INSURANCE .....	3-78
11.4	Indemnity and Litigation Cost .....	3-78
11.5	COMPLIANCE.....	3-79
11.6	SURETY QUALIFICATION.....	3-79
Article 12	UNCOVERING AND CORRECTION OF WORK .....	3-80
12.1	UNCOVERING OF WORK.....	3-80
12.1.1	Uncovering Work for Required Inspections .....	3-80
12.1.2	Costs for Inspections not Required .....	3-80
12.2	CORRECTION OF WORK.....	3-80



12.2.1	Correction of Rejected Work .....	3-80
12.2.2	Two-Year Warranty Corrections .....	3-80
12.2.3	Removal of Nonconforming Work .....	3-81
12.2.4	District’s Rights if Contractor Fails to Correct.....	3-81
12.2.5	Cost of Correcting the Work.....	3-81
12.2.6	No Time Limitation .....	3-81
12.3	ACCEPTANCE OF NONCONFORMING WORK .....	3-81
Article 13	MISCELLANEOUS PROVISIONS.....	3-82
13.1	GOVERNING LAW.....	3-82
13.2	SUCCESSORS AND ASSIGNS .....	3-82
13.3	WRITTEN NOTICE.....	3-82
13.4	RIGHTS AND REMEDIES .....	3-82
13.4.1	Duties and Obligations Cumulative .....	3-82
13.4.2	No Waiver.....	3-82
13.5	TESTS AND INSPECTIONS.....	3-82
13.5.1	Compliance .....	3-82
13.5.2	Independent Testing Laboratory .....	3-83
13.5.3	Advance Notice to Inspector.....	3-83
13.5.4	Testing Off-Site .....	3-83
13.5.5	Additional Testing or Inspection .....	3-83
13.5.6	Costs for Retesting.....	3-83
13.5.7	Costs for Premature Test.....	3-83
13.5.8	Tests or Inspections Not to Delay Work.....	3-84
13.6	INTEREST.....	3-84
13.7	TRENCH EXCAVATION .....	3-84
13.7.1	Trenches Greater Than Five Feet.....	3-84
13.7.2	Excavation Safety .....	3-84
13.7.3	No Tort Liability of Owner.....	3-84
13.7.4	No Excavation Without Permits .....	3-84
13.8.1	Application.....	3-84
13.9	General Contractor’s License Notice.....	3-85
13.10	Historical, Scientific and Archeological Discoveries .....	3-85
Article 14	TERMINATION OR SUSPENSION OF THE CONTRACT .....	3-85
14.1	Suspension of Work.....	3-85
14.2	Termination Upon Default.....	3-86
14.3	Termination for Convenience .....	3-87
14.4	Rights of District Upon Termination .....	3-89
14.5.1	Liquidated Damages.. .....	3-89
14.5.2	Exclusions.....	3-90