

# Table of Contents

BID OVERVIEW .....	2
SCOPE OF WORK.....	3
PROJECT INFORMATION.....	4
GENERAL CONTRACT .....	6
1. SCOPE OF WORK.....	6
2. CONTRACT PRICE.....	6
3. CONTRACT TIME .....	6
4. LIQUIDATED DAMAGES .....	6
5. INSURANCE REQUIREMENTS .....	6
6. PROVISIONS REQUIRED BY LAW .....	7
7. DESIGNATION OF ARCHITECT AND INSPECTOR.....	7
8. DUE AUTHORIZATION.....	7
9. AUTHORIZATION OF SIGNATORIES.....	7
10. COMPONENT PARTS OF THE CONTRACT.....	7
REFERENCE LIST REQUEST .....	10
SUBCONTRACTOR LIST .....	11
NON-COLLUSION AFFIDAVIT.....	12
BID BOND .....	13
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION.....	14
PAYMENT BOND.....	16
PERFORMANCE BOND.....	18
GUARANTEE .....	20
VENDOR INFORMATION SHEET .....	22
GENERAL TERMS AND CONDITIONS .....	25
1. DEFINITIONS.....	25
2. SCHEDULE OF VALUES.....	29
3. PROJECT SCHEDULE.....	29
4. THE WORK.....	31
5. CONTRACT PRICE.....	33
6. PAYMENT SCHEDULE .....	33
7. TIME PERIOD FOR COMPLETION OF THE WORK.....	39
8. DELAY IN THE WORK.....	40
9. CHANGES.....	41
10. TIME AND MATERIALS PRACTICES .....	44
11. SUBSTITUTIONS.....	45
12. SUPERVISION OF THE WORK.....	46
13. INSPECTOR'S FIELD OFFICE .....	47

14.	ACCESS TO WORK.....	48
15.	SUBCONTRACTING.....	48
16.	DRUG-FREE WORKPLACE.....	49
17.	TAXES.....	49
18.	UTILITIES AND SANITARY FACILITIES.....	49
19.	FEES, PERMITS, LICENSES, PATENTS AND ROYALTIES; AND PAYMENT THEREFOR.	50
20.	EASEMENTS.....	50
21.	SURVEYS.....	50
22.	LAWS AND REGULATIONS.....	50
23.	MATERIAL SAFETY DATA SHEETS AND COMPLIANCE WITH PROPOSITION 65.....	51
24.	DETAIL DRAWINGS AND INSTRUCTIONS.....	51
25.	COPIES OF DRAWINGS AND SPECIFICATIONS FURNISHED.....	52
26.	CONTRACT DOCUMENTS ON PROJECT PREMISES.....	52
27.	OWNERSHIP OF DRAWINGS.....	52
28.	SHOP DRAWINGS AND DIAGRAMS.....	52
29.	LAYOUT AND FIELD ENGINEERING.....	53
30.	SOILS INVESTIGATION REPORT.....	54
31.	EXCAVATIONS; SUBSURFACE CONDITIONS.....	55
32.	MATERIALS AND WORK.....	56
33.	NON-UTILIZATION OF ASBESTOS MATERIAL.....	57
34.	SAMPLES.....	58
35.	TESTS AND INSPECTIONS.....	58
36.	CUTTING AND PATCHING.....	60
37.	NOISE CONTROL.....	60
38.	DUST CONTROL.....	60
40.	SEPARATE CONTRACTS.....	62
41.	RISK OF LOSS ON CONTRACTOR; SAFETY PRECAUTIONS.....	62
42.	HOLD HARMLESS CLAUSES.....	64
43.	INSURANCE.....	65
44.	CONTRACT SECURITY.....	68
45.	MAINTENANCE WARRANTY BOND.....	68
46.	OCCUPANCY OR USE BEFORE ACCEPTANCE OF COMPLETION.....	69
47.	CONTRACT/PROJECT CLOSE-OUT.....	70
48.	REQUIREMENTS PREPARATORY TO FINAL INSPECTION/EXAMINATION.....	70
49.	FINAL INSPECTION/EXAMINATION.....	70
50.	CLOSE-OUT SUBMITTALS.....	71
51.	ACCOUNTS ADJUSTMENT.....	72
52.	ACCEPTANCE OF COMPLETION.....	72
53.	CORRECTION OF WORK BEFORE FINAL PAYMENT.....	73
54.	DEFAULT; REMEDIES.....	73
55.	TERMINATION OF CONTRACT FOR CONVENIENCE.....	75

56. DISPUTE RESOLUTION .....	76
57. GUARANTY-WARRANTY .....	77
58. OPERATIONAL-TRAINING .....	78
59. CONTRACT AUDITS .....	79
60. WAGE RATES .....	80
61. RECORD OF WAGES PAID: INSPECTOR .....	83
62. HOURS OF WORK .....	84
63. APPRENTICES .....	84
64. ASSIGNMENT OF ANTITRUST CLAIMS .....	87
65. REQUIRED ATTENDANCE AT JOB START MEETING .....	88
66. FAIR EMPLOYMENT PRACTICES .....	88
67. CONTRACTOR NOT A PARTNER, OFFICER, EMPLOYEE OR AGENT OF THE DISTRICT	90
68. ATTORNEYS' FEES .....	90
69. CHANGE IN NAME OR NATURE OF CONTRACTOR'S LEGAL ENTITY .....	91
70. ASSIGNMENT .....	91
71. NOTICE AND SERVICE THEREOF .....	91
72. WAIVER .....	91
73. ENTIRE AGREEMENT; AMENDMENT .....	91
EXHIBIT A .....	92
FORM FOR PROPOSAL REQUEST .....	92
EXHIBIT B .....	93
FORM OF CONTRACTOR PAYMENT REQUEST .....	93
EXHIBIT E .....	94
FORM OF REQUEST FOR INFORMATION .....	94
EXHIBIT F .....	95
CONSTRUCTION CHANGE DIRECTIVE .....	95
EXHIBIT G .....	96
FORM OF CONTRACTOR'S SUBSTITUTION REQUEST .....	96
EXHIBIT H .....	97
FORM OF DAILY REPORT .....	97
(SUPPLIED BY CONTRACTOR) .....	97
EXHIBIT I .....	98
FORM OF RECORD DRAWING REVIEW LOG .....	98
EXHIBIT J .....	99
FORM OF FINAL INSPECTION CERTIFICATION .....	99
EXHIBIT K .....	100
FORM OF SUBCONTRACTOR/MATERIALMAN GUARANTEE .....	100
EXHIBIT L .....	101
CONSTRUCTION CLAIMS .....	101

RESOLUTION PROCEDURES .....	101
I.    CLAIMS; REQUIREMENTS; TORT CLAIMS EXCLUDED .....	101
II.   CIVIL ACTION PROCEDURES; MEDIATION AND ARBITRATION; TRIAL DE NOVO; WITNESSES.....	102
III.  PAYMENT ON UNDISPUTED PORTION OF CLAIM; INTEREST ON ARBITRATION AWARD OR JUDGMENTS .....	103

# **BELLFLOWER UNIFIED SCHOOL DISTRICT**

**16703 CLARK AVENUE  
BELLFLOWER, CA 90706-5203**



*We build futures!*

**Bid # 2324-04**

## **Fire and Intrusion Alarm Upgrades**

**The Bellflower Unified School District will receive Bids at:**

District Office, Building A – Reception  
Desk 16703 Clark Avenue  
Bellflower, California 90706-5203

Until local time on Wednesday, April 10, 2024

**Bids are late at 2:01 P.M. The District clock is the official time.**

—————→ **NOTE:** Bids cannot be submitted to any other location.  
The District will reject such offers.

# NOTICE INVITING BIDS

For Publication Two Times  
Long Beach Press Telegram  
Orange County Register

Wednesday, March 13, 2024  
Wednesday, March 20, 2024

NOTICE IS HEREBY GIVEN that the Bellflower Unified School District of Los Angeles County, California, will accept formal sealed bids no later than **2:00 p.m., April 10, 2024** at 16703 Clark Avenue, Bellflower, CA. District Office, Building A, Reception Desk, for contract:

## **Bid #2324-04 Fire and Intrusion Alarm Upgrades**

The District will hold a non-mandatory job walk on March 27, 2024 at 9:00 a.m. for the various project sites. Contractors are to report to the District Office, Building A at 16703 S. Clark Ave., Bellflower, CA 90706 at 10:00 a.m.

All bids shall be made and presented on a form furnished by the District. Bids shall be received at the District's Office, Building A, Reception Desk, and shall be opened and publicly read aloud at the above-stated time and place. Contractors can obtain bid documents by contacting the Purchasing Department at [purchasingservices@busd.k12.ca.us](mailto:purchasingservices@busd.k12.ca.us)

Please note that this project is for fire and intrusion alarm upgrades at three elementary schools and one high school. Concurrent construction with staggered start dates is required. Additionally, the Contractor must be or use an official distributor and installer of Edwards EST4 products.

These are prevailing wage jobs. The Contractor shall use the rates for Los Angeles County area for each trade, craft and classification or type of work needed to execute the contract. Copies of schedules of rates so determined are available at <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>.

In accordance with provisions of Public Contract Code section 22300, substitution of eligible and equivalent securities for any monies withheld to ensure performance under this Contract will be permitted at the request and expense of the Contractor.

Pursuant to Public Contract Code section 3300, each bidder shall possess at the time this contract is awarded a Class A, B or C16 Contractor's License, legally issued by the Contractors State License Board. The successful bidder must maintain the license throughout the duration of this Contract. No bidder may withdraw his bid for a period of ninety (90) days after the date set for the opening of bids.

The District reserves the right to reject any and all bids or to waive irregularities in any bid.

# SCOPE OF WORK

Campus-wide fire alarm upgrades:

- Provide complete full automatic addressable fire alarm system with voice evacuation. Provide fire alarm system devices as shown in equipment legend, floor plans and specifications in this construction document set. Upon completion, a complete pretest will be performed to verify functionality, if functionality is complete then the proper documentation shall be submitted to the authority having jurisdiction prior to scheduling a final inspection.
- A fire watch shall be established and the fire department and fire code official will be notified immediately whenever the fire protection / alarm system is rendered out of service. A fire watch will be staged whenever the building is occupied (partial or whole) per DSA IR F-2 and CFC 901.7.
- Contractor to maintain the existing fire alarm system as operational in all buildings until the new installation is complete and tested by the inspector. Once tested and approved for occupancy, the older system can be removed and surfaces patch/painted.
- The Contractor must be or use an official distributor and installer of Edwards EST4 products.
- Each bidder shall possess at the time this contract is awarded a Class A, B or C16 Contractor's License.
- An estimated timeline is required as soon as possible.

After Hours Work Schedule

- Monday through Friday 2:00 PM – 10:30 PM
- Saturday 7:00 AM – 4:00 PM
- Sunday Pre-approval by Facilities Department

## TIMELINE

Event	Date
Non-mandatory Job Walk	March 27, 2024
Deadline for Questions	April 4, 2024
District Issues Responses to all Respondents	April 5, 2024
Proposal Submittal Deadline	<b>April 11, 2024</b>
District Evaluation of Proposals	April 11, 2024
Anticipated Award Date	May 10, 2024

Question(s) for this project should be emailed to:

[purchasingservices@busd.k12.ca.us](mailto:purchasingservices@busd.k12.ca.us)

# PROJECT INFORMATION

TO: BELLFLOWER UNIFIED SCHOOL DISTRICT, acting by and through its Governing Board, herein called the "District:"

1. Pursuant to and in compliance with the Invitation for Bid and the other documents relating thereto, the undersigned contractor, having familiarized themselves with the terms of the Contract, the local conditions affecting the performance of the Contract and the cost of the Work at the place where the Work is to be done, and with the Contract Documents, drawings, specifications, addendum and all other related documents, hereby proposes and agrees to perform, within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all utility and transportation services necessary to perform the Contract and complete in a workmanlike manner all of the Work required in connection with:

## **Bid #2324-04 Fire and Intrusion Alarm Upgrades**

all in strict conformity with the drawings and specifications and other Contract Documents on file at the District Office - 16703 Clark Avenue, Bellflower, CA 90706-5203 of said District for the sum of:

In the event of a conflict between written and numeric version of the quote, the *written* will prevail.

<b>Bellflower High School</b>	\$
<b>Craig Williams Elementary School</b>	\$
<b>Frank E. Woodruff Elementary School</b>	\$
<b>Thomas Jefferson Elementary School</b>	\$
<b>Total Bid Amount</b>	\$
<b>Total Bid in Words</b>	

### **Cash Price In Words And In Numbers**

2. It is understood that the District reserves the right to reject this Bid.



# Contract Form

# GENERAL CONTRACT

Revised as of \_\_, \_\_

**THIS GENERAL CONTRACT** (this "**General Contract**") is made as of \_\_\_\_, in the County of Los Angeles, State of California, by and between the **BELLFLOWER UNIFIED SCHOOL DISTRICT** (hereinafter called the "**District**"), and \_\_\_\_\_ (hereinafter called "**Contractor**").

**IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONSIDERATIONS STATED HEREIN**, the receipt and sufficiency of which are hereby acknowledged, the District and Contractor hereby agree as follows:

**1. SCOPE OF WORK.** The Contractor shall perform within the time stipulated within the bid documents, and shall provide all labor, equipment, materials, tools, utility services and transportation to complete in a workmanlike manner, in accordance with the terms and conditions of the Contract Documents, as defined in Section 10 below, all of the work (the "**Work**") required in connection with the following titled project, all as more fully described in the Contract Documents (the "**Project**"):

## **Bid No. 2324-04 Fire and Intrusion Alarm Upgrades**

It is the duty of the Contractor to complete the Work in exact accordance with the Contract Documents and any approved revisions or interpretations thereto, including, without limitation, all Project Requests for Information, Submittal Endorsements and Architectural and Engineering Field Directives and Inspector Non-compliance Notices. The Contractor shall be liable to the District for any damages arising as a result of a failure to fully comply with its obligations hereunder and, except as otherwise expressly provided in Section 8 of the General Terms and Conditions, shall not be excused from such obligations by any act or omission of the Architect (as defined in Section 7 below), any licensed engineer whose stamp appears on the drawings, the Inspector (as defined in Section 7 below) or any specialty inspector, any representative of the Division of the State Architect (DSA), the District or the State of California.

**2. CONTRACT PRICE.** The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions ordered or approved by the District by any Change Order (as described and provided for in the General Terms and Conditions), the sum price of: \_\_\_\_\_ (\$\_\_\_\_\_) (the "**Contract Price**") including related taxes, for Item C –Wireless Networking and Installation which shall be payable to the Contractor in progress payments from time to time in accordance with Section 6 of the General Terms and Conditions.

**3. CONTRACT TIME.** The Work shall be commenced on the date stated in the Districts Notice to Proceed to the Contractor (the "**Starting Date**"), and as specified therein, shall be completed within the time frame specified in the bid documents after the Starting Date (the "**Contract Time**"). If the Work is not completed in conformance with the foregoing, the Contractor shall be subject to liquidated damages in the amount set forth in Section 4 below.

**4. LIQUIDATED DAMAGES.** *(If applicable)* The agreed upon liquidated damages payable to the District pursuant to Section 7 of the General Terms and Conditions in the event that the Work is not completed within the Contract Time shall be **One Thousand Five Hundred Dollars (\$1,500.00)** for each calendar day that the completion of the Project is so delayed beyond the expiration of the Contract Time.

**5. INSURANCE REQUIREMENTS.** As provided in Section 37 of the General Terms and Conditions, Contractor shall procure and maintain from the Starting Date until final payment under this General Contract is made to the Contractor, and shall require all subcontractors to so procure and maintain for all periods during which such subcontractors are performing any portion of the Work, the insurance described below in the coverage amounts described below.

a. Builder's Risk Insurance or its equivalent on a so-called all risks basis (including collapse, but excluding coverage for earthquake and flood) on a completed value (non-reporting) form for the full Contract Price (as may be increased from time to time pursuant to Change Orders (as defined in the General Terms and Conditions) or full replacement value, whichever is the greater sum, covering the interest of the District, its contractors and subcontractors in all Work, including, without limitation, all materials and equipment stored on the site to be incorporated in such Work and all materials and equipment already incorporated in such Work.

b. Comprehensive Bodily Injury and Property Damage Liability Insurance for Combined Single Limit Bodily Injury and/or Property Damage Liability of not less than \$1,000,000 each occurrence, minimum \$2,000,000 aggregate. The policy(ies) so secured and maintained shall include coverage for Contractual or Assumed Liability, Contractors Protective (Contingency) Liability, Products Liability or Completed Operations, Hazardous Materials (required when the Contract involves removal of these materials), and Owned, Hired, and Non-owned Automobiles Insurance; and shall be endorsed to the name of the Bellflower School District, its Board and all other indemnities described in Section 36 of the General Terms and Conditions as additional insurers and shall provide specifically that any insurance carried by the District which may be applicable to any claim or loss shall be deemed excess and the Contractor's insurance primary despite any conflicting provisions in the Contractor's policy to the contrary. Coverage shall be maintained with no self-insured retention.

c. Workers' Compensation Insurance in accordance with the provisions of the California Labor Code, adequate to protect it and all subcontractors from claims under Workers' Compensation Acts which may arise from operations under the Contract Documents, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them.

d. All insurance coverage amounts specified above shall be Project-specific to this particular Work, and all such insurance shall cover only risks relating to or arising out of the Project and the Work. The insurance and required amounts of insurance specified above shall not be reduced or encumbered on account of other work contracted for or being performed by Contractor. \_\_\_\_\_ Architects and all Consultants shall be named as additional insurers.

e. Such other insurance in amounts as the District may reasonably deem advisable from time to time for protection against claims, liabilities and losses arising out of or in connection with the Project or the Work; provided that, the additional cost of such insurance shall be added to the Contract Price pursuant to a Change Order in accordance with Section 9 of the General Terms and Conditions.

6. **PROVISIONS REQUIRED BY LAW.** Each and every provision of law and clause required to be inserted into this General Contract and the other Contract Documents shall be deemed to be inserted herein or therein (as applicable) and this General Contract and such other Contract Documents shall be read and enforced as though it were included herein or therein (as applicable), and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the General Contract or any of the other Contract documents (as applicable) shall forthwith be physically amended to make such insertion or correction.

7. **DESIGNATION OF ARCHITECT AND INSPECTOR.** The Engineer for the Project shall be Rand Nicholl Architecture (or such other person or legal entity as the District may designate from time to time by written notice to the Contractor), and the Inspector shall be TYR, Inc. (or such other person or legal entity as the District may designate from time to time by written notice to the Contractor).

8. **DUE AUTHORIZATION.** This General Contract is, and all Contract Documents to be executed by Contractor in connection with the Work and the Project will be, duly authorized, executed and delivered by Contractor, is and will be legal, valid and binding obligations of Contractor enforceable against Contractor in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), and does not and will not violate any provisions of any agreement to which Contractor is a party or may become a party or to which it is subject or may become subject. The representations and warranties contained in this Section 8 shall be deemed to be remade each day throughout the term of the Contract.

9. **AUTHORIZATION OF SIGNATORIES.** Each individual and entity executing this General Contract hereby represents and warrants that he, she or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she or it is executing this General Contract to the terms and provisions hereof.

10. **COMPONENT PARTS OF THE CONTRACT.** The "**Contract**" consists of the following contract documents, all of which are component parts of the Contract as if herein set out in full or attached hereto (the "**Contract Documents**"):

Notice to Contractors Calling for Bids  
 Reference List  
 Bid Form  
 List of Subcontractors  
 Contractor's Certificate Regarding Worker's Compensation  
 Bid Bond  
 DVBE Certification (State Allocation Board / SAB Forms)  
 Non-collusion Affidavit  
 General Contract  
 Performance Bond  
 Payment Bond  
 General Terms and Conditions  
 Special Conditions and any Supplementary General Terms and Conditions  
 Requests for Information (RFIs)  
 Submittal Endorsement  
 Specifications  
 Addenda Nos. \_\_\_\_\_ as issued  
 Drawings  
 Change Orders  
 Architect/Engineer Field Directives  
 Submittal Responses  
 Title 24 of the California Code of Regulations  
 California Building Code  
 Prevailing Wage Rate Tables  
 Board Award  
 Board Item \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

All of the above-listed Contract Documents are intended to be complimentary. Work required by any one of the above-named items and not required by another shall be performed as if required by all.

**IN WITNESS WHEREOF**, this General Contract has been duly executed by the above-named parties, on the day and year first above written.

**DISTRICT:**

Bellflower Unified School District  
 County of Los Angeles, State of California  
 By: Sulema Holguin

\_\_\_\_\_  
Name:

Associate Superintendent Business Services & Personnel

\_\_\_\_\_  
Title:

(Authorized Signatory for Bellflower Unified School District and not personally)

**CONTRACTOR:**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

# **ATTACHMENTS**

**(MUST BE SUBMITTED WITH BID)**

#1. “Definitions”  
Bidders Initials

#7. “Time period for completion of the work”  
Contractor Signature

#56. Dispute Resolution  
Bidders Initials

# REFERENCE LIST REQUEST

Contractor's Name: \_\_\_\_\_

**NOTE:** In terms of size and scope, please list **only** references that demonstrate the requisite experience necessary to perform said job per the specifications of this quote. Please indicate if the project was approved by the California (CA) Division of the State Architect (DSA).

**Reference #1**

District or Entity: \_\_\_\_\_

Phone#: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Year Performed, Scope of Work and Dollar Amount of Contract: \_\_\_\_\_

Was this a DSA Project? **Yes** or **No**? (Circle one) Architect of Record \_\_\_\_\_

**Reference #2**

District or Entity: \_\_\_\_\_

Phone#: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Year Performed, Scope of Work and Dollar Amount of Contract: \_\_\_\_\_

Was this a DSA Project? **Yes** or **No**? (Circle one) Architect of Record \_\_\_\_\_

**Reference #3**

District or Entity: \_\_\_\_\_

Phone#: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Year Performed, Scope of Work and Dollar Amount of Contract: \_\_\_\_\_

Was this a DSA Project? **Yes** or **No**? (Circle one) Architect of Record \_\_\_\_\_

## SUBCONTRACTOR LIST

Please list the Company Name of all Authorized Dealers, Service Representatives or other subcontractors within one hundred (100) square miles of the geographic center of the Bellflower Metropolitan Area who are authorized to accept purchase orders against this contract. Include your company if you are to receive orders.

Scope of Work	Name of Subcontractor	Address	Number & License Type	DIR Registration Number	Email & Telephone Number

# NON-COLLUSION AFFIDAVIT

## ATTACHMENT

*In accordance with California Public Contract Code Section 7106, the following Affidavit must be executed by Offeror, notarized, and submitted with proposal.*

### To Be Executed By Offeror and Submitted With Proposal

State of California

County of \_\_\_\_\_(County).

\_\_\_\_\_(Offeror's Name),

being first duly sworn, deposes and says that he or she is (Owner) of \_\_\_\_\_

\_\_\_\_\_(Contractor Name)

the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation;

1. that the proposal is genuine and not collusive or sham;
2. that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Offeror or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the Offeror has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Offeror or any other Offeror, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Offeror, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract;
3. that all statements contained in the proposal are true; and further, that the Offeror has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal."

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signed at (Place)

\_\_\_\_\_  
Offeror Name  
(Person, Firm, Corp.)

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Representative's Name

\_\_\_\_\_  
District, State, Zip

\_\_\_\_\_  
Representative's Title



# BID BOND

Name of Principal \_\_\_\_\_  
Address \_\_\_\_\_ City of \_\_\_\_\_  
State of \_\_\_\_\_  
as Principal, and \_\_\_\_\_

a corporation organized and existing under the laws of the State of \_\_\_\_\_, **legally doing business in California as an admitted surety insurer at:**

Address \_\_\_\_\_ City of \_\_\_\_\_, State of California, as Surety, are indebted to **Bellflower Unified School District** hereinafter called the District, in the sum of **TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID** of the Principal submitted to the District for which payment Principal and Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITION OF THE OBLIGATION OF THIS BOND IS THAT THE PRINCIPAL** has submitted the accompanying bid dated \_\_\_\_\_, 2023 for:

## **Bid #2324-04 Fire and Intrusion Upgrades**

**NOW THEREFORE**, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening; and if the Principal is awarded the contract, and shall within the period specified therefore, or if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the District, in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the contract or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, if the Principal shall pay the District the difference between the amount specified in said bid and the amount from which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the District in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force.

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

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney's fee to be fixed by the court.

**IN WITNESS WHEREOF** this instrument has been duly executed by the Principal and Surety above-named on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
**Principal**  
BY \_\_\_\_\_  
*(Typed or Printed Name)*

(Corporate Seal)

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
**Surety**  
BY \_\_\_\_\_  
*(Typed or Printed Name)*

(Corporate Seal)

\_\_\_\_\_  
*(Title)*

**(Attach Attorney-In-Fact Certificate)**

# **CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION**

Labor Code Section 3700.

"Every employer except the State shall secure the payment of compensation one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this contract.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

# **Awarded Vendor Attachments**

**(The selected vendor must have delivered the proof of insurance and W9 to Purchasing Department prior of work commencement. Enclosed are required documents.)**

**PAYMENT BOND**  
**(Labor & Materials)**

WHEREAS, the BELLFLOWER UNIFIED SCHOOL DISTRICT by Board action on April 12, 2020 has awarded to \_\_\_\_\_, hereinafter designated as the "Principal", a contract for the work described as follows:

**Bid #2324-04**  
**Fire and Intrusion Upgrades**

WHEREAS, said Principal is required by Division 3, Part IV, Title XV, Chapter 7, (commencing at Section 3247) of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, \_\_\_\_\_ of  
NAME OF PRINCIPAL

ADDRESS

City \_\_\_\_\_, State of \_\_\_\_\_, as  
of \_\_\_\_\_

Principal, and \_\_\_\_\_, a corporation organized and  
existing under the laws of the State  
of \_\_\_\_\_  
legally doing business in California as an admitted \_\_\_\_\_, City of  
surety at \_\_\_\_\_

ADDRESS

\_\_\_\_\_, State of California, as Surety, are indebted to BELLFLOWER  
UNIFIED SCHOOL DISTRICT in the sum \_\_\_\_\_ DOLLARS

of \_\_\_\_\_  
(\$ \_\_\_\_\_) for which payment Principal and Surety bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION is that if the Principal, his, hers, or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any person or persons named in Civil Code Section 3110 and 3181 or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor that the sureties will pay for the same, and also, in case suit is brought upon the bond, reasonable attorneys' fee, to be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 3110 and 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

IN WITNESS WHEREOF, the Principal has duly executed this instrument and Surety above named, on the \_\_\_\_\_ day of \_\_, 2023.

(Corporate Seal)

By \_

Title \_

**SURETY**

(Corporate Seal)

\_\_\_\_\_  
**BY:**

\_\_\_\_\_  
**TITLE:**

\_\_\_\_\_  
**ADDRESS:**

\_\_\_\_\_  
**TELEPHONE:**

\_\_\_\_\_  
**EMAIL:**

(Attach Attorney-in-Fact  
Certificate)

\_\_\_\_\_  
**WEB:**

# PERFORMANCE BOND

100%

WHEREAS, the BELLFLOWER UNIFIED SCHOOL DISTRICT by Board action on April 2, 2020 has awarded to \_\_\_\_\_, hereinafter designated as the "Principal", a contract for the work described as follows:

## **Bid #2324-04 Fire and Intrusion Upgrades**

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

NOW THEREFORE, \_\_\_\_\_ of  
NAME OF PRINCIPAL

\_\_\_\_\_  
ADDRESS

City of \_\_\_\_\_, State of \_\_\_\_\_, as

Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_

legally doing business in California as an admitted \_\_\_\_\_, City of \_\_\_\_\_

ADDRESS

\_\_\_\_\_, State of California, as Surety, are indebted to BELLFLOWER

UNIFIED SCHOOL DISTRICT in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) for which payment Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION is that if the Principal, his, hers, or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fully and faithfully keep and perform the covenants, conditions and agreements in the contract and any alteration thereof on his, hers, its or their part, to be kept and performed at the times and in the manner therein specified, and in all respects according to their intent and meaning, and shall indemnify and save harmless the District, its board, and their officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force.

In the event the District brings suit upon this bond and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including reasonable attorneys' fees to be fixed by the court.

Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any change, alteration or modification in or of the contract, any plans, specifications or agreements pertaining to or relating to any schedule or work of improvement or pertaining or relating to the furnishing of labor, materials, or equipment therefore under the contract, nor by any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any scheme or work of improvement under the contract, nor by any rescission or attempted rescission of the contract or bond, nor by any conditions precedent or subsequent in the bond, express or implied, attempting to limit the right of recovery of claimants otherwise entitled to recover under the contract or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond.

IN WITNESS WHEREOF, the Principal has duly executed this instrument and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(Corporate Seal)

By \_

Title \_

**SURETY**

(Corporate Seal)

\_\_\_\_\_  
**BY:**

\_\_\_\_\_  
**TITLE:**

\_\_\_\_\_  
**ADDRESS:**

\_\_\_\_\_  
**TELEPHONE:**

\_\_\_\_\_  
**EMAIL:**

(Attach Attorney-in-Fact  
Certificate)

\_\_\_\_\_  
**WEB:**

# GUARANTEE

Guarantee for \_\_\_\_\_ . We hereby guarantee that the  
\_\_\_\_\_ which we have installed  
at  
\_\_\_\_\_ has been installed in accordance with the  
drawings and specifications and that the work as installed will fulfill the requirements  
included in the specifications. The undersigned agrees to repair or replace any or all of  
such work, together with any other adjacent work which may be displaced in connection  
with such replacement, that may prove to be defective in workmanship or material  
within a period of one (1) year(s) from the date of acceptance of the abovementioned  
item by the Bellflower Unified School District (the "District"), ordinary wear and tear  
and unusual abuse or neglect excepted.

In the event of the undersigned's failure to comply with the above  
mentioned conditions within a reasonable period of time, as determined by the District,  
but not later than thirty (30) days after being notified in writing by the District, the  
undersigned authorizes the District to proceed to have said defects repaired or replaced  
and made good at the expense of undersigned, which will pay the costs and charges  
therefore upon demand. If the Contractor or Subcontractor executing this Guarantee is  
a corporation, this Guarantee shall be executed by either the chairman of the board,  
president, or vice president, and if a different individual, also by the secretary, chief  
financial officer, or assistant treasurer. See Section 3 of Information for Contractors  
Form for additional information.

## Countersigned

\_\_\_\_\_  
(Proper Name)  
  
By \_\_\_\_\_  
(Signature of Subcontractor or General Contractor)  
Its \_\_\_\_\_

\_\_\_\_\_  
(Proper Name)  
  
By \_\_\_\_\_  
(Signature of Subcontractor or General Contractor)  
Its \_\_\_\_\_

By \_\_\_\_\_  
(Signature of Subcontractor or General Contractor)  
Its \_\_\_\_\_

By \_\_\_\_\_  
(Signature of Subcontractor or General Contractor)  
Its \_\_\_\_\_

Representatives to be contacted for service:

NOTE: If Contractor is a corporation, the legal name of the corporation shall be set forth above together with the signature(s) of the authorized officers or agents. If Contractor is a partnership or joint venture, the true name of the firm shall be set forth above together with the signature of the individual or individuals authorized to sign contracts on behalf of and bind the partnership or joint venture; if Contractor is an individual, his or her signature shall be placed above.



Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_

# VENDOR INFORMATION SHEET



**BELLFLOWER UNIFIED SCHOOL DISTRICT**

16703 S. Clark Avenue, Bellflower, CA 90706-5203

Tel: 562-866-9011 Fax: 562-804-6594

**Date:**

**Company Name:**

**Address:**

City, State, Zip

**Phone:**

**Fax:**

**Email:**

**Web page:**

**Year in business:**

**Payment Terms (circle one):**

**Federal Tax I.D. (Attach W-9)**

**Number of employees:**

**Annual Sales/Revenue:**

**Dun & Bradstreet #/rating:**

**Salesperson:**

**Freight Allowance/Terms:**

**FOB (Destination / Origin):**

**A/R Contact:**

**Type of goods/services provided:**

**Remittance Address (if different):**




# **General Terms And Conditions**

***(As Applicable to the Scope of Work)***

# GENERAL TERMS AND CONDITIONS

## 1. DEFINITIONS

a. **“Acceptance of Completion”** shall mean the date upon which the District’s Board, based on its consultation with District staff, the Architect and the Inspector, formally accepts Substantial Completion or Final Completion of the Project, whichever occurs first, and authorizes the execution and recordation of a Notice of Completion for the Project.

b. **“Acts of God”** shall mean only the following occurrences or conditions or effects: earthquakes that measure in excess of a magnitude of 3.5 on the Richter Scale within a five (5) mile radius of the Project Premises.

c. **“Architect”** shall mean the architect or engineer, if any, retained or employed on the Work and specifically identified in the General Contract. In the event there is no architect or engineer on the Work, then the term “Architect” shall be construed to mean the District.

d. **“Architect/Engineer Field Directive”** shall mean a clarification of the Drawings and/or Specifications in the form of Exhibit A attached hereto and incorporated herein by this reference that is directive in nature and issued to the Contractor by the Architect or an engineer working on the Project.

e. **“Board”** shall mean the Bellflower Unified School District Board of Education.

f. **“Bulletin”** is defined in Section 8(b) hereof.

g. **“Certificate for Payment”** shall mean the certificate of the Architect given from time to time in accordance with the terms and provisions of Section 6 hereof to fully or partially approve any progress payments requested in a Contractor Payment Request.

h. **“Change Order”** shall mean a written statement executed by the District and the Contractor, in accordance with the terms and provisions of Sections 9 and 10 hereof, ordering a change in the Work or the Drawings or Specifications or other Contract Documents, and/or confirming a change in the Contract Price (whether an increase or decrease thereto) and/or Contract Time (whether an extension or reduction thereof). A Change Order may in the alternative constitute the decision of an arbitrator, if applicable, in accordance with and pursuant to Section 9(d) hereof.

i. **“Construction Claims”** is defined in Section 56(a) hereof.

j. **“Contract”** shall mean the contract for the construction and completion of the Project and the performance of all Work by the Contractor, which consists of all of the Contract Documents as a whole.

k. **“Contract Documents”** is defined in Section 10 of the General Contract.

l. **“Contract Price”** shall mean the lump sum price payable to the Contractor for all of the Work, as specifically set forth in the General Contract. The Contract Price shall include any and all shipping costs and/or other charge(s) for delivery(ies) of any parts and/or materials of any kind necessary for performance of the Work. The Contract Price may not be changed, altered or otherwise modified except by a Change Order in accordance with the terms and provisions of Sections 9 and 10 hereof.

m. **“Contract Time”** shall mean the number of consecutive calendar days from and after the Starting Date within which the Project and all Work must be completed, which number of calendar days is specifically set forth in Section 3 of the General Contract. The Contract Time may not be changed, altered or otherwise modified except by a Change Order in accordance with the terms and provisions of Sections 9 and 10 hereof.

n. **“Contractor”** shall mean the individual or entity specifically identified as the Contractor in the General Contract.

o. **“Contractor Payment Request”** shall mean a progress payment request, in the form of Exhibit B attached hereto, to be submitted by the Contractor to the District monthly during the progress of the Work in accordance with the terms and provisions of Section 6 hereof.

p. **“Cost of the Work”** is defined in Section 9(b) hereof.

q. **“Day” or “day”** shall mean calendar day, unless specified otherwise.

r. **“Drawings”** shall mean the drawings attached hereto as the same may be amended, modified or otherwise revised from time to time by Change Order and any revisions or modifications thereto promulgated by the Architect or an Architect/Engineer Field Directive, a response to a Request for Information (RFI) or a Submittal Response returned to the Contractor by the Architect, an engineer or any other District representative working on the Project.

s. **“Default”** is defined in Section 54(a) hereof.

t. **“District”** shall mean the Bellflower Unified School District, and its authorized representative(s).

u. **“Final Completion”** shall mean “completion” as that term is defined in California Public Contract Code section 7107(c)(2) and applied to the Work, i.e., the acceptance of the Work by the District, through the Board.

v. **“General Contract”** shall mean the General Contract executed by the District and the Contractor and attached hereto.

w. **“General Terms and Conditions”** shall mean these General Terms and Conditions. References in the Contract Documents to “General Conditions” shall mean (a) the Supplementary General Terms and Conditions, if applicable; or (b) these General Conditions if there are no Supplementary General Terms and Conditions.

x. **“Inspector”** shall mean the inspector, if any, retained or employed on the Work and specifically identified in the General Contract.

y. **“Maintenance Bond”** is defined in Section 45 hereof.

z. **“Materialmen”** shall mean those organizations or individuals who furnish material or equipment that is incorporated into or used in connection with the Project or the Work. The term “Materialmen” shall include, without limitation, vendors, suppliers and manufacturers. The term “Materialmen” shall also include all materialmen of any tier.

- aa. **“Notice of Completion”** shall mean the Notice of Completion executed by the District and recorded in the County Records of Los Angeles County, California, promptly after the District’s Acceptance of Completion in accordance with Section 52 hereof.
- bb. **“Payment Bond”** shall mean that certain Payment Bond for the Work and the Project in the form of Exhibit C attached hereto, issued by a surety that has been approved by the District, in its reasonable discretion, in favor of the District, as obligee.
- cc. **“Performance Bond”** shall mean that certain Performance Bond for the Work and the Project in the form of Exhibit D attached hereto, issued by a surety that has been approved by the District, in its reasonable discretion, in favor of the District, as obligee.
- dd. **“Prevailing Wage Rate Tables”** is defined in Section 60 hereof.
- ee. **“Project”** shall mean the project described in the General Contract.
- ff. **“Project Premises”** shall mean the parcel of real property upon which the Work shall be performed.
- gg. **“Project Schedule”** is defined in Section 3 hereof.
- hh. **“Public Work”** and “Public Works,” whether or not capitalized, are defined generally in sections 1720, 1720.2, 1720.3 and 1720.6, and for limited purposes in section 1750, of the California Labor Code (as the same may be amended or recodified from time to time). As used herein, “public work” and “public works,” whether or not capitalized, mean(s) (a) any and/or all of the Work, when used in reference to the Contract or any part thereof, whether the Contract or the relevant part thereof is for public work/public works as defined in sections 1720, 1720.2, 1720.3, 1720.6, and/or 1750 of the California Labor Code (as the same may be amended or recodified from time to time) or is for non-public work; and/or (b) public work/public works as defined in sections 1720, 1720.2, 1720.3, 1720.6, and/or 1750 of the California Labor Code (as the same may be amended or recodified from time to time) when used in reference to matters other than the Contract or any part thereof.
- ii. **“Record Drawings”** is defined in Section 24(g) hereof.
- jj. **“Retention”** is defined in Section 6(a) hereof.
- kk. **“Request for Information”** shall mean a written request for additional information or clarification of the Contract Documents in the form of Exhibit E attached hereto and incorporated herein by this reference delivered by the Contractor to the District and Architect.
- ll. **“Schedule of Values”** is defined in Section 2 hereof.
- mm. **“Specifications”** shall mean the specifications attached hereto (as the same may be amended, modified or otherwise revised from time to time by Change Order or as otherwise provided hereunder).
- nn. **“Starting Date”** shall mean the date specified as such in the Notice to Proceed from the District to the Contractor, being the date from which the Contract Time will commence and be calculated.
- oo. **“Subcontractor”** shall mean those organizations or individuals who furnish labor and/or

materials in connection with the Work or the Project and who do not have a direct written contract with the District, the Architect or any organization or individual (other than Contractor) who has a direct written contract with the District or Architect. The term "Subcontractor" shall include, without limitation, all engineers hired by Contractor or any other Subcontractor. The term "Subcontractor" shall also include all subcontractors of any tier.

pp. "**Submittal Response**" shall mean the District's response to any Contractor submittal that proposes the use of certain materials and/or methods in connection with the completion of the Project.

qq. "**Substantial Completion**" shall mean the stage in the progress of the Work when the Work is complete in accordance with the Contract Documents, except for certain minor corrective items commonly referred to in the construction industry as "punch list" items, such that the District can occupy or utilize the Project for its intended use; provided that, as a condition precedent to Substantial Completion, the Architect and Inspector shall have each agreed that the Work and Project have reached a stage of substantial completion and the District shall have received all permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial use of the Project.

rr. "**Substitution Request**" is defined in Section 11 hereof.

ss. "Supplementary General Terms and Conditions" shall mean the Supplementary General Terms and Conditions to the Contract (as such Supplementary General Terms and Conditions to the Contract may be amended, modified or otherwise revised from time to time by Change Order or as otherwise provided hereunder).

tt. "**Surety**" shall mean the person, firm, corporation or other entity that executes as surety the Payment Bond and/or Performance Bond. The surety must be an "admitted surety insurer" as defined in California Code of Civil Procedure section 995.120, and is subject to the prior approval of the District, which the District shall grant or withhold in its reasonable discretion.

uu. "**Work**" shall mean the labor and services required by the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations to complete the Project. The term "Work" includes labor and materials, or both, incorporated in, or to be incorporated in the work covered by the Contract Documents or reasonably inferable from the Contract Documents. Unless otherwise specified, the terms "approved," "directed," "satisfactory," "accepted," "acceptable," "proper," "required," "necessary," and "equal," as used in connection with the Work, shall mean as approved, directed, satisfactory, accepted, proper, required, necessary and equal, in the opinion of the Architect and/or the District.

This set of General Terms and Conditions and the definitions above are an integral part of the Contract Documents. In addition to signing the General Contract, Contractor shall initial this paragraph immediately below acknowledging that these General Terms and Conditions and the definitions have been read, understood and accepted by Contractor. Contractor shall not disclaim knowledge of the meaning and effect of any term or provision of these General Terms and Conditions and agrees to strictly abide by their meaning and intent. In the event that Contractor fails to initial below, the District shall have the right, at its option, to declare the Contract unexecuted and void and, in its discretion, proceed to award the Contract to the next lowest responsible bidder in accordance with the California Public Contract Code.



CONTRACTOR'S INITIALS: \_\_\_\_\_ DISTRICT'S INITIALS: \_\_\_\_\_

## 2. SCHEDULE OF VALUES

Within seven (7) days after award of the Contract, the Contractor shall submit to the Architect and/or the District, for their reasonable approval, a schedule of values (the "Schedule of Values") allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or the District may require. Such values shall include the amount of overhead and profit applicable to each item of the Work and shall include a breakdown between rough and finish Work for the basic trades as well as individual dollar figures for large dollar equipment and materials installed or furnished in connection with the Project. Prior to the processing of any Contractor Payment Request (including a Contractor Payment Request for mobilization), the Schedule of Values must have been approved in writing by the District and/or the Architect. The approved Schedule of Values shall be used as a basis for reviewing the Contractor Payment Requests that are submitted for payment from time to time. If the District or the Architect objects to any Schedule of Values submitted by the Contractor, the Contractor shall work and cooperate with the party objecting to the same in order to revise the Schedule of Values in a manner that addresses such objecting party's objections. The Schedule of Values will be updated from time to time as may be necessary during the course of construction. Updates to the Schedule of Values shall also be subject to the prior approval of the District and/or the Architect.

In preparing the Schedule of Values, the Contractor shall carefully list the true cost of each activity or item for which payment will be requested. The Contractor shall not "front-load" the Schedule of Values with false dollar amounts for activities required to be performed in the early stages of the Project Schedule. The District may, in its sole discretion, utilize the costs listed in the Schedule of Values as the true costs of items to be deducted from the Contract Price through credit or deductive Change Order.

## 3. PROJECT SCHEDULE

Within fourteen (14) days after award of the Contract and prior to the processing of any Contractor Payment Request (including a Contractor Payment Request for mobilization), the Contractor shall submit the following to the District and/or the Architect for their review and written approval (in their sole discretion):

- a. A project schedule setting forth the milestone dates for the Project and stating the start and completion dates of the various stages of the Work (the "Project Schedule"); and
- b. A preliminary schedule of submittals.

The Project Schedule and the preliminary schedule of submittals must each be approved in writing by the District and/or the Architect (and in their sole discretion). The Project Schedule shall provide for an orderly progression of the Work to completion within the specified milestones and the Contract Time. Approval of the Project Schedule by the District and/or the Architect shall neither impose on the District or the Architect responsibility for the progress or scheduling of the Work nor relieve the Contractor from full responsibility therefor. The Project Schedule shall be prepared in a critical path network format such that no activity has a duration of more than twenty (20) days, shall have the critical path clearly indicated and shall have the total Contract Price allocated among the scheduled activities such that progress payments may be computed accurately from the updates of the critical path schedule. Each of the Contractor's activities shall be allocated a price, and the sum of the prices of all activities listed on the Project Schedule shall equal the total Contract Price.

The Project Schedule shall be prepared on a PC-based program. For purposes of bidding, the Contractor shall assume that the District will request preparation of a Cost-Loaded Microsoft Project 98 or acceptable equivalent Software Package. However, following bid award, the District fully reserves the right to require an alternate software system (such as ProCommPlus) without any additional cost to the District. Before preparing the first base line schedule, Contractor shall recommend a software scheduling program for the District's approval.

In addition to being in a "critical path network format," as provided above, the Contractor agrees that the Project Schedule shall plot and incorporate certain milestone activities and dates deemed "critical" or "constraining factors" by the District and furnished by the District. Should the District not provide the Contractor with such milestone activities or dates, then the start and finish dates shall be considered the main constraining elements; however, the District reserves the full right to reject or approve intermediate schedule development.

The completed Project Schedule and all required periodic updates (as required below) shall include, at a minimum, the following items of data:

- a. Critical path;
- b. Earliest and latest dates of completion;
- c. Float for each activity and total Project float;
- d. Manufacturing dates and delivery dates of critical equipment or special equipment designated by the District as essential;
- e. District-designated milestone activities;
- f. Submission dates for all submittals and shop drawings (which may be provided on a separate schedule of submittals); and
- g. All underground Work.

The District and/or the Architect shall provide the Contractor with their approval or disapproval of the Project Schedule promptly after receipt of the same. If the Project Schedule is not approved, the Contractor shall revise the Project Schedule as necessary based on the District's and/or the Architect's comments and resubmit to the District and/or the Architect a revised Project Schedule. No progress payments shall be processed or paid until the Contractor's Project Schedule has been properly prepared and submitted by the Contractor and approved by the District and/or the Architect.

The Contractor shall submit with each Contractor Payment Request monthly schedule reports to the District and/or the Architect indicating the current status of the Work and incorporating into such monthly schedule all Change Orders. The reports may include proposed adjustments in the Contractor's Project Schedule and, additionally, shall indicate any revised sequence of the Work as may be necessary to meet specified milestone and Final Completion dates. No changes in any activity or price allocations shall be permitted except by, and in accordance with, the Change Order provisions set forth in Sections 9 and 10 hereof. Acceptance of the proposed adjustments shall be at the sole discretion of the District and/or the Architect. If the proposed adjustments are accepted, the Contractor shall, within ten (10) days, submit to the District and/or the Architect for approval (in their sole discretion) a revised Contractor's Project Schedule indicating the accepted adjustments.

In bidding on this Project, Contractor expressly agrees and understands that the following principles will be controlling and shall govern the District's evaluation and interpretation of the Project Schedule and, together with the terms and provisions of Sections 8, 9 and 10 hereof, shall be applied when determining the potential impact of, and monetary costs (if any) resulting from, Project delays:

1. No extended overhead, general conditions money, impact costs, out-of-sequence money

or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project Schedule, and if any delay occurs to any critical path item, such compensation shall only be payable to the Contractor in accordance with the terms and provisions of Sections 8, 9 and 10 below.

2. There shall be only one (1) critical path for the Project.

3. In lieu of payment of extended general conditions or overhead or any other cost as specified in Subsection 1 above, the District reserves the right to first direct “work orients” to the Contractor’s Project Schedule in order to recover the lost time whenever a District-caused delay (as defined in Section 8 hereof) occurs; provided that the District’s exercise of this right shall neither impose upon the District the responsibility for the progress of the Work or the completion thereof within the Contract Time nor relieve the Contractor from full responsibility therefor or from the responsibility to perform all Work and complete the Project in accordance with the terms and provisions of the Contract Documents.

4. Neither the District nor the Contractor has a right to the float. If the Contractor’s construction progress is ahead of the agreed-upon baseline time schedule and a delay is encountered (even if such delay is a District-caused delay), no compensation of any type will be due the Contractor and the District may claim float days equal to the delay until such float days are exhausted.

#### 4. THE WORK

a. **The Work.** The Contractor shall perform, diligently prosecute and complete the Work in a good and workmanlike manner within the Contract Time, and in strict conformity with all Contract Documents. All utilities, tools, equipment, apparatus, facilities, transportation, labor and materials necessary for the performance and completion of the Work shall be furnished by the Contractor, at its cost, except for material expressly agreed to be furnished by the District (at its cost) in a writing signed by the District. During the term of this Contract, Contractor shall send proper notices, make all necessary arrangements and perform all other services required for the care and maintenance of all public utilities used in connection with the Project. Contractor shall assume all responsibility concerning the same for which the District may otherwise be liable. By executing the General Contract, the Contractor represents and warrants that he/she/it has (a) examined the Contract Documents thoroughly, (b) visited the Project Premises to become familiar with local conditions that may in any manner affect the cost, progress or performance of the Work, (c) become familiar with federal, state and local laws, ordinances, rules and regulations that may in any manner affect the cost, progress or performance of the Work, (d) become familiar with the anticipated labor supply and costs, (e) become familiar with local utility company standards and policies, and (f) studied and carefully correlated the Contractor’s observations with the Contract Documents.

b. **Interpretation of Contract Documents.** The Contract Documents are intended to be complementary, and what is called for by one Contract Document shall be as binding as if called for by all. In the event there is any inconsistency among the provisions of the various Contract Documents, the provisions of these General Terms and Conditions, as supplemented by the Supplementary General Terms and Conditions, will control. The intention of the Contract Documents is to include all labor and materials, equipment, transportation and other things necessary for the proper execution of the Work. When the word “provide” (including derivatives thereof) is used, it shall mean “provide complete in place,” “furnish and install” and deliver materials and equipment F.O.B. destination to the Project

Premises, and to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operation or use in accordance with the Drawings and Specifications. Materials or Work described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

Work that is not particularly shown or specified on the Drawings or Specifications shall be the same as similar parts or Work that are shown or specified. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and Specifications are intended to be fully cooperative and to agree. If the Contractor or any Subcontractor observes that the Drawings and Specifications are in conflict, or that there is a conflict or inconsistency between the Drawings, he or she or it shall promptly notify the Architect in writing (via a Request for Information) before commencing any Work or layout or making any submittals and before ordering any materials, and any necessary changes shall be made by a written response to the Request for Information and Change Order, if required.

Should any question arise concerning the true meaning of the Drawings and/or Specifications, the point in question shall be resolved by the Architect, subject to the approval of the District in its sole discretion. Should the Contractor disagree with such interpretation, the Contractor shall proceed without delay with the Work under question as resolved by the Architect and may initiate the dispute resolution proceedings set forth in Section 56 hereof to resolve its dispute.

Standards, Rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of the Contract Documents within any limits specified. Specifications and accompanying Drawings are intended to delineate and describe the Project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the Work and to carry said Work to a successful conclusion. In preparing the bid for this Project, any Work called for on the Drawings and not by the Specifications, or vice versa, or called for on one Drawing sheet but not on others, shall be priced and fully included in the bid. For bidding purposes, the Contractor shall bid the more stringent requirement or the more complete and comprehensive process in the event of conflicts or discrepancies in the Drawings or Specifications. Should the District desire, during the construction phase of the Project after bid, to direct the use of the simpler or less comprehensive process of the Work or processes in conflict, the Contractor will be issued an Architect/Engineer Field Directive to this effect and a credit Change Order will be issued for the dollar difference between the District-directed Work or method and the more elaborate or comprehensive Work or method that was used in bidding.

It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to Contractor that the Work so named must be completed with all its appurtenances according to the best practices of the trade. The naming of any material and/or equipment shall mean the furnishing and installing of the same, including all incidental and accessory items thereto and/or labor, as per best practices of the trade(s) involved, unless specifically noted otherwise. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

c. **Compliance with Laws.** Drawings and Specifications (and all other Contract Documents) are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules and regulations shall be considered as a part of said Contract Documents within the limits specified therein. If the Contractor observes that portions of the Contract Documents are at variance with any laws,

ordinances, rules or regulations applicable to the Project Premises, the Work or the Project, the Contractor shall promptly notify the Architect and/or the District in writing, and any necessary changes shall be made by Change Order in accordance with Sections 9 and 10 hereof or as otherwise provided in the Contract Documents. The Contractor shall bear all expenses of correcting Work that is done contrary to, or in violation of, said laws, ordinances, rules and regulations if the Contractor knew or should have known that the Work as performed is contrary to, or violates, said laws, ordinances, rules and regulations and if the Contractor performed the same (1) without first consulting the Architect and/or the District for further instructions regarding said Work or (2) disregarded the Architect's or the District's instructions regarding said Work.

## 5. CONTRACT PRICE

The District shall pay, and the Contractor shall accept in full payment for the Work, the Contract Price, subject to additions and deductions provided for in written Change Orders, if any, as hereinafter allowed. Whenever Contractor arranges to work at night or at any time when work is not usually in progress, such work shall be accomplished without extra cost to the District, unless the acceleration in the schedule has been directed by the District after bid award and the delay is not caused by the Contractor. If the District directs the acceleration, the Contract Price shall be equitably adjusted by Change Order.

A reduction in the Contract Price will be made, dollar for dollar, for each overtime or per diem dollar spent by the District in connection with required State Inspections when such per diem or overtime payments are caused by the following:

- a. Voluntary acceleration of the Project Schedule by the Contractor which involves weekend Work, Work in excess of forty (40) hours per week, or Work in excess of eight (8) hours in a single day, performed by the Contractor or any Subcontractors or Materialmen (of any tier), for which on-site inspection of the accelerated Work is required to be furnished by the District; or
- b. Fabrication of materials outside a geographical radius of one hundred (100) air miles from the Project Premises in each direction, when said fabrication requires the presence of a District or State inspector (i.e., steel fabrication or concrete batch mixing).

## 6. PAYMENT SCHEDULE

a. **Progress Payments.** On or about the last day of each month during the progress of the Work, the Contractor shall submit to the Inspector of record for preliminary approval a completed Contractor Payment Request form, which will include Contractor's periodic estimate for partial payment, on account of the portion of the Contract Price in proportion to Work completed from the commencement of the Work through the last day of the month and not included and paid pursuant to any previous Contractor Payment Requests. Each Contractor Payment Request shall show the Contractor's reasonable estimate of the percentage of completion of the Work based upon the most updated Schedule of Values and Contractor's reasonable estimate of the portion of the Contract Price allocable to (1) labor, materials and equipment incorporated into the Work during the period commencing on the date of the preceding Contractor Payment Request (or the date of the General Contract if no payments have been made) and ending on the last day of the month, and (2) materials and equipment properly purchased and stored for use in the Project as of the last day of the month; provided that, except as otherwise provided in the next paragraph, the District shall not be obligated to make payment for (and shall not pay for) materials or equipment stored off-site (i.e., not on the Project Premises). The Contractor Payment Request shall also include a request for a pro rata share (based upon the Contract Time) of the general conditions previously approved in the Schedule of Values. Contractor's estimate of percentage of completion shall be subject to final review and approval by the Inspector of record and the Architect, in each such person's reasonable

discretion.

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

(1) The aggregate cost of materials stored off-site shall not exceed Twenty-Five Thousand Dollars (\$25,000) at any time without the written approval of the District, to be given or withheld in its sole discretion;

(2) Title to such materials shall be vested in the District, as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;

(3) With each Contractor Payment Request, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total replacement value thereof;

(4) The written consent of any Surety shall be obtained by the Contractor, and a copy of the same sent to the District, to the extent required by the District or Contract Document prior to payment for any materials stored off-site;

(5) Representatives of the District shall have the right to make inspections of the storage areas at any time in their sole discretion without notice; and

(6) Such materials shall be (a) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District, (b) specifically marked for use on the Project, and (c) segregated from other materials at the storage facility.

In addition to other required items, each Contractor Payment Request shall be accompanied by (i) a duly executed and acknowledged sworn statement showing all Subcontractors and Materialmen with whom the Contractor has entered into contracts, the amount of each such contract, the amount requested for any Subcontractors or Materialmen in the Contractor Payment Request, together with similar sworn statements from all such Subcontractors and Materialmen, (ii) duly executed conditional lien releases and waivers (in the form provided in California Civil Code section 8132) from Contractor, and all Subcontractors and Materialmen providing labor, services, materials or equipment in connection with the Work, whereby such persons conditionally waive all lien, stop notice and stop payment notice rights against the District, the Project and the Project Premises with respect to all payments to be made pursuant to the Contractor Payment Request being submitted, (iii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8134) from Contractor, and all Subcontractors and Materialmen providing labor, services, materials or equipment in connection with the Work, whereby such persons unconditionally and irrevocably waive all lien, stop notice and stop payment notice rights against the District, the Project and the Project Premises with respect to all payments made pursuant to all previous Contractor Payment Requests, (iv) copies of all recently issued permits or other governmental licenses and approvals with respect to the Work or the Project, (v) copies of certified payroll records (in the form described in Section 61 hereof) from Contractor and each Subcontractor performing any work during the current payment period, (vi) the monthly schedule report and any updates made to the Project Schedule during the current payment period, (vii) a record drawing review log form

as required by Section 24(g) pertaining to the current payment period and (viii) all other information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the District or the Architect. Each Contractor Payment Request shall be based upon the most updated Schedule of Values submitted by the Contractor in accordance with Section 2 hereof.

Upon approval of the Contractor Payment Request (or any portion thereof), the Inspector shall sign the same and deliver it to the Architect for approval. The Architect shall review each Contractor Payment Request, the supporting documentation and the progress of the Work, and shall submit to the District a Certificate for Payment form certifying the amounts owed Contractor based on the percentage of completion of the Work as of the date of the Contractor Payment Request, and/or a statement that the Contractor Payment Request, or any portion thereof, is rejected and the reasons for rejecting the same, within three (3) days after receipt of the Contractor Payment Request and all supporting documentation. Notwithstanding anything to the contrary stated herein, in accordance with California Public Contract Code section 20104.50, any Contractor Payment Request (or portion thereof) that is rejected by the Architect or the District shall be returned to the Contractor, together with a document setting forth the reasons why the Contractor Payment Request (or portion thereof) is rejected, as soon as practicable, but not later than seven (7) days after the District's receipt of the Contractor Payment Request. The issuance of a Certificate for Payment will not prejudice the District's rights in anyway nor be a representation by the District that the Inspector or the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and Materialmen and other data requested by the District to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price.

If the Contractor Payment Request is undisputed and in accordance with the Contract Documents and the Architect issues a Certificate for Payment, payment shall be made to the Contractor within thirty (30) days after receipt of the Certificate for Payment by the District as required by California Public Contract Code section 20104.50(b). The amount paid pursuant to each Contractor Payment Request shall be a percentage of the amount certified by the Architect in the applicable Certificate for Payment. The District shall be entitled to retain a percentage of the value of the Work completed as certified by the Architect to assure the faithful performance of the Contract by the Contractor (collectively, the "Retention"), plus any other amounts that may be retained by the District pursuant to Section 6(d) below. Pursuant to section 7201 of the California Public Contract Code, the amount paid pursuant to each Contractor Payment Request, and the amount retained by the District from each such payment as part of the Retention, shall be as described in either (1) or (2) below:

(1) If the Board or its designee, including, but not limited to, a general manager or other director of an appropriate department, has approved a finding during a properly noticed and normally scheduled public hearing and prior to bid that the project is substantially complex and therefore requires a higher retention amount than 5 percent and the Board includes both this finding and an actual retention amount in the bid documents of ten percent (10%) of the Contract Price, the amount paid pursuant to each Contractor Payment Request shall be ninety percent (90%) of the amount certified by the Architect in the applicable Certificate for Payment. The District shall be entitled to retain ten percent (10%) of the value of the Work completed as certified by the Architect as part of the Retention, plus any other amounts that may be retained by the District pursuant to Section 6(d) below.

(2) In all other instances, the amount paid pursuant to each Contractor Payment Request shall be ninety-five percent (95%) of the amount certified by the Architect in the applicable Certificate for Payment. The District shall be entitled to retain five percent (5%) of the value of the Work completed as certified by the Architect to assure the faithful performance of the Contract by the Contractor

(collectively, the “Retention”), plus any other amounts that may be retained by the District pursuant to Section 6(d) below.

Any Retention (less any other amounts that the District is otherwise entitled to withhold pursuant to Section 6(d) below) shall be paid to the Contractor, if at all, at the time of final payment. Notwithstanding the foregoing, the District shall have the option, but not the obligation, in its sole and absolute discretion, to reduce from time to time or at any time the Retention, or release any portion of the Retention or any other amounts withheld hereunder prior to the date hereinbefore specified, so long as the District does not allow the Retention to fall below the percentages required by California Public Contract Code section 9203. Any exercise of this option shall not be a waiver or limitation of (i) any of the District’s rights respecting the Retention or future Retention or the right to withhold other amounts under the Contract Documents or (ii) any other right or remedy that the District has under the Contract Documents, at law or in equity. Contractor shall not be entitled to have any Contractor Payment Requests processed or be entitled to have any payment made for Work performed so long as any lawful or proper direction concerning the Work, or any portion thereof, given by the District, Architect or Inspector shall remain uncomplished. Pursuant to California Public Contract Code section 20104.50, if the District fails to make a progress payment (or any acceptable portion thereof) within thirty (30) days after the District’s receipt of a properly submitted Certificate for Payment therefor (as provided above), the progress payment (or such acceptable portion thereof) shall accrue interest for each day from and after the expiration of the said thirty (30) day period until it is paid to the Contractor at the legal rate set forth in subdivision (a) of section 685.010 of the California Code of Civil Procedure.

A Certificate for Payment or a progress payment shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

The Contractor shall promptly pay each Subcontractor and Materialman, upon receipt of payment from the District, and in any event no later than seven (7) days after such receipt in accordance with California Public Contract Code section 10262.5, out of the amount paid to the Contractor on account of such Subcontractor’s or Materialman’s portion of the Work, the amount to which such Subcontractor or Materialman is entitled, less percentages (amounts) actually retained from payments to the Contractor on account of such Subcontractor’s or Materialman’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor and Materialman, require each Subcontractor and Materialman to make payments to its sub-Subcontractors and sub-Materialmen in a similar manner. In no event shall Contractor be permitted to withhold any sums (other than the Retention as provided hereinabove) due any Subcontractor or Materialman hereunder on the basis of any claims, retention rights or other rights that Contractor may have against such Subcontractor or Materialman at law, in equity or under contract pertaining to or arising out of any project other than the Project. Contractor’s failure to make timely payments to its Subcontractors or Materialmen, or to enforce the terms of this Section 6, shall be a Default under this Contract.

b. **Final Payment.** If no stop notices, stop payment notices or other claims relating to the Work have been served or filed against the District, the Contractor, the Work, the Project or the Project Premises, the final payment, or any part thereof that is not subject to a stop notice, stop payment notice or other claim, less any other amounts that may be withheld or retained by the District pursuant to Section 6(d) below, shall be processed following the thirty-fifth (35th) day after recordation of a Notice of Completion for the Work, but no later than the sixtieth (60th) day after the recordation of the Notice of Completion or Final Completion of the Project, whichever occurs first, as prescribed by California Public Contract Code section 7107. The final payment shall be processed in accordance with the submission of a final Contractor Payment Request. Before final payment is due and will be paid under the Contract, the Contractor shall deliver the following items to the District (whether or not requested by the District prior to final payment): (1) all maintenance and operating manuals, spare parts, extra stock and special tools



required by the Specifications, (2) the marked sets of Record Drawings, (3) reproducible Mylar drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components, (4) any special guaranties and warranties required by the Contract Documents, (5) assignments of all guaranties and warranties from Subcontractors and Materialmen, (6) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or the District's property might be responsible or encumbered (less amounts withheld by the District) have been paid or otherwise satisfied, (7) duly executed conditional lien releases and waivers (in the form provided in California Civil Code section 8136) from Contractor, and all Subcontractors and Materialmen providing labor, services, materials or equipment in connection with the Work, whereby such persons conditionally waive all lien, stop notice and stop payment notice rights against the District, the Project and the Project Premises with respect to all payments to be made to them from the final payment, (8) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8138) from Contractor, and all Subcontractors and Materialmen providing labor, services, materials or equipment in connection with the Work, whereby such persons unconditionally and irrevocably waive all lien, stop notice and stop payment notice rights against the District, the Project and the Project Premises with respect to all payments made pursuant to all previous Contractor Payment Requests, (9) copies of certified payroll records (in the form described in Section 61 hereof) from Contractor and each Subcontractor performing any portion of the Work to the extent that such records have not been previously delivered to the District with an earlier Contractor Payment Request, (10) a record drawing review log form for the current payment period and (11) copies of all recently issued or final permits or other governmental licenses and approvals with respect to the Work or the Project. The District, in its sole discretion, may add to, or waive delivery of, any or all of the aforementioned items as condition(s) precedent to final payment. Absent such waiver, delivery of all such items to the District is a condition precedent to final payment. As a further condition precedent to final payment, Contractor shall also have satisfied all close-out requirements set forth in Sections 48, 49, 50 and 51 hereof. Within ten (10) days following final payment, the Contractor shall deliver to the District duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8138) from Contractor, and all Subcontractors and Materialmen providing labor, services, materials or equipment in connection with the Work or the Project, executed by such persons, whereby such persons unconditionally and irrevocably waive all lien, stop notice and stop payment notice rights against the District, the Work, the Project and the Project Premises arising out of this Contract, the Work or the Project in general.

c. **Changes.** Payment for additional work or extra work shall be authorized by Change Order in accordance with the terms and provisions of Sections 9 and 10 hereof.

d. **Payments Reduced or Withheld.** The District may at any time decline to pay the Contractor, or reduce or withhold any portion of a payment otherwise due the Contractor under the Contract (including, without limitation, the final payment), if:

- (i) Any of the Work in the District's opinion is defective and such defects are not remedied within the time frame requested by the District;
- (ii) Any third-party claims are filed with respect to the Work or there is reasonable evidence indicating the probable filing of such claims;
- (iii) The Contractor fails to properly make any or all payments to Subcontractors or Materialmen for labor, materials or equipment;
- (iv) In the District's opinion, the Work cannot be completed for the unpaid balance of the Contract Price;
- (v) In the District's opinion, the Work will not be completed within the Contract Time and the unpaid balance of the Contract Price would not be adequate to cover liquidated damages and/or actual delay damages resulting from the anticipated delay;
- (vi) Any damage has occurred to the District or any Subcontractor, Materialman or another contractor, and the Contractor may be liable for such damage;

- (vii) The Contractor fails to comply with the Project Schedule;
- (viii) The Contractor fails to perform any portion of the Work in accordance with the Contract Documents or otherwise violates any provision of the Contract Documents or fails to discharge any Contractor obligation thereunder;
- (ix) Any claims, liens, stop notices or stop payment notices are filed in connection with the Work or asserted against the District, the Project or the Project Premises, or the District has reason to believe it is probable a claim, lien, stop notice or stop payment notice will be filed or asserted in connection with any portion of the Work;
- (x) The Contractor fails to reimburse the District for any costs or expenses incurred by the District, or amounts advanced by the District, on behalf of the Contractor as may be provided or permitted in this Contract;
- (xi) Notification has been given that a penalty will be assessed by any State, local or municipal agency or by the District for violations of any applicable laws, including, without limitation, labor laws and/or fair employment laws; or
- (xii) Any testing/inspection costs or payments that become due to the District for failed tests or inspections.

If the District elects to withhold payment from the Contractor pursuant to this Section 6(d), then the District will be permitted to withhold such amounts as the District may, in its reasonable discretion, deem necessary to (A) protect the District against any and all liabilities to Subcontractors, Materialmen or any other persons as a result of the Work or any of the Contractor's acts or omissions, (B) correct any defective Work or remedy any breach of the Contract Documents, (C) recover and collect liquidated damages and actual delay damages in the event completion of the Project is delayed, (D) recover and collect any costs or expenses paid by, or amounts advanced by, the District on behalf of Contractor, (E) collect any penalty that may be assessed against the Contractor for violations of any applicable laws, including, without limitation, labor laws and/or fair employment laws, and/or (F) recover any testing/inspections costs incurred by the District in connection with failed tests or inspections. The District may apply any such withheld amount or amounts to the payment and satisfaction of such claims or obligations at its discretion. In so doing, the District shall be deemed the agent of Contractor and any payment so made by the District shall be considered as a payment made under the Contract by the District to the Contractor and shall be so deducted from the Contract Price due the Contractor. The District shall not be liable to Contractor for any such payments made in good faith. Such payments may be made without prior judicial determination of the claim or the obligation to make such payment. The District will render the Contractor a proper accounting of any such amounts retained or disbursed by the District on behalf of the Contractor.

The Contractor shall promptly pay each Subcontractor or Materialman, upon receipt of payment from the District of such withheld funds, and in any event no later than seven (7) days after such receipt in accordance with California Public Contract Code section 7107, out of the amount paid to the Contractor on account of such Subcontractor's or Materialman's portion of the Work, the balance of the portion of the Retention to which said Subcontractor or Materialman is entitled, reflecting amounts actually retained from previous payments to the Contractor on account of such Subcontractor's or Materialman's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor and Materialman, require each Subcontractor and Materialman to make payments to sub-Subcontractors and sub-Materialmen in a similar manner. In no event shall Contractor be permitted to withhold any sums (other than the Retention as provided hereinabove) due any Subcontractor or Materialman hereunder on the basis of any claims, retention rights or other rights that Contractor may have against such Subcontractor or Materialman at law, in equity or under contract pertaining to or arising out of any project other than the Project.

e. **Substitution of Securities.** Substitution of securities for any monies withheld under this Section 6 will be permitted at the request and expense of the Contractor, but only in accordance with the

provisions of California Public Contract Code section 22300. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this Section 6(e) shall include those listed in California 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 owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this Section 6(e) shall be substantially similar to the form set forth in California Public Contract Code section 22300(f).

## **7. TIME PERIOD FOR COMPLETION OF THE WORK**

The time period for completion of the Work shall be the number of consecutive calendar days stated in the General Contract and shall commence from the Starting Date. By executing the General Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. Any extension thereto shall be authorized under Change Order only in accordance with Sections 8, 9 and 10 below. Notwithstanding any provision in this Contract to the contrary, time is of the essence in the performance of the Contract.

**It is agreed by the contractor and the district that, if the project fails to reach substantial completion within the contract time plus any written authorized extensions of time hereunder, then (a) as compensation to the district for the loss of the beneficial use of the project during the period of the delay, there shall be assessed against contractor as liquidated damages, but not as a penalty, the amount stated in this contract for each day thereafter until the date that physical completion of the work and the project has reached substantial completion, and (b) as compensation for the actual additional out-of-pocket costs and expenses incurred by the district as a result of the delay in completion, there shall also be assessed against the contractor the actual and verifiable out-of-pocket costs and expenses incurred by the district as a result of the delay (such as, for example, additional compensation paid to the district's architect, construction manager(s) and other consultant(s) and the legal fees and expenses incurred by the district in connection with the delay). It is hereby agreed by the contractor and the district that it would be impracticable and extremely difficult to fix the actual damage to the district should the entire work and project not be completed within the time period specified above plus any written authorized extensions of time hereunder and the district be deprived of the beneficial occupancy of the project as a result thereof. The liquidated damages provided for in this section 7 represent the parties' reasonable estimate of the actual damages that the district will incur if its beneficial use of the project is delayed beyond the expiration of the contract time; such liquidated damages do not constitute a penalty, nor are they intended to compensate the district for (or cover) the actual out-of-pocket damages incurred by the district in connection with any such delay (which actual out-of-pocket damages shall be separately recoverable by the district as discussed below within this section 7). The payment of the amounts described in this section 7 as liquidated damages is not intended as a forfeiture or penalty within the meaning of California civil code sections 3275 or 3369, but is intended to constitute liquidated damages to the district pursuant to California civil code section 1671. The parties expressly agree that the District shall be permitted to recover its actual out-of-pocket damages incurred as a result of any delay in Substantial Completion (in addition to the liquidated damages that may be recovered for the loss of the beneficial use of the Project during the period of the delay), and that such actual out-of-pocket delay damages are not liquidated hereunder, because unlike the damages**

**resulting from the loss of the beneficial use of the Project, such actual out-of-pocket damages are not impracticable or difficult to fix.**

CONTRACTOR'S INITIALS: \_\_\_\_\_ DISTRICT'S INITIALS: \_\_\_\_\_

The District may deduct liquidated and/or actual out-of-pocket delay damages described in this Section 7 from any unpaid amounts then or thereafter due the Contractor under this Contract in accordance with Section 6(d) hereof. Any liquidated and/or actual out-of-pocket delay damages not so deducted from any unpaid amounts due the Contractor shall be payable to the District at the demand of the District, together with interest thereon from the date of demand until paid at a rate equal to the rate of interest set forth in Section 54(d) hereof.

**8. DELAY IN THE WORK**

a. **Extension of Contract Time.** The District shall extend the time period for completion of the Work by the number of calendar days the Contractor is delayed only when satisfactory evidence is presented to the District by Contractor, which shall be provided within fifteen (15) calendar days after the commencement of the matter or condition causing the delay, proving to the District's satisfaction that such delay could not be anticipated at the time of entering into the Contract and is neither caused nor continued by fault or negligence on the part of the Contractor, its Subcontractors, Materialmen or others reasonably and customarily under the Contractor's control, and is not otherwise caused by the Contractor or by factors within his/her/its control. The following shall constitute matters or conditions that may justify an extension to the Contract Time hereunder: Acts of God or of a public enemy, act of government, act of any quasi-governmental or publicly-regulated entity including a public utility, labor disputes, fire, abnormal adverse weather, flood, epidemic, quarantine restrictions, riot, strike, freight embargo, unavoidable casualties, and other such causes beyond the Contractor's control. If abnormal adverse weather conditions are the basis of a claim for an extension to the Contract Time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time claimed and could not have been reasonably anticipated at the time of contracting, and that such weather conditions had an adverse effect on the scheduled construction. The District shall ascertain the facts and the extent of the delay, and its findings shall be conclusive. A time extension granted for Work at one site shall not apply to any other site. Any extension of time, if allowed by the District pursuant to this Section 8, shall be authorized under a written Change Order.

b. **District Liability for Delays.** Except as otherwise provided in this Section 8, the District and those acting on its behalf shall not be liable for any damages because of any delay in furnishing the Project Premises or otherwise resulting from any cause beyond the control and without the fault of the District, including, but not restricted to: a commonly understood act of God or of a public enemy, act of government, act of any quasi-governmental or publicly-regulated entity including a public utility, labor disputes, act of the Contractor or the Contractor's employees, Subcontractors, Materialmen or agents, act of any other contractor on the Project, abnormal adverse weather conditions, fire, flood, epidemic, quarantine restrictions, riot, strike, freight embargo, unavoidable casualties, or act of any third person or entity not subject to the direct control of the District. The sole remedy of the Contractor for any such delay shall be limited to an extension of the Contract Time in accordance with Section 8(a), above. Notwithstanding anything to the contrary stated above, the District may, in its sole and absolute discretion and without obligation to do so, elect to increase (or otherwise adjust) the Contract Price for, among other things, significant delays that are not caused by the Contractor or any person under the Contractor's control where the circumstances warrant such a change in the Contract Price pursuant to a Bulletin in the form of Exhibit F attached hereto and incorporated herein by this reference (a "Bulletin") or a Change

Order in accordance with Sections 9 and 10 hereof.

In compliance with the provisions of California Public Contract Code section 7102, if the Contractor is delayed in completing the Work due solely to the fault of the District, and where such delay is unreasonable under the circumstances and was not contemplated by the parties at the time of contracting, the Contractor shall be entitled to an appropriate time extension to account for the delay, to be authorized by Change Order, and the District shall pay to Contractor the actual and verifiable damages and costs incurred by Contractor as a direct result of such delay. An extension of the Contract Time shall be the Contractor's sole remedy (and the Contractor shall have no right to actual or liquidated damages) for any delay, hindrance in the performance of the Work, loss in productivity, impact damages or similar claims unless the delay (i) is caused solely by the acts of the District, (ii) is unreasonable under the circumstances, and (iii) was not contemplated by the parties at the time of contracting. If any such District-caused delay occurs, the Contractor expressly agrees to be limited solely to the actual and verifiable damages provided for in this Section 8(b).

Notwithstanding anything to the contrary stated above, Contractor hereby acknowledges and agrees that Contractor shall not be entitled to any compensation, under any theory of recovery, for extended overhead, project general conditions, acceleration costs or other costs or expenses, arising or resulting from delays of up to one-hundred twenty (120) days from the latest of: (a) the date of bid opening, (b) the date of the District's obtaining bid approval from its Board, and (c) the date of the District's obtaining bid approval from the State of California (if required). In bidding on this Project, Contractor fully agrees and understands that a considerable delay may result from the date of the bid opening until the issuance of the Notice to Proceed and that no compensation shall be due to Contractor for such delay unless such delay exceeds one-hundred twenty (120) days from the latest of the dates described as "(a)," "(b)" and "(c)" in this Subsection b, in which event the Contractor shall be appropriately compensated only for the portion of such delay that exceeds one-hundred twenty (120) days.

c. **Change Order Work.** The Contractor expressly acknowledges and agrees that any change in the Work performed pursuant to Sections 9 or 10 below shall not be deemed to constitute a delay or other basis for claiming additional compensation based on any theories including, but not limited to, acceleration, suspension or disruption to the Project, and further acknowledges that a complete system of compensation for said change in the Work is provided exclusively under said Sections 9 and 10.

## 9. CHANGES

a. **Changes in the Work.** The District may, in its sole discretion, at any time prior to Acceptance of Completion, by delivery of a written Bulletin, make changes in the Work or the Contract Documents by alteration, addition, deduction, deviation, or omission, without making the Contract void. The Contractor when so notified by the District shall proceed without delay with the changes described in the Bulletin. The details, workmanship and materials involved in any change in the Work shall conform to the original Drawings and Specifications unless specifically instructed otherwise by the District. All such Work shall be executed under conditions of the original Contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Architect, any engineer or any other District representative working on the Project shall have authority to make minor changes in the Work, not involving a change in Contract Price or Contract Time, and not inconsistent with the purposes of the Project, via an Architect/Engineer Field Directive. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless it is made pursuant to a written order from the District, and no claim for addition to the

Contract Price or extension to the Contract Time shall be valid unless so ordered by the District.

b. **Changes in the Contract Price.** The charge or credit to the District resulting from any changes ordered or authorized by the District in writing shall be mutually agreed upon by the District and the Contractor as provided in this Section 9(b), or, at the District's option, shall be performed on a time and materials basis in accordance with Section 10, below. In no event shall the Contractor be permitted to cease Work during the negotiation of any Bulletin or Architect/Engineer Field Directive; Contractor shall proceed with the ordered change in the Work in a timely manner. Contractor shall promptly increase the amounts of each of the Payment Bond and Performance Bond in proportion to any increase in the Contract Price and provide the District with evidence of the same.

If the District elects to fix the charge or credit resulting from any such change by agreement with the Contractor prior to commencement of the change in the Work, then the District shall so notify the Contractor in the Bulletin whereby it requests the change and the Contractor shall submit its estimate for the change within seven (7) calendar days after the change is requested. If the nature of the change permits, the estimate may be in a lump sum agreed to by the Contractor and the District. However, if required by the District, the Contractor shall submit estimates in sufficient detail to permit verification of all costs comprising the Cost of the Work (as defined below). Such estimates shall be based on either unit prices or detailed labor and material estimates, as required by the District in its sole and absolute discretion.

For changes in the Work performed by the Contractor, only the following shall be used in computing the total "Cost of the Work":

(i) Amount of wages (including employer payment for fringe benefits required by custom) paid to (A) laborers, apprentices, journeymen and others who are dedicated exclusively to the Project and working on the Project on a full-time basis to the extent such wages are incurred in connection with such Change Order Work, and (B) foremen, full time superintendents and others retained on a full-time basis to supervise the Project to the extent such wages are incurred while such persons are directly supervising Change Order Work;

(ii) A portion of the wages (including employer payment for fringe benefits required by custom) for project directors, assistant project directors, project managers, assistant project managers, project engineers and other such employees equal to the product of such employees' wages multiplied by the number of hours that such employees actually worked on the Project Premises in connection with the Change Order Work (it being acknowledged and agreed by the parties that hours worked by such employees off-site (e.g., not on the Project Premises) on or in connection with the Change Order Work shall be considered Contractor overhead and compensated via the overhead and profit percentages set forth below and not as a part of the Cost of the Work);

(iii) Cost of services, materials, supplies and equipment, including transportation, directly and actually consumed in connection with the change in the Work; provided that (a) the rental cost for any hand tool with a replacement value that is less than \$500 shall be excluded from the "Cost of the Work," and (b) all materials credits, cash or bulk discounts given to the Contractor or any Subcontractor or Materialman shall be passed on to the District in full;

(iv) Cost of the rental or use of special machinery and equipment (except as otherwise excluded above) necessary to perform the actual change in the Work (including, without limitation, the additional rental costs for Contractor's field office, temporary fencing and other such rented items and materials, but only to the extent that such rental costs are incurred as a result of the critical path being affected by the change in the Work); and

(v) Cost of applicable taxes, insurance and surety bonds that become due and payable solely because of the change in the Work.

No other amounts shall be included in the calculation of the Cost of the Work.

For Change Order Work performed solely by the Contractor and/or its employees, the Contractor shall add fifteen percent (15%) of the total Cost of the Work for the Contractor's profit, overhead, supervision, and any and all other costs or expenses which are incurred by the Contractor because of the change in the Work.

For Change Order Work performed by a direct Subcontractor of the Contractor, the Subcontractor shall be paid the Cost of the Work actually performed by such Subcontractor plus fifteen percent (15%) of the Cost of the Work performed by such Subcontractor as the Subcontractor's profit, overhead, supervision and any and all other such costs or expenses which are incurred by the Subcontractor because of the change in the Work, and the Contractor may add six percent (6%) of the Subcontractor's Cost of the Work as the Contractor's profit, overhead, supervision, and any and all other costs or expenses which are incurred by the Contractor because of the change in the Work.

For Change Order Work performed by a sub Subcontractor, the sub-Subcontractor shall be paid the Cost of the Work actually performed by such sub-Subcontractor, plus fifteen percent (15%) of the Cost of the Work performed by such sub-Subcontractor as the sub-Subcontractor's profit, overhead, supervision and any and all other such costs or expenses which are incurred by the sub-Subcontractor because of the change in the Work, to which the Subcontractor may add five percent (5%) of the sub Subcontractor's total Cost of the Work and the Contractor may add six percent (6%) of the sub-Subcontractor's total Cost of the Work. No increases above the Cost of the Work, as described in items (i) through (v) listed above, other than the overhead, profit and supervision percentages specifically referenced hereinbefore, shall be allowed regardless of the number of layers or tiers of Subcontractors involved.

When the change involves a deletion of Work, the credit to the District shall be computed as set forth in this Section 9(b) above, including overhead and profit.

If the District and Contractor agree on the amount of any such charge or credit to the District, both parties shall execute a Change Order memorializing the same. If the District and the Contractor are unable to agree on the amount of any charge or credit to the District resulting from a change in the Work, the Contractor shall, at the District's direction, promptly proceed with and diligently prosecute such change in the Work and the charge or credit to the District resulting therefrom shall be determined on a time and materials basis, and if, after completion of the change in the Work, the Contractor or the District disputes the other party's determination of the labor and materials cost incurred in connection with the change in the Work, then the party disputing the same may initiate the dispute resolution procedures pursuant to, and otherwise proceed in accordance with, Section 9(d) below.

c. **Extension of Time.** If the District determines that additional time will be required to complete the Work by reason of a change made pursuant to this Section 9, or a justified delay has occurred in accordance with Section 8, above, the time for completion of the Work shall be extended by a Change Order for a period commensurate with the number of days by which the entire Project has been extended because of that change or delay, as determined by the District in its reasonable discretion. The parties understand and expressly agree that insofar as the provisions of California Public Contract Code section 7102 may apply to changes in the Work or delays under this Contract, the actual delay damages set forth in Section 8b, above, in conjunction with the time extensions provided herein, are intended to, and shall provide, the exclusive and full method of compensation for changes in the Work performed under this Contract and construction delays. If the Contractor disputes the District's proposed time extension or any increase in the Contract Price resulting therefrom, the Contractor may proceed in accordance with Section 9(d) below.

d. **Dispute over Estimate of Changes to the Contract Price and/or Contract Time.** Should the Contractor and the District fail to agree on the estimate of any charge or credit to the District

and/or additional or reduced time required for proposed changes in the Work or any justified delay under Section 8 hereof, the Contractor when notified by the District shall proceed without delay with the changes or extra Work and shall file a written request for mediation and then arbitration (if necessary), as provided in Section 56 hereof, and, if the matter is not resolved by mediation and goes to arbitration, the decision of the arbitrator on the matter shall constitute the Change Order for such change in the Work or delay, as applicable.

e. **Unknown or Concealed Conditions or Mistakes/Omissions in Drawings or Specifications.** The Contractor hereby reconfirms that it has intensively and thoroughly reviewed the Drawings and Specifications and the Project Premises and is familiar with all laws, rules and regulations that may be imposed upon the Project or the Work by any governmental entity. The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time for any concealed or unknown condition encountered in the performance of the Work, or for correcting any mistakes or omissions in the Drawings or Specifications, if the Contractor knew of or should have recognized (given the Contractor's investigation of the Drawings and Specifications, the Project Premises and the proposed Work) the condition or mistake/omission prior to commencement of the Work. Notwithstanding the foregoing, however, if the Contractor makes a proper claim for an adjustment to the Contract Time or Contract Price regarding special or concealed conditions or mistakes/omissions in the Drawings or Specifications which do not fall into the categories set forth above, the Architect will promptly investigate such conditions or mistakes/omissions. If such conditions or mistakes/omissions differ materially and cause an increase or decrease in the Contractor's cost or time required for performance of any part of the Work, and the Contractor has timely and properly made its claim, the Architect will recommend an equitable adjustment to the Contract Time or Contract Price, or both. If the Architect determines that the conditions at the Project Premises are not materially different from those indicated in the Contract Documents or that the conditions or mistakes or omissions in the Drawings or Specifications should have been recognized by the Contractor prior to the commencement of the Work and that no change in either or both of the Contract Time or the Contract Price is justified, then the Architect shall so notify the District and the Contractor in writing stating the reasons. For any claim for any adjustment to the Contract Time or Contract Price to be made properly, such claim must be made by the Contractor in writing with specific detail as to the special or concealed condition or mistakes or omissions (as applicable) and such notice shall be given to the District and/or the Architect promptly before conditions are disturbed and in no event later than fifteen (15) calendar days after first observance of such conditions, mistakes or omissions. If the Contractor is entitled to an adjustment in the Contract Time and/or Contract Price, the Contractor shall make such claim within the fifteen (15) calendar day period. If such claim is not timely and properly made, it shall be considered waived. In no event shall the existence of any concealed or unknown conditions, or any mistakes or omissions in the Drawings or Specifications, qualify or limit any of the Contractor's obligations under the Contract Documents.

## **10. TIME AND MATERIALS PRACTICES**

If, in the opinion of the Architect and/or the District, it is not feasible to estimate the charge or credit to the District or additional time required in connection with a proposed change in the Work before such change is performed, or if the District and the Contractor are unable to agree upon the charge, credit or additional time required in connection with a proposed change by agreement in accordance with Section 9(b) above, then the Contractor shall, upon the authorization of the District (to be given or withheld in its sole and absolute discretion), proceed with the change in the Work on a TIME AND MATERIALS BASIS not to exceed the amounts authorized by California Public Contract Code section 20118.4 for changes or alterations to contracts. The time and materials costs shall be based upon the Cost of the Work, shall include profit, overhead and supervision percentage fees for the Contractor, Subcontractors and sub-Subcontractors, and shall otherwise be calculated in accordance with the applicable provisions of Section 9(b) above. The Contractor shall submit to the District and/or the Architect daily time and



material tickets signed by the Inspector of record that include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not small or expendable tools), and such other evidence of cost or credit as the District may require in its sole discretion. The Contractor shall submit time and materials tickets for such authorized Work on a daily basis. Should the Contractor fail to submit such tickets as specified on a daily basis, the evaluation of the amount of materials used and labor expended will be made by the District, in its sole and absolute discretion. The District shall not be liable to Contractor for time and materials costs which arise or are incurred because of the negligence of, or defective or nonconforming work or materials of, Contractor or any Subcontractor, Materialman or other person within Contractor's control, because of Contractor's failure to properly supervise the Work or to properly schedule or coordinate the Work, or because of Contractor's failure to comply with any requirements of the Contract Documents.

Upon completion of the change in the Work, a Change Order shall be issued and signed by the District and Contractor based upon the aforesaid records; provided that, if the District disputes the amounts claimed in such records of the Contractor, the District may initiate mediation and/or arbitration proceedings (if necessary) pursuant to Section 56 hereof, and, if the matter is not resolved by mediation and an arbitration hearing is required, then the arbitrator's decision on the matter will constitute the Change Order for the change in the Work. No work shall proceed on a time and materials basis except in the presence of the Inspector or an assigned District representative. All daily time and material tickets must be signed by the Inspector.

## **11. SUBSTITUTIONS**

In accordance with California Public Contract Code section 3400, whenever in the Specifications any material, process or article is indicated or specified by grade, patent or proprietary name or by name of manufacture, and the District is unaware of any material, process or article which is equal to the product or item specified, 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," and 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 by delivering to the District and Architect a completed substitution request in the form of Exhibit G attached hereto and incorporated herein by this reference (a "Substitution Request"). If the material, process or article offered by the Contractor in the Substitution Request is not, in the opinion of the Architect and/or the District, substantially equal or better in every respect to that specified, then the Contractor shall furnish any material, process or article specified. Burden of proof as to quality of any material, process or article proposed in a Substitution Request shall rest with the Contractor. The Contractor shall submit the Substitution Request together with substantiating data for substitution of any "or equal" item within five (5) calendar days after submission of its bid, and no substitutions (or Substitution Requests) shall be considered or permitted after such 5-calendar-day period. The Substitution Request shall include proof of the State Fire Marshal's approval, if required, all necessary information, specifications, data and the difference in cost. Provision authorizing submission of "or equal" justification data shall not in any way authorize an extension to the Contract Time.

If requested by the Architect or the District, the Contractor shall, at the Contractor's sole cost and expense, have the proposed substitute material, apparatus, equipment or process tested under the direction of the Architect or the Inspector or other District representative in accordance with the terms and provisions of Section 35 hereof. Quality and strength, physical, chemical or other characteristics, durability finish, or efficiency shall be tested by a testing laboratory selected by the District. It shall be the responsibility of the Contractor to provide all necessary evidence for the Architect and/or the District to evaluate a proposed substitute. If the Architect and/or the District accept the proposed substitute, the

Contractor agrees to pay for all engineering and design services, including, without limitation, compensation to the Architect and affected engineers for their required time to process such substitution through the Division of the State Architect (DSA), if required, and to make all changes and adjustments in materials or Work of all trades directly or indirectly affected by the substituted item or items at no cost to the District. If the furnished material, process or article is more expensive than that specified, the difference in cost of such material, process or article so furnished shall be borne entirely by the Contractor.

## 12. SUPERVISION OF THE WORK

a. **District**. The tools, equipment, apparatus, facilities, transportation, labor and materials shall be furnished, and the Work shall be performed and completed, under the general supervision of and subject to the approval of the Architect, the Inspector and the District. Assigned and designated District representatives, including, without limitation, construction managers or project managers, shall have full access to the Work at all times while Work is underway and being performed.

b. **Architect**. The Architect shall have the right to accept or reject materials or workmanship and determine when the Contractor has complied with the conditions of the Contract. The Architect shall be the District's representative during the construction period and shall observe the progress and quality of the Work on behalf of the District. The Architect will visit the Project Premises at intervals appropriate to the stage of construction 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 shall have the authority to act on behalf of the District only to the extent expressly provided in the Contract Documents. The Architect shall have the authority to stop Work whenever such stoppage may be necessary, in the Architect's reasonable opinion, to ensure the proper execution of the Contract. The Architect shall be in the first instance the judge of the performance of this Contract. The Architect shall side neither with the District nor with the Contractor, but shall use its powers under the Contract to enforce its faithful performance by both. The Architect shall, within a reasonable time, make decisions on all claims of the District or the Contractor and on all other matters relating to the execution and progress of the Work, and shall generally have all responsibility and power established by law, including but not limited to Title 24 of the California Code of Regulations. If the District elects, in its sole discretion, to utilize a project manager or a construction manager, the powers delineated above for the Architect may be shared, in whole or in part, with the project manager or construction manager, as the District may determine in its reasonable discretion.

c. **Inspector**. One or more inspectors employed by the District (including the Inspector) will be assigned to the Work. The inspectors employed by the District shall represent the Architect and/or the District on the Work. All Work shall be done under the observation or with the knowledge of the Inspector and/or any specialty trade inspector representing the District as may be applicable. The Inspector and such specialty inspectors shall have free access to any and all parts of the Work at any time. Work done or covered up in the absence of specified or prescribed inspection may be required to be removed and replaced under proper inspection. Contractor shall bear the entire cost of performing all the Work and furnishing all the material necessary for the removal and its subsequent replacement irrespective of whether or not the Work is found to be defective. Whenever Contractor arranges to work at night, or at any time when the Work is not usually in progress, or to vary the period during which the Work is carried on each day, Contractor shall give the District twenty-four (24) hours prior notice so that proper inspection may be provided. Contractor shall furnish the Inspector with reasonable facilities (including, without limitation, the field office described in Section 13 below) for obtaining such information as may be necessary to keep the Inspector fully informed respecting the progress and manner of the Work and character of materials and equipment. Inspection of the Work shall not relieve the

Contractor from any obligation to fulfill the Contract. The Inspector shall have the authority to stop Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its subcontractors and employees accordingly.

d. **Contractor.** Unless personally present on the Project Premises where Work is being done, the Contractor shall keep on the Work at all times during its progress a competent construction superintendent satisfactory to the District. The superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendence duties with another project or job. The construction superintendent shall not be replaced except with written consent of the District. The construction superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instructions from the Architect, the Inspector, the District or any other District representative. All Requests for Information shall be originated by the superintendent and responses thereto shall be given to the superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project Premises until the superintendent has arrived, nor shall Work continue during any day after the superintendent has departed from the Project Premises. Any authorized replacement of the superintendent must be completed through a smooth transition of duties lasting at least ten (10) working days' duration, with such transition being at no expense to the District. The Contractor shall give efficient supervision over the Work using the best skill and attention. The Contractor and all Subcontractors and Materialmen shall at all times enforce strict discipline and good order among the Contractor's, such Subcontractor's or Materialman's (as applicable) employees and shall not employ on the Work any unfit person or anyone not skilled in the portion of the Work assigned. Any person in the employ of the Contractor or any Subcontractor or Materialman whom the District may deem incompetent or unfit shall be dismissed from the Work and shall not again be employed on it except with the written consent of the District. Prior to the District deeming an employee of the Contractor, Subcontractor or Materialman incompetent or unfit, the District shall serve written notice upon the Contractor setting forth the reasons for its determination, and if it relates to a Subcontractor or Materialman, Contractor shall forward a copy of such notice to the affected Subcontractor or Materialman. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall submit to the Inspector of record on or before 12:00 p.m. of each working day a daily report in the form of Exhibit H attached hereto and incorporated herein by this reference pertaining to the previous working day.

e. **Subcontractors and Materialmen.** The Contractor shall be fully responsible for the acts and omissions of all Subcontractors and Materialmen on the Work of every tier. In the event of any dispute or controversy between the Contractor and any Subcontractor or Materialman over any matter whatsoever, performance of the Work required under this Contract shall not be delayed or stopped. The District will deal with Subcontractors, Materialmen and others employed in connection with the Work only through the Contractor, who shall be responsible for the proper execution of all the Work.

f. **Conflicts.** In case of conflicts among the parties listed above, the decision of the District shall be final.

### **13. INSPECTOR'S FIELD OFFICE**

The Contractor shall provide for the use of the Inspector and other District representatives on the Project Premises a temporary office of not less than seventy-five (75) square feet of floor area to be located as directed by the Inspector and to be maintained until removal is ordered or authorized by the District. The Inspector's office shall be separate from the Contractor's office area. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Doors shall have a key type lock or padlock hasp. Windows shall be barred. If requested by the District,

the office shall also be air conditioned. At no cost to the District, Contractor shall also install and provide, for Inspector's and other District representatives' exclusive use, a facsimile machine and a dedicated phone line for such fax service.

A table satisfactory for study of the Drawings and other plans and two chairs shall be provided by the Contractor. The Contractor shall, at its sole cost and expense, provide and pay for adequate electric lights, free telephone service within the Southern California area (not a payphone), and adequate heat for the field office until removal of such field office is ordered or authorized by the District. Contractor shall also grant to Inspector access to a copy machine located on the Project Premises free of charge.

#### **14. ACCESS TO WORK**

The District, the Architect, the Inspector and their representatives shall at all times have access to the Project and the Work wherever it is in preparation or progress. The Contractor shall provide safe and proper facilities for such access so that the District, the Architect, the Inspector and their representatives may perform their functions in connection with the Work or under this Contract. The Contractor, at its sole cost and expense, shall provide sufficient, safe and proper facilities and the labor necessary to move, take and prepare samples for testing of materials and shall move the same for purposes of inspection when ordered to do so by any of the above-named persons.

#### **15. SUBCONTRACTING**

a. **Subcontracting Generally.** The Contractor agrees to bind every Subcontractor and Materialman to the terms of this Contract as far as such terms are applicable to such Subcontractor's or Materialman's Work or services. If the Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to the District for acts and omissions of all Subcontractors (of every tier) and of persons either directly or indirectly employed by such Subcontractors, as the Contractor is for acts and omissions of persons employed directly by the Contractor. The Contractor shall also be so responsible for the acts and omissions of all Subcontractors and Materialmen of every tier. Nothing contained in the Contract Documents shall create any contractual relations between any Subcontractor or Materialman and the District; provided that, each subcontract or other contract with a Subcontractor or Materialman shall specifically provide that the District is an intended third party beneficiary thereof. Each such subcontract or other contract shall further specifically provide that the District shall only be responsible for those obligations of the Contractor that accrue subsequent to the District's exercise of any rights under the contingent assignment set forth in Subsection d below. The Contractor shall not contract with any Subcontractor or Materialman to whom the District or the Architect has made reasonable objection. The District shall have no obligation to pay or to see to the payment of money to a Subcontractor or Materialman except as may be otherwise required by law.

b. **District Consent.** The District's consent to or approval of any Subcontractor or Materialman under this Contract shall not in any way relieve the Contractor of its obligations under this Contract with respect to such persons, and no such consent or approval shall be deemed to waive any such provisions of this Contract.

c. **Subletting and Subcontracting Fair Practices Act.** In performance of the Work, the Contractor is required to comply with the "Subletting and Subcontracting Fair Practices Act" (California Public Contract Code sections 4100 et seq.) and, for violation of any provision of said Act, shall be subject to the penalties prescribed in the Act. Failure to comply with the Act shall also constitute a "Default" under this Contract. Should performance or completion of the Work be assumed and undertaken by a guarantor or Surety pursuant to a performance guaranty or bond (including, without limitation, the Performance Bond), such party shall, to the same extent as the Contractor, be obligated to

use the same subcontractors which the Contractor would have been required to use under the provisions of the "Subletting and Subcontracting Fair Practices Act."

d. **Contingent Assignment of Subcontracts and Other Contracts.** Each subcontract and other contract or agreement for any portion of the Work is hereby assigned by the Contractor to the District provided that:

(i) such assignment is effective only after termination of this Contract by the District as provided herein and only for those subcontracts and other contracts and agreements which the District accepts by notifying the Subcontractor or Materialman (as may be applicable) in writing; and

(ii) such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.

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

## **16. DRUG-FREE WORKPLACE**

The Contractor shall remove any worker from the Project Premises when directed to do so by the District or any representative of the District. The District and all of the District's projects are "drug-free" and "tobacco-free" workplaces and, as such, require that the Contractor be subject to the requirements mandated by California Government Code sections 8350 et seq. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Contractor to police and oversee any and all personnel used in connection with the Work and the Project, whether employed directly or indirectly by Contractor. If Contractor fails to maintain a drug-free workplace as required by the Drug-Free Workplace Act and a tobacco-free workplace, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate the Contract, and may pursue all other rights and remedies it may have against the Contractor at law and/or in equity. The Contractor shall also submit to the District the drug-free workplace certificate required by law within seven (7) days after award of the Contract.

## **17. TAXES**

It is understood and agreed that all taxes applicable to or that may be levied in connection with the Work or the Project will be paid by the Contractor and are included in the Contract Price. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purpose of such exemption; and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the calculation of any bid price.

## **18. UTILITIES AND SANITARY FACILITIES**

All utilities, including, but not limited to, electricity, water, gas, and telephone, used on or in connection with the Work, or, with respect to projects providing for the construction of new buildings, the building under construction, shall be furnished and paid for by the Contractor. For projects involving the construction of new buildings, the District shall be responsible for all utilities charges and fees for the

building under construction only upon and after the earlier to occur of Acceptance of Completion and early occupancy of the building by the District as provided in Section 46 hereof. The Contractor shall furnish and install all necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Project Premises where utility is necessary to carry on the Work. The Contractor shall protect all public utilities equipment by enclosing or boxing in, and upon the completion of the Work, remove all enclosures or protective coverings and leave the Work in a finished condition. Upon completion of the Work, the Contractor shall remove all temporary distribution systems. If this Contract is for an addition to an existing facility (or otherwise for Work on an existing building or facility), the Contractor may, with the written permission of the District, use the District's existing utilities by making prearranged payments to the District for the utilities used by Contractor and all Subcontractors and Materialmen and others employed on the Project. The Contractor shall provide sanitary temporary toilet building(s) as directed by the District or any District representative for the use of all workmen; provided that, in any event, the ratio of such toilet buildings to workers on the Project Premises shall be at least equal to the ratio required by OSHA regulations. The building(s) shall be maintained in a sanitary condition at all times and shall be left at the Project Premises until removal is directed by the approval of the District or any District representative. Use of toilet facilities at the Project Premises shall not be permitted except by approval of the District or any District representative.

**19. FEES, PERMITS, LICENSES, PATENTS AND ROYALTIES; AND PAYMENT THEREFOR**

The Contractor and all its employees, Subcontractors, Materialmen or agents shall secure and maintain in force for the duration of the Contract and the warranty period such licenses and permits as are required by law and shall conform to all Federal and State of California laws and regulations and County of Los Angeles, City of Bellflower and other applicable laws, ordinances and regulations covering the Project or the Work

The Contractor shall obtain and pay for all permits and licenses required for the performance of, or in connection with, the Work, and shall give all necessary notices and shall deliver necessary certificates to the District when required except when provided otherwise in the Specifications, and shall pay all royalties and license fees arising from the use of any material, machine, method or process used in performing the Work. All charges, assessments and fees payable in connection therewith are included in the Contract Price and shall be the Contractor's sole responsibility.

**20. EASEMENTS**

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the District unless otherwise specified in the Contract Documents.

**21. SURVEYS**

Surveys to determine the location of property lines and corners, and legal limitations and utility locations, will be supplied by the District, at its sole cost and expense. Surveys to determine the location of construction, grading and site work, and all building layout Work and layout for utility lines and connections, required in connection with the Project or the Work shall be provided by Contractor, at its sole cost and expense.

**22. LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on

conduct of the Work as indicated and specified.

### **23. MATERIAL SAFETY DATA SHEETS AND COMPLIANCE WITH PROPOSITION 65**

a. Contractor is required to insure that material safety data sheets for any material requiring a material safety data sheet pursuant to the federal “hazard communication” standard or employee’s right-to-know 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, and (ii) that the person(s) working with the material, or within the general area of the material, is/are informed about the hazards of the substance and follow(s) proper handling and protection procedures.

b. Contractor is required to comply with the provisions of California Health and Safety Code sections 25249.5 et seq., which require the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with such statutory provisions and to fully comply with the requirements therein set forth.

### **24. DETAIL DRAWINGS AND INSTRUCTIONS**

a. In case of any ambiguity, conflict or lack of information in the Drawings or Specifications, the Architect shall furnish, with reasonable promptness, additional instructions by means of additional drawings or specifications, an Architect/Engineer Field Directive, or otherwise as may be necessary for the proper execution of the Work. All such drawings, specifications, Architect/Engineer Field Directives and instruments shall be consistent with the Contract Documents or with true developments thereof and/or reasonable inferences therefrom.

b. The Work shall be executed in conformity with all Contract Documents, and the Contractor shall do no Work without proper drawings, specifications and instructions.

c. The Architect will furnish all additional details needed to more fully explain the Work, which details shall be considered as part of the Contract Documents.

d. Should any details be more elaborate, in the reasonable opinion of the Contractor, than scale drawings and specifications warrant, written notice thereof shall be given to the Architect within five (5) days of receipt of the details. In case no such written notice is given to the Architect within such five (5) day period, it will be presumed that the details are reasonable developments of the scale drawings. If such notice is given, then the claim will be considered by the District and/or the Architect, and if found justified, the Architect will either modify the Drawings or recommend to the District a Change Order for any extra work involved.

e. All parts of the described and shown construction shall be of the best quality of their respective kinds, and the Contractor is hereby advised to use all diligence to understand fully the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from the Architect such directions and/or drawings as may be necessary for the proper performance of the Work.

f. If it is found that the Contractor has varied from the Drawings and/or Specifications in materials, quality, form or finish, or in the amount or value of the materials and labor used, the Architect shall be at liberty, at any time either before or after completion of the Work, to order such improper work removed, remade and replaced, and all Work disturbed by these changes shall be made good at the Contractor’s expense, or the Architect shall receive from the Contractor for the District a sum of money

(or the District shall deduct from amounts otherwise due the Contractor in accordance with Section 6(d) hereof a sum of money) equal to the difference in value between the work actually performed and the Work that is called for by the Drawings and Specifications, it being within the Architect's and the District's sole discretion to pursue either course of action.

g. The Contractor shall maintain at the Project Premises, and shall make available to the District, the Architect, the Inspector and other District representatives, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain the said set in good condition and shall use colored pencils to markup said set with "record information" in a legible manner to show (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing Drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as the District, Architect, Inspector or other District representative may reasonably request from time to time. Contractor shall submit a completed record drawing review log form in the form of Exhibit I attached hereto and incorporated herein by this reference together with each Contractor Payment Request in accordance with Section 6 hereof. Final payment and any Retention hereunder shall not be made or paid to the Contractor until the final Record Drawings marked by the Contractor as required herein are delivered to the District.

## **25. COPIES OF DRAWINGS AND SPECIFICATIONS FURNISHED**

The Contractor will be furnished, free of charge, 10 copies of the Drawings and Specifications, plus 1 set of the Drawings for use as the Record Drawings. Additional copies may be obtained by the Contractor at the cost of reproduction.

## **26. CONTRACT DOCUMENTS ON PROJECT PREMISES**

Contractor shall keep one copy of all Contract Documents, including, without limitation, addenda, Change Orders, Title 24 of the California Code of Regulations, the California Building Code, most recent edition, and the Prevailing Wage Rate Tables, which are all part of the Contract Documents, on the Project Premises at all times during the progress of the Work. Contractor shall also retain the most recent issue of the Uniform Building Code on the Project Premises. Said documents shall be kept in good order and will be available for review by the Architect, its representatives and the District and its representatives. Contractor shall be acquainted with and comply with the provisions of Title 24 of the California Code of Regulations as they relate to this Project.

## **27. OWNERSHIP OF DRAWINGS**

All drawings, specifications, and copies thereof furnished by the District are its property. They are not to be used on other work and with exception of signed Contract sets are to be returned to the District on request at completion of the Work. The District shall have the right to, and hereby asserts a copyright in respect to, all such plans, drawings, specifications and other construction documents, and the District shall have all additional common law, statutory and other reserved rights to such plans, drawings, specifications and other construction documents, and Contractor hereby waives all of the said rights (including, without limitation, the right to copyright any of the Construction Documents).

## **28. SHOP DRAWINGS AND DIAGRAMS**



a. **Submittal of Drawings.** The Contractor shall check and verify all field measurements and shall submit, with such promptness so as not to cause delay to the Contractor's Work or in the work of any other contractor on the Project Premises, six (6) copies checked and approved by the Contractor of all shop or setting drawings, schedules and materials lists required for the Work of various trades. The Contractor shall further submit, for the Architect's approval, shop and diagram drawings as required by the Specifications or requested by the Architect, of any material and equipment proposed to be used by the Contractor. The Contractor covenants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer. Drawings shall be submitted with a letter of transmittal addressed to the Architect and listing the numbers of the drawings submitted. Drawings must identify the Project and the Contractor and be complete in every respect. If the drawings have variations from the requirements of the Contract Documents, Contractor shall make specific mention and request approval of such variations in the Contractor's letter of transmittal in order that, if acceptable, suitable action may be taken for acceptance and proper adjustment of the Contract Documents by Change Order. Otherwise, Contractor will not be relieved of the responsibility for executing the Work in accordance with the Contract Documents, even though the drawings have been approved. By approving and submitting shop drawings, samples (as provided by Section 34, below) and other similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. All shop drawings shall be reviewed by the Contractor for coordination of each submittal with the Work of other Subcontractors performing Work on the Project. The Contractor's endorsement shall state that such coordination has taken place and that no conflict exists between the information contained in the submitted shop drawings and any other trade or process used in connection with the Project. All submittals and shop drawings transmitted directly by any Subcontractor or Materialman and not endorsed by the Contractor will be returned as incomplete and no action will be taken thereon by the District.

b. **Architect Review of Drawings.** Architect shall check and review the drawings for conformance with design concept of the Project and compliance with information given in the Contract Documents only, and shall indicate corrections, if any, and shall return such drawings to the Contractor within fourteen (14) working days after the Architect's receipt thereof. If the drawings have not been given final approval, the Contractor shall make any corrections required by the Architect, re-submit to the Architect corrected copies of the drawings in the same number as the original submittal in accordance with the procedure outlined above and obtain final approval before beginning the Work involved. Upon final approval of the drawings, the Contractor shall furnish such other copies thereof as may be needed for construction. The Architect's approval of such drawings or schedules shall not relieve the Contractor from the responsibility for errors in shop drawings or schedules, or for fitting and construction of the Work, or for deviations from the Drawings or Specifications, or from furnishing materials and Work required by the Contract Documents, which may not be indicated on the approved drawings, unless the Contractor has in writing called the Architect's attention to any such deviation.

## **29. LAYOUT AND FIELD ENGINEERING**

It shall be the Contractor's sole and absolute responsibility to check, verify and determine the accuracy of all measurements and locations contained in the Drawings and Specifications, including, without limitation, the verification of quantities and general information. Any field engineering required for laying out the Work and establishing grades shall be furnished by the Contractor at its sole cost and expense.

Whenever the documentation or Drawings provided by the District, as prepared by various consultants or others, provide or indicate quantities or related dimensioning, these quantities or information in general

shall not be construed as specific requirements for the basis of fabrication, preparation or pricing or installation until verified as accurate by the Contractor and/or its Subcontractors. Contractor shall, at its sole cost and expense, procure, calculate, confirm and obtain accurate reports for quantities and dimensioning. The District shall not be liable (to any degree or in any manner) for any cost, expense or liability resulting from or arising out of Contractor's failure to obtain and verify any information relevant to the work, the Project, or the Project Premises. Any information furnished by the District, the Architect, any record engineer, the project manager, the Inspector or any other District representative shall be considered to be "good will" information provided on a courtesy basis without the assumption of any liability or responsibility on the part of the District or such other persons, and all responsibility for checking, verifying and determining the accuracy of all measurements and locations, and for all field engineering required for laying out the Work and establishing grades, shall remain with the Contractor.

### **30. SOILS INVESTIGATION REPORT**

The Contractor has examined the Project Premises and satisfied itself as to site conditions and the character, quality and quantity of surface and subsurface materials that will be encountered in connection with the Work.

When a soils investigation report obtained from test holes at the Project Premises is available, such report shall not be a part of this Contract. Any information obtained from such report, or any information given on any drawings as to subsurface soil conditions or to elevations of existing grades or elevations of underlying rock, is approximate only, is not guaranteed, and does not form a part of the Contract. The Contractor is required to make a visual examination of the Project Premises and must (and is permitted to) make whatever tests the Contractor deems appropriate to determine and assess the underground condition of soil. No claims for allowances or damages because of the Contractor's error, mistake, negligence or failure in acquainting herself/himself/itself with the conditions of the Project Premises as described herein will be recognized by the District.

The following constitute the only exceptions to the Contractor's responsibility stated above:

a. The Contractor shall promptly notify the Architect if foundations, utility installations or facilities or other man-made obstacles are encountered which are not shown or indicated on the Drawings or Specifications, or which are found in a location substantially different from that shown, indicated or specified, and such obstacles were not reasonably apparent from a personal on-site examination of the Project Premises. Any delay to the Project caused as a result of any failure by the District or any utility company to provide for the removal or relocation of any such utility facilities shall justify a corresponding extension to the Contract Time. Contractor shall be compensated for the cost of locating and repairing damage to any existing main or trunkline utility facilities located on the Project Premises and shall be otherwise compensated as required by California Government Code section 4215, provided that (i) any such damage was not caused by the negligence or willful misconduct of Contractor or its Subcontractors or Materialmen, and (ii) such main and/or trunkline utility facilities were not indicated in the Contract Documents with reasonable accuracy. Additional work that may be required because of the obstacles referenced above shall be handled by a Change Order in accordance with Sections 9 and 10 hereof and in accordance with California Government Code section 4215.

b. If the Contract Documents require excavation or other Work to a stated elevation and the Architect orders a change of depth or dimension of such subsurface Work, then an adjustment in Contract Price for such change will be made in accordance with Sections 9 and 10, hereof.

### **31. EXCAVATIONS; SUBSURFACE CONDITIONS**

a. For all excavations in excess of five (5) feet involving an estimated expenditure in excess of \$25,000, the Contractor shall submit to the District or, at the District's direction, to its civil or structural engineer, for acceptance a detailed drawing showing the design of shoring, bracing, sloping or other provisions to be made for the protection of workmen from the hazard of caving ground. If such design varies from the standards established by the Construction Safety Orders of the California Division of Industrial Safety, the drawing shall be prepared by a registered civil or structural engineer. None of the aforementioned trenching shall be started before the Contractor receives notification of acceptance from the District or its civil or structural engineer, as applicable. Contractor shall comply with all other applicable requirements of California Labor Code section 6705, and, as therein provided, no provisions of that section or this Section 31 shall be construed to impose tort liability upon the District. In any event, 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 Project Premises prior to the commencement of any excavation.

b. In accordance with section 7104 of the California Public Contract Code, if the Work under this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District in writing of any:

- (i) Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the California 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;
- (ii) Subsurface or latent physical conditions at the Project Premises differing from those indicated; or
- (iii) Unknown physical conditions at the Project Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Contract.

The District will promptly investigate the conditions, and if it finds that the conditions do materially 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, the District will issue a Change Order under the procedures described in Sections 9 and 10 hereof.

In the event that a dispute arises between the District and the Contractor as to 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, then the Contractor shall not be excused from the 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 either by contract or by law and may initiate the dispute resolution proceedings of this Contract in accordance with Section 56 hereof to resolve its dispute.

In addition, the District reserves the right to terminate this Contract should the District determine not to proceed with the Project because of any condition described in this Subsection b. In the event of any such termination, the Contractor shall receive payment for all Work actually performed to the effective date of termination.

## **32. MATERIALS AND WORK**

Except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract and the Work within the Contract Time. Unless otherwise specified, all materials used in connection with the Work shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality and done in full compliance with applicable laws and to industry standards or better, if specified.

Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required. Contractor shall be entirely responsible for loss or damage to materials or to the Work under this Contract by weather or other causes, except as otherwise expressly provided in this Contract with respect to Acts of God.

Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Premises by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Premises. Protection of construction materials and equipment stored on the Project Premises is solely the responsibility of the Contractor.

Contractor shall, after signing the General Contract with the District and receiving approval by the Architect of the submittals and samples, place orders for materials and/or equipment as specified so that delivery of the same may be made without delays to the performance of the Work. Contractor shall, upon demand from the Architect, furnish to the Architect documentary evidence showing that the orders have been placed. When delivered, materials and equipment shall be completely identified with manufacturer's name, model number, type and other required data stamped thereon or on a tag or label attached thereto; or the materials or equipment shall be delivered in the manufacturer's original containers bearing such identification and other pertinent data as required for complete identification. If materials or equipment are not so identified, an invoice or certificate providing complete identification of the same shall at time of delivery be furnished to the District's Inspector.

The District reserves the right, for any neglect in not complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order to ensure that the Work may be completed within the Contract Time, and all expenses incidental to the procuring of said materials and/or equipment by the District shall be paid for by the Contractor upon demand. Any amounts expended by the District pursuant to this paragraph shall accrue interest from the date incurred until repaid at the rate set forth in Section 54(d) hereof.

Materials shall be stored on the Project Premises in such manner so as not to interfere with the Work and as prescribed by all applicable laws, rules, regulations, orders or permits applicable to the Project, and so that no portion of the structure shall be overloaded. If Contractor shall cause, permit or allow any part of the building(s) to be overloaded by storing, piling or setting thereon any material or equipment, or by performing thereon any of the Work, Contractor shall do so at its own risk and shall be solely responsible for any and all loss, damage and injury arising or resulting therefrom. Any load on any area in excess of that fixed by the Architect as a safe load within the limits allowed by the applicable building code or other laws, rules or regulations, or any load placed or distributed so as to exceed such safe load, shall be deemed to be overloaded. The Architect may require load tests to be made on any part of the building(s) so overloaded. Said portion of the Work shall support a test load of two times the design load without excessive deflection. These tests shall be made by a testing laboratory selected by the District, and the cost of such tests shall be borne by the Contractor.

Should the Architect, the Inspector or any other District representative consider that the place, manner or form of storage by the Contractor of any materials, or the placing or storage by the Contractor of any equipment, temporary structures or other facilities on public property, on the Project Premises or within the building(s), is obstructing the progress of the Work, or is liable to cause delay in the completion of any Work, or is causing overloading of any portion of the building(s), then the Architect, Inspector or such other District representative shall notify the Contractor in writing to change such place, manner or form of delivery or storage of materials, or placing or storage of equipment, temporary structures or other facilities, and shall fix the time in such notice within which such changes must be made. Upon receipt of such notice, Contractor, at its own cost and expense, shall proceed forthwith to make the changes required in said notice within the time fixed therein.

Materials or work required or necessary to be tested shall be tested under supervision of, as directed by, and at such places as may be convenient to, the Architect, the Inspector or another District representative. The required testing of all structural materials shall be done by a District approved testing laboratory in accordance with the terms and provisions of Section 35(b) below.

Contractor shall be responsible for all existing structures and improvements within the Work area, and shall provide adequate protection therefor, either by covering or by temporary removal. Any existing structures and/or improvements damaged during construction shall be repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled. Contractor shall be liable for all damage to property of the District or others on the Project Premises within the Work area and all loss thereof by theft, and shall promptly replace or repair, as the case may require, at its sole cost and expense, all such damaged and stolen property.

Contractor shall protect and preserve the Work and the Project Premises, including any adjoining property of the District or others, from all damage or accident, by providing temporary roofs, window and door coverings, boxings, shoring or other construction required.

No materials, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage, or under a conditional sale or other agreement by which an interest therein, or in any part thereof, is retained by the seller or supplier thereof. Contractor warrants good title to all materials, supplies and equipment installed or incorporated into the Work and agrees, upon completion of the Work, to deliver the Project Premises, together with all improvements constructed or placed thereon, to the District free of any stop notices, stop payment notices, liens, claims or charges.

### **33. NON-UTILIZATION OF ASBESTOS MATERIAL**

a. No asbestos or asbestos-containing products or materials shall be used in this Project or in any tools, devices, clothing or equipment used in connection with the Work or this Project.

b. Asbestos and/or asbestos-containing products or materials shall be defined as all items containing, but not limited to, chrysotile, crocidolite, amosite, anthophyllite, tremolite and/or actinolite.

c. Any or all products or materials containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

d. Any disputes involving the question of whether or not a product or material will be installed with asbestos-containing equipment shall be settled by electron microscopy, and the cost of any such tests shall be paid by the Contractor.

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

### 34. SAMPLES

Contractor shall furnish for approval, within thirty-five (35) days following receipt of the Notice to Proceed, all samples as required in the Specifications, together with all submittals, catalogs, required MSDS sheets and supporting data required by the Architect. This provision shall not authorize any extension to the Contract Time. Within fourteen (14) working days from receipt of the same, the Architect will check and approve such samples only for conformance with design concept of the Work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples.

Unless specified otherwise, sampling, preparation of samples and tests shall be in accordance with the latest standards of the American Society for Testing and Materials.

Samples of materials and/or articles shall, upon demand, be submitted for tests or examinations and consideration before incorporation of same in the Work is started. Contractor shall be solely responsible for delays due to samples not being submitted in time to allow for proper time to perform tests. Acceptance or rejection will be expressed in writing. Materials furnished must be equal to approved samples in every respect. Samples which are of value after testing will remain the property of the Contractor.

### 35. TESTS AND INSPECTIONS

a. **Tests and Inspections; Payment.** If the Contract, the District's instructions, laws, ordinances or any public authority (including, without limitation, the Division of the State Architect (DSA)) require any portion of the Work to be specially tested, inspected or approved, the Contractor shall give notice to the District and any other required authority of its readiness for testing, observation or inspection at least two (2) working days prior to such Work being tested or covered up. If the test or inspection is by an authority other than the District, the Contractor shall nevertheless inform the District of the date fixed for such test or inspection. Required certificates of inspection shall be secured by the Contractor. Observations by the District shall be promptly made, and where practicable at the source of supply. If any Work should be covered up without the approval or consent of the District, it must, if required by the District, be uncovered for examination and satisfactorily reconstructed at Contractor's sole expense in compliance with the Contract Documents.

The Contractor shall notify the District a sufficient time in advance of the manufacture of materials to be supplied by the Contractor under the Contract, which must, by terms of the Contract, be tested in order that the District may arrange for testing of the same at the source of supply. Any materials shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in the Work without the prior approval of the District and subsequent testing and inspection.

Reexamination of questioned Work may be ordered by the District, and if so ordered, Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and replacement of the Work. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay for all such costs. In the event

required DSA testing of the Work identifies a failure rate of ten percent (10%) or greater for any system, scope of work, installation or subtrade that has been specifically targeted, the District may, in its sole discretion, order that all such similar systems, installations, scopes of work or subtrade work used in connection with the Work be tested, and the cost to test all such Work shall be paid by the Contractor.

The District will pay for all tests and inspections as set forth herein; provided that, in addition to the costs to be paid by the Contractor in accordance with the preceding paragraph, the Contractor shall pay for all tests and inspections under any of the following conditions:

(i) When such costs are stipulated in the provisions of the Contract Documents to be borne by the Contractor;

(ii) When a material is tested or inspected and fails to meet the requirements of the Specifications and/or Drawings; or

(iii) When the source of the material is changed after the original test or inspection has been made and approved.

b. **Testing Laboratory.** The District, with the approval of the Architect or registered engineer, shall select a qualified person or testing laboratory as the testing agency to conduct the test, and all tests shall be conducted in conformance with section 4 335 of Title 24 of the California Code of Regulations.

Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of such materials to be tested shall be selected by such laboratory or agency or the District's representative and not by the Contractor.

c. **Testing Reports.** The testing laboratory shall report the results of all tests in writing and shall furnish the number of copies of the report ordered by the District. The reports shall state that the tests were made under the responsible charge of a testing engineer holding a license to practice civil engineering in the State of California; that the material was tested in accordance with the provisions of the Specifications; and that the material tested either passed or failed to pass the test. The District will send one copy of each test report to the Contractor and will distribute copies to the Architect, the Inspector and others required. For tests shown to be required on the "Testing & Inspection Sheet" issued by the Division of the State Architect (DSA), a copy will also be mailed to DSA, referencing the Project File Number and the DSA manager assigned supervision over the Project

d. **Certification of Non-Tested Materials.** If a material is not required to be tested, the Architect, the Inspector or the District may require the Contractor to furnish a certificate bearing the official and legal signature of the supplier with each delivery of such material, which certificate shall state that the material complies with the Specifications.

e. **Tested Materials on Hand.** The Contractor shall have in storage on the Project Premises at all times sufficient quantity of the tested and approved materials so that the progress of the Work will not be delayed because of lack thereof. The Contractor shall not use any material which is required to be tested, nor any material of which tests are being made, until the test reports have been delivered as hereinbefore specified, and said reports show that the material under test conforms to the provisions of the Contract Documents and has been approved by the Architect and/or the District.

f. **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.

### **36. CUTTING AND PATCHING**

The Contractor shall do all cutting, fitting or patching of the Work as required to make its several parts come together properly and fit it to receive or be received by the work of other contractors as shown by, or reasonably implied by, or inferred from, the Drawings and Specifications for the completed structure and shall make good after them as the Architect may direct. Only tradespersons skilled and experienced in cutting and patching shall perform such Work.

All costs incurred as a result of defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any Work by cutting, excavating, or otherwise altering such Work and shall not cut or alter work of any other contractor except with the consent of the Architect.

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.

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

### **37. NOISE CONTROL**

The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements. These controls shall be implemented during site preparation and construction.

### **38. DUST CONTROL**

a. The Contractor shall be fully and solely responsible for the maintenance and upkeep of all areas of the Work and Project Premises, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust in general as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or other elements that may accumulate on top of equipment, on walls, on floors, furniture and/or any other permanent or movable items. Prior to the commencement of any Work, the Contractor shall determine the probabilities of creating such an environment and provide all of the necessary protective equipment and/or items to contain the dust or airborne elements under a complete and secured control. Such



protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable State and/or Federal regulations. Additionally, the Contractor shall be the sole party responsible to clean up and remove any and all deposits of dust and other elements. Damages and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of local, state and/or federal regulations, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand and shall bear interest from the date expended until repaid at the rate set forth in Section 54(d) hereof. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Section 6(d) hereof. Contractor shall protect all of the District's property, fixed or movable, and shall replace any damaged item or part thereof and professionally clean any and all items that might become covered or partially covered to any degree by dust or other airborne elements. If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements.

b. In the event that the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of this Contract, the District shall so notify the Contractor and the Contractor shall be obligated to take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from the District's notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred in connection with such actions shall be the sole responsibility of, and be borne by, Contractor and will bear interest from the date expended until repaid to the District at the rate set forth in Section 54(d) hereof. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Section 6(d) hereof.

### **39. CLEANING UP**

In addition to its obligations set forth in the Sections above, Contractor at all times shall keep the Project Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work; debris shall be removed from such Project Premises at Contractor's sole cost. Contractor shall not leave debris under, in, or about the Project Premises. Upon completion of the Work, Contractor shall clean the interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and, at the District's direction, shall remove temporary fencing, barricades, planking and construction toilet(s) and similar temporary facilities from the Project Premises. If the Contractor fails to clean up as provided herein, the District may do so at the sole cost and expense of the Contractor after twenty-four (24) hours written notice to the Project superintendent, and any amounts expended by the District hereunder shall accrue interest from the date of expenditure until paid by the Contractor at the rate set forth in Section 54(d) hereof. The District may also retain or withhold any amounts expended hereunder from progress payments otherwise due Contractor in accordance with Section 6(d) hereof. These provisions are in addition to the cleanup requirements found in Division One (1) of the Specifications.

#### **40. SEPARATE CONTRACTS**

The District reserves the right to enter into other contracts with one or more other contractor(s) in connection with the Work or the Project. Contractor shall afford other such contractor(s) a reasonable opportunity for the introduction and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.

If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such other contractor's work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute Contractor's acceptance of the other contractor's work as fit and proper for reception of the Contractor's Work, except as to defects which may first develop or become noticeable in such other contractor's work after the Contractor has already commenced its Work.

To ensure proper execution of the Contractor's Work, Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between work executed by any other contractor and the Contract Documents. Assistance required by the Architect in obtaining measurements of information on the Work shall be furnished fully and efficiently by the Contractor. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the District in prosecution of, or in connection with, the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Before starting the various phases of its Work, Contractor shall consult with other contractors on the Project Premises, if any, and with the Architect and Inspector, regarding the installation of such other contractor's work in order to avoid the possibility of conflict in installing Work and the maintenance of Work progression according to the Project Schedule. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project Premises. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract or contracts for the Project is likely to cause interference with performance of some other contract or contracts, the District shall decide which contractor shall continue or whether work can be coordinated so that the contractors may proceed simultaneously.

The District shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of the District respecting the order of precedence in performance of contracts. Should the Contractor cause damage to the work of another contractor on the Project Premises, Contractor agrees, upon due notice, to settle with such other contractor by agreement or arbitration without cost to the District.

#### **41. RISK OF LOSS ON CONTRACTOR; SAFETY PRECAUTIONS**

Except as otherwise provided in this Section 41, the District assumes no responsibility or liability for the physical condition or safety of the Project Premises or of any improvements thereon or injuries to any person occurring on the Project Premises. Contractor shall be solely responsible for providing a safe place for performance of the Work. Contractor acknowledges and agrees that any information, materials and test equipment furnished the Contractor by the District, the Architect or any other District representative, excepting the Drawings and Specifications, are supplied solely for the convenience of the Contractor, and the District makes no representation or warranty regarding the accuracy, completeness or adequacy of such information, materials and data, and the Contractor must verify independently that such items are sufficient to be relied upon in connection with the Work.

Except as otherwise provided in this paragraph, the Contractor shall assume all the risk of any and all types of loss or damage to the Work or any part thereof, to adjoining property, or to materials or things employed in doing the Work, or stored on the Project Premises, until the earlier of: (x) the date that the District accepts Final Completion of all Work (including all "punch-list" items), and (y) the date that the District assumes early occupancy pursuant to Section 46, hereof. The District, however, will not in any event assume the risk of any loss or damage to materials and things employed by the Contractor in doing the Work. Pursuant to California Public Contract Code section 7105, the District will not hold the Contractor responsible for the cost of repairing or restoring any damage to the Work proximately caused by any Acts of God in excess of five percent (5%) of the Contract Price; provided that, the Work that was damaged by any such Acts of God was constructed in accordance with all accepted and applicable building standards and the Drawings and Specifications.

Except as provided in the preceding paragraph with respect to damage caused by Acts of God, the Contractor, with due diligence and dispatch, shall replace or repair, at its own expense, all Work lost or damaged.

The Contractor shall take all necessary precautions for the safety of hers/his/its employees, Subcontractors, Materialmen and others on the Work and shall comply with all applicable safety laws and building codes to prevent accidents or injuries to all persons on, about or adjacent to the Project Premises where Work is being performed. Contractor shall erect and install all necessary safeguards, signs, barriers, lights and watchmen for protection of workers, District personnel, and the public, and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the Work whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the District. Contractor shall provide and maintain at the Project Premises first-aid supplies for minor injuries.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel.

In an emergency affecting safety or life, or of Work, or of adjoining property, Contractor, without special instruction or authorization from the Architect or the District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury, and shall so act, without appeal, if so authorized or instructed by the Inspector, the Architect, the District or any other District representative. Any compensation or extension to the Contract Time claimed by the Contractor on account of emergency work shall be determined by Change Order in accordance with Sections 9 and 10 hereof.

Contractor shall provide such heat, covering and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations.

Contractor shall (unless the requirement is waived by the Inspector):

Enclose the working area with a substantial barricade, arrange the Work to cause a minimal amount of inconvenience and danger to students and faculty in their regular school activities, and perform Work which may interfere with school routine before or after school hours;

Provide substantial barricades around any shrubs or trees indicated to be preserved (Contractor shall not

trim or remove any tree, for any reason, without the prior written approval of the District);

Deliver materials to building areas over routes designated by the Architect, the Inspector, an assigned project manager or any other District representative;

When directed by the District, take preventative measures to eliminate objectionable dust;

Confine Contractor's apparatus, the storage of materials, and the operation of its workmen to limits indicated by laws, ordinances, permits or directions of the Architect, the Inspector or any other District representative, and shall not unreasonably encumber the Project Premises with material, and enforce all instructions of the District, the Architect, the Inspector or any other District representative regarding signs, advertising, fires, danger signals, barricades and smoking, and require that all persons employed on the Work comply with all regulations while on the Project Premises; and

Take care to prevent disturbing or covering survey markers, monuments or other devices marking property boundaries or corners, and if such markers, monuments or other devices are disturbed, replace the same using an approved civil engineer at no cost to the District.

#### **42. HOLD HARMLESS CLAUSES**

The Contractor shall indemnify, defend and hold harmless the District, the Board, the Architect, and each of their respective officers, employees, agents, consultants, independent contractors, and representatives, from and against any and every type of liability, claim, demand, cost, loss, damage, suit, cause of action, workers' compensation claim, or expense which directly or indirectly relates to, may accrue or be made by reason of:

a. Any injury to person or property sustained by the Contractor or by any person, firm, corporation, partnership, limited liability company or other entity employed directly or indirectly by the Contractor, including, without limitation, any Subcontractor or Materialman of any tier and/or any person, firm, corporation, partnership, limited liability company or other entity employed directly or indirectly by any Subcontractor or Materialman of any tier, upon or in connection with the Work or the performance of this Contract;

b. Any injury to person or property sustained by any District employee, person, firm, corporation, partnership, limited liability company or other entity, occurring at the Work site or arising out of or resulting from any act, neglect, Default or omission of the Contractor or any person, firm, corporation, partnership, limited liability company or other entity employed directly or indirectly by the Contractor, including, without limitation, any Subcontractor or Materialman of any tier and/or any person, firm, corporation, partnership, limited liability company or other entity employed directly or indirectly by any Subcontractor or Materialman of any tier, upon or in connection with the Work or the performance of this Contract, whether the injury or damage occurs upon or adjacent to the Work or the Project;

c. The furnishing or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, process, article, or appliance in connection with the Work or the performance of this Contract;

d. The violation of any and/or all applicable laws, rules or regulations of any governmental entity in connection with the Work or the performance of this Contract; or

e. Any failure or alleged failure of the Contractor (or any person hired or employed, directly or indirectly, by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person

employed in connection with the Work or the performance of this Contract, and/or the filing of any stop notice, stop payment notice or mechanic's lien claim.

The Contractor, at its own cost, expense and risk, shall defend all legal proceedings that may be brought against the District, the Board, the Architect, and each of their respective officers, employees, agents, consultants, independent contractors and representatives, on any and every such liability, claim, demand, cost, loss, damage, suit, cause of action, workers' compensation claim, or expense, and satisfy any resulting judgment or award that may be rendered against any of them, and pay any settlement reached to resolve the same, whether or not the liability, claim, demand, cost, loss, damage, suit, cause of action, workers' compensation claim, or expense was actually or allegedly caused wholly or in part through the negligence or other tortious conduct of any of them or of the Contractor, any Subcontractor or Materialman, and regardless of fault; provided that, notwithstanding anything to the contrary stated above, the Contractor shall not be obligated to indemnify any particular indemnitee if the liability, claim, demand, cost, loss, damage, suit, cause of action, workers' compensation claim, or expense was actually and solely caused by such indemnitee's gross negligence or willful misconduct. Upon written demand by the District, the Board, the Architect, or any of their respective officers, employees, agents, consultants, independent contractors or representatives, the Contractor shall, within five (5) days, unequivocally and without reservation of rights, agree in writing to indemnify, defend and hold harmless such indemnitee(s) in such legal proceeding or action. If Contractor fails or refuses to do so within the specified time, the indemnitee(s) may, in its/their sole discretion, retain counsel of its/their choice at Contractor's sole expense, and the indemnitees in its/their sole discretion may, in addition to seeking, by cross-claim or otherwise, indemnification and all other relief permitted and/or granted to the indemnitee(s) under this Contract and at law, demand reimbursement from the Contractor of attorneys' fees and costs as they are incurred and come due, or seek the same by cross-claim or otherwise, or both.

#### **43. INSURANCE**

The Contractor shall secure and maintain, as a minimum, the insurance described and as set forth in the General Contract and/or the Contract Documents. The Contractor further shall furnish to the District one or more certificates of insurance, each bearing the original signature of an authorized representative of each insurance carrier (facsimile or reproduced signatures are not acceptable), no later than five (5) days after the notice of Board approval of the Contract or prior to the start of construction, whichever occurs first. The certificates of insurance and insurance policies required under this Contract shall name the District, the Office of Public School Construction, the State of California (when the Project is a State-funded project) and all other indemnitees described in Section 42 hereof as additional insureds ("Additional Insureds"). Copies of endorsements establishing the same shall be supplied to the District at the same time as the certificate(s) of insurance.

In the event that the Contractor's workers' compensation insurance is provided by one or more carriers that will not allow the indemnitees described in this Section 43 and/or Section 42 hereof to be named as additional insureds under the Contractor's operative workers' compensation policy(ies), the Contractor shall obtain a written confirmation from said insurance carrier of the carrier's inability to provide such coverage, and the Contractor shall provide the District with an endorsement amending the Contractor's general liability policy(ies) required under the Contract, and any applicable excess and/or umbrella policy(ies), removing any exclusion of workers' compensation coverage for claims by employees of all Additional Insureds. If the Contractor is unable to obtain such insurance coverage from its carrier(s) of workers' compensation insurance or general liability insurance, then in the event that any employee of the District, or of any other indemnitee described in this Section 43 and/or Section 42 hereof, files a workers' compensation claim or action against the District or any other indemnitee described in this Section 43 and/or Section 42 hereof based on any alleged injury suffered on the Project Premises during the time the Project or the Work is being performed and prior to Acceptance of Completion, the Contractor's

indemnity obligations under Section 42 hereof require that Contractor reimburse such indemnitee for all costs related to such workers' compensation claim, including but not limited to all attorneys' fees paid by the indemnitee to its attorney(s) and/or the employee/applicant's attorney(s), employee/applicant's third party administrator charges, and any workers' compensation award made to such employee/applicant or settlement amount paid to resolve said employee/applicant's workers' compensation claim. Such reimbursements to the indemnitee shall be provided to the indemnitee on demand, and in no event less frequently than monthly, upon presentation to the Contractor by the indemnitee of documentation of such costs.

Any Builder's Risk insurance policy required by the Contract shall name the District as loss payee thereunder, and a copy of the endorsement establishing the same shall be supplied to the District at the same time as all certificate(s) of insurance required under the Contract.

Each certificate of insurance, or a supplement to such certificate which is incorporated therein, shall affirm that as to each policy evidenced by the certificate, such policy shall not be suspended, cancelled, reduced in coverage or required limits of liability or amounts of insurance, or non-renewed, until notice has been mailed to the District, and that the date of suspension, cancellation, reduction or non-renewal may not be less than thirty (30) days after the date of mailing such notice. The Contractor and/or its insurer(s) may supply such notice provisions either by an endorsement to the policy or by a separate covenant in writing signed by an authorized representative of the insurer. If supplied by endorsement, a copy of said endorsement shall be supplied to the District at the same time as the certificate(s) of insurance; if supplied by separate written covenant, such covenant, bearing the original signature of the authorized representative of the insurance carrier (facsimile or reproduced signatures are not acceptable), shall be supplied to the District at the same time as the certificate(s) of insurance.

Each policy required under this Contract, and/or proposed by Contractor to comply with his/her/its obligations to procure and maintain the insurance coverage required under this Contract, shall include an endorsement, a copy of which shall be supplied to the District at the same time as the certificate(s) of insurance, providing that with respect to the matters covered by such policy, any other insurance carried by the District and/or any of the other indemnitees described in this Section 43 or Section 42 hereof is excess and non-contributing in relation to such policy, unless Contractor is excused by the District from providing such endorsement.

All insurance coverage required under this Contract, and/or proposed by Contractor to comply with his/her/its obligations to procure and maintain the insurance coverage required under this Contract, shall be procured and/or maintained with no self-insured retention, and shall be Project-specific to this particular Work, covering only risks relating to or arising out of the Project and the Work. The insurance and required amounts of insurance specified above shall not be reduced or encumbered on account of other work contracted for or being performed by Contractor.

Contractor represents, warrants and assures the District and all Additional Insureds that the coverages set forth in the certificate(s) of insurance Contractor supplies to the District as required herein, and any and all endorsements, attachments or other documents supplementing said certificate(s) of insurance, will accurately describe the coverages provided by the insurance policies required by the Contract. If complete and proper insurance certificates as required hereunder are not delivered to the District within the time period provided above, the District may declare the Contract unexecuted and void and, in its discretion, proceed to award the Contract to the next lowest responsible bidder in accordance with the applicable provisions of the California Public Contract Code. If the Contractor delivers one or more certificates of insurance to the District that do not comply with the requirements of the Contract, as such requirements are interpreted by the District in its sole discretion, the District may, but shall not be obligated to, and without waiver of any other remedy it may have pursuant to the provisions of this

Section 43 or Section 54 hereof, or under California law, through the District's attorneys or otherwise, advise the Contractor in writing of the lack of compliance of the certificate(s) of insurance, and advise the Contractor in writing of the changes required to bring the certificate(s) of insurance into compliance with the requirements of the Contract ("First Insurance Certificate Advice"). If after being so advised, the Contractor delivers one or more certificates of insurance to the District that do not comply with the requirements of the Contract, as such requirements are interpreted by the District in its sole discretion, the District may, but shall not be obligated to, and without waiver of any other remedy it may have pursuant to the provisions of this Section 43 or Section 54 hereof, or under California law, through the District's attorneys or otherwise, further advise the Contractor, and/or the Contractor's insurer(s) in the District's sole discretion, in writing of the changes required to bring the certificate(s) of insurance into compliance with the requirements of the Contract ("Subsequent Insurance Certificate Advice"). In the event that the District provides one or more instances of Subsequent Insurance Certificate Advice, the District may, in its sole discretion, elect to recover from the Contractor all costs associated with any and/or all such instances of Subsequent Insurance Certificate Advice, including but not limited to the District's attorneys' fees and costs. If the District makes such election, it shall be entitled to be reimbursed by the Contractor promptly thereafter, or the District may deduct all amounts paid by the District for such costs from the Contract Price in accordance with Section 6(d) hereof. Any amounts expended by the District hereunder shall bear interest at the rate set forth in Section 54(d) hereof from the date incurred until repaid to the District. Under no circumstances shall the Contractor allege, contend or assert that its obligation to pay the District's costs for Subsequent Insurance Certificate Advice creates an attorney-client relationship between the Contractor and the District's attorney(s).

The District reserves the right to require complete certified copies of the required insurance policies. All insurance policies shall be on a full "occurrence" basis and not a claims made or modified occurrence basis.

Contractor hereby releases the District, the Office of Public School Construction, the State of California (when the Project is a State-funded project) and all other indemnitees described in Section 42 and each of their respective boards, officers, directors, agents, partners, servants and employees from any liability, and on behalf of its insurer, waives any right of subrogation, for any loss or damage to any or all of its or their property, which loss or damage is of the type covered by the builder's risk insurance required to be maintained by it under the Contract Documents, regardless of any negligence on the part of the released persons which may have contributed to or caused such loss or damage. Contractor shall supply to the District, at the same time as the certificate(s) of insurance, copies of insurance policy provisions and/or an endorsement providing for the waiver of subrogation described herein, by both Contractor and its insurer. If the insurance policy does not allow a waiver of the right of subrogation of the insurer, Contractor covenants that it will obtain for the benefit of each of the listed persons a waiver of any right of subrogation which the insurer of such person may acquire against any such person by virtue of the payment of any loss covered by such insurance.

The Contractor in signing this Contract hereby certifies, pursuant to section 1861 of the California Labor Code, as follows:

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

The Contractor shall require all Subcontractors engaged on the Work to maintain the same insurance coverages required of Contractor, so that such insurance will protect the Contractor and such Subcontractors from all claims and other liabilities as set forth in Section 42 above, in these General

Terms and Conditions, and in the General Contract (including, without limitation, workers' compensation insurance), and hereby represents, warrants, and assures the District that all such Subcontractors will maintain such insurance.

The insurance companies providing the insurance required under this Contract shall be subject to the District's prior written approval, which shall not be unreasonably withheld or delayed.

The Contractor shall not commence Work, nor allow any Subcontractor or other person to commence Work, under this Contract until all required insurance and certificates of insurance have been obtained and delivered in duplicate to, and approved by, the District. Failure to maintain the insurance and/or furnish the required certificates of insurance or insurance policies shall constitute a Default by the Contractor and the District may terminate the Contract without waiver of any other remedy it may have pursuant to the provisions of the Contract or Section 54 hereof, or under California law.

If the Contractor fails to purchase and maintain any insurance required under this Section 43 or the Contract Documents, the District may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor promptly thereafter or deduct all amounts paid by the District for such insurance from the Contract Price in accordance with Section 6(d) hereof. Any amounts expended by the District hereunder shall bear interest at the rate set forth in Section 54(d) hereof from the date incurred until repaid to the District.

**It is agreed and understood by the contractor that strict compliance with this section 43 must be achieved before the notice to proceed from the district to the contractor will be issued, and that the contractor will not be compensated for any delay from the date of the bid opening to the issuance of the notice to proceed caused by the contractor's failure to strictly comply with this section 43, notwithstanding any language to the contrary in section 8 hereof or in any other provisions of the contract.**

#### **44. CONTRACT SECURITY**

Unless otherwise specified in the Contract Documents, the Contractor shall furnish a surety bond in an amount at least equal to 100% of the Contract Price, as required by California Public Contract Code section 7103 (as the same may be amended or recodified from time to time), as security for payment of persons performing labor and furnishing materials in connection with this Contract and shall furnish a separate bond in an amount equal to 100 percent of the Contract Price as security for faithful performance of this Contract. The aforesaid bonds shall be in the forms set forth in Exhibits C and D of this Contract, respectively. Upon request of the Contractor, the District will consider and accept, in its sole discretion, multiple Sureties on such bonds. Only bonds executed by "admitted surety insurers" as defined in California Code of Civil Procedure section 995.120 shall be accepted.

The Contractor shall keep the Surety informed of the progress of the Work. The District shall be notified by the Contractor, in writing, of all communications between the Contractor and the Surety. The District may, in its sole discretion, inform the Surety of the progress of the Work (or lack of progress) or any problems encountered in connection with the Work or the Contractor and may obtain consents, as necessary, to protect the District's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

#### **45. MAINTENANCE WARRANTY BOND**

If the bid for the Project requires an additional form of security to insure compliance with the



requirements of the Guaranty-Warranty provisions of this Contract set forth in Section 57 hereof, the Contractor shall provide, at its sole cost and expense, a maintenance-warranty-guaranty bond for a sum equal to the lesser of (x) ten percent (10%) of the Contract Price, and (y) One Million Dollars (\$1,000,000) (the "Maintenance Bond"). Such Maintenance Bond will be issued by a Surety meeting the requirements of this Contract. The Maintenance Bond shall cover the entire scope of the Work, shall be in addition to any and all warranties or guaranties issued by manufacturers and suppliers, and shall warrant and guaranty all of the Work for a term equal to the terms of each of the Contractor's warranties and guaranties provided in the Contract Documents so that the Maintenance Bond will fully warrant and guaranty each Contractor's warranty and guaranty set forth in the Contract Documents for an equal amount of time as set forth in the Contract Documents. The Maintenance Bond shall further warrant and guaranty a response time of not more than one (1) business day from the time of District's notification to the Contractor of a defect. If the Contractor fails to respond and/or initiate any action for the repair of defects within a period of one (1) business day after notice from the District thereof, the District shall then have the right to summarily execute upon the Maintenance Bond up to its entire value and proceed to remedy and correct the defect without further notice to Contractor.

#### **46. OCCUPANCY OR USE BEFORE ACCEPTANCE OF COMPLETION**

The District may occupy any building or portion thereof or use any improvement contemplated by the Contract prior to the completion of the entire Work. A list of Work to be completed and corrected by the Contractor, if any, shall be prepared and agreed to between the District and the Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Work but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of Work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until the District has given the Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. The District and the Contractor shall take reasonable steps to obtain the consent of the Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance.

Such occupancy or use by the District shall relieve the Contractor of (and the District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by the District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of the Contractor, any Subcontractors or Materialmen of any tier, or their officers, employees or agents. Upon occupancy of any building or portion thereof by the District pursuant to this Section 46, the District shall assume payment of all utility costs and expenses incurred in connection with the building or portion thereof so occupied and shall procure insurance for (or self-insure) the occupied building or portion thereof. The Contractor shall continue to pay all utility costs and expenses and provide insurance for any portion of the Project that is not so occupied by the District and shall coordinate with the District before canceling or reducing insurance coverage.

The Contractor shall not be required to reclean such occupied portions of the Project before final acceptance, except for cleanup made necessary by Contractor's operations. Nothing in this Section 46 shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials and from removing the same from the Project Premises.

**47. CONTRACT/PROJECT CLOSE-OUT**

a. The Contractor shall provide all operations necessary for closing out the Contract and assisting in the District's final inspection and examination of the Project, and shall, prior to requesting inspection by the District, inspect and make certain (and fully verify) that all of the Work is complete in accordance with the content and intent of all of the Contract Documents and is in fact ready for the requested inspection.

b. The District will not review, inspect, examine or walk-through any areas or assemblies that are only partially completed.

c. If the Contractor requests an inspection of areas or assemblies that are evidently or excessively incomplete, and/or if, in the reasonable opinion of the District, the Contractor is using the inspection as a means and way to define or determine a scope of Work or to accelerate the Work of a Subcontractor instead of a means to finally inspect a completed portion of the Work, then the Contractor shall be liable for all costs and expenses that the District may incur in connection with any such inspection, inclusive of, but not limited to, personnel salaries, wages, consultant fees, transportation costs, etc., which amounts the District may retain or withhold from the Contract Price in accordance with Section 6(d), hereof. Such amounts shall bear interest from the date incurred until repaid to the District at the rate set forth in Section 54(d), hereof.

d. The Supplementary General Terms and Conditions, if any, may contain additional close-out formats and required forms to be completed, if any are required thereunder.

**48. REQUIREMENTS PREPARATORY TO FINAL INSPECTION/EXAMINATION**

The following shall be conditions precedent to the final inspection/examination of the Project by the District or any of its representatives:

- a. All punch list items shall be completed;
- b. All temporary facilities shall have been removed from the Project Premises if the District has so instructed the Contractor;
- c. The buildings, Project Premises and all other facilities located thereon shall have been thoroughly cleaned as required by the Contract Documents;
- d. All plumbing, mechanical and electrical equipment shall operate quietly and free from vibration;
- e. All systems shall function as designed and shall meet specified requirements for the Project; and
- f. All operating instructions for equipment shall be properly mounted and posted as specified by the Contract Documents.

**49. FINAL INSPECTION/EXAMINATION**

- a. After all the requirements to final inspection have been completed and satisfied,

Contractor shall notify the District so that the final inspection can be performed.

b. Contractor shall submit to the District a written certification in the form of Exhibit J attached hereto and incorporated herein by this reference certifying that:

(i) The Work has been inspected by the Contractor for compliance with the Contract Documents and by all public agencies having jurisdiction.

(ii) The Work has been completed in accordance with the Contract Documents.

(iii) All equipment and systems have been tested in the presence of the District's designated representative, and when so required, the Architect, the Inspector and other consultants, inspectors and governing agencies, and all such equipment and systems are operational.

(iv) The Work is fully complete and ready for final examination.

c. Contractor shall schedule final inspection and examination in a sequential manner to facilitate the inspection.

d. Inspector(s) will perform final inspection/examination of the Work within seven (7) days after receipt of the certification described above.

e. Should the Architect and the Inspector consider that the Work is "finally complete," the Contractor shall be required to make the close-out submittals immediately.

f. The District representatives, Contractor, consultants and Inspector will coordinate for occupational authorization.

g. If the Architect or the Inspector determines that the Work is not "finally complete:"

(i) The Contractor shall be so notified in writing, which writing shall describe all of the reasons for the Architect's or the Inspector's, as applicable, decision and all points of contention.

(ii) The Contractor shall then take immediate steps to remedy the work that has not been completed (or has not been completed correctly) and notify the District's Architect, Inspector and consultants in writing upon completion of the same.

(iii) Once remediation has been completed, Contractor shall resubmit a request for final inspection and examination, together with the certification described in Section 49(b), above, and the District's representatives and Architect and Inspector will re-inspect the Work within seven (7) days after receipt of such certification.

(iv) The District reserves the right to assess to the Contractor all direct and indirect costs and expenses incurred by the District in connection with any failed inspections if the Work failed to pass inspection as a result of the Contractor's negligence, error or other wrongful conduct. The District may retain or withhold any amounts assessed hereunder from the Contract Price in accordance with Section 6(d), hereof. All amounts assessed hereunder shall bear interest from the date assessed until paid to the District at the rate set forth in Section 54(d), hereof.

## **50. CLOSE-OUT SUBMITTALS**

a. Immediately upon the Architect's and Inspector's approval of the final inspection, and in addition to any other submittals required to be made by the Contractor under any other provision of the Contract Documents, the Contractor shall submit the following close-out documentation to the District:

(i) Operations and maintenance data for equipment as required by this Contract, the Specifications, the Drawings, Change Orders, Addenda or any other Contract Document, (including, without limitation, three (3) complete sets of manuals containing manufacturers' instructions on the operation of each item and apparatus furnished under the Contract Documents) and for such other items when and as directed by the District or the Contract Documents;

(ii) Project Record Drawings;

(iii) Warranties and bonds for equipment put into service;  
(iv) Keys and keying schedule and "Identification Tagging" master template (if Project Work is tagged);  
(v) Tools, spare parts and maintenance materials;  
(vi) A list of all Subcontractors and Materialmen of every tier providing services and/or materials in connection with the Project, in a formal, adequately bound, cataloged form, which shall include the names, addresses, telephone numbers and fax numbers of such persons, and shall further include notices as to where pertinent persons can and may be reached for emergency service, inclusive of nights, weekends and holidays; and  
(vii) A fully executed Guarantee in the form of Exhibit K attached hereto from every Subcontractor and Materialman providing labor or materials in connection with the Work.  
Contractor shall certify that each of the items submitted to the District in accordance with this Section 50(a) above is complete and accurate and all of the items submitted, taken together, cover all of the Work.

b. Contractor shall deliver evidence of compliance with any and all requirements of all applicable governmental regulatory agencies at all levels, including, without limitation, the District, City, State and Federal government and agencies, as may be reasonably required by the District.

c. Contractor shall deliver certificates of inspection for vertical transportation systems, life safety systems and mechanical and electrical Work as may be applicable.

d. Contractor shall deliver certificates of insurance for products and completed operations, bonds, maintenance bonds, warranties and any and all other required certificates as may be applicable and required by any of the Contract Documents.

e. Contractor shall submit Contractor's final affidavit of payment of debts and complete payroll certifications.

## **51. ACCOUNTS ADJUSTMENT**

a. Upon completion of the Project, Contractor shall comply with Section 6(a) hereof and submit a final statement of accounting to the District, showing in full detail all adjustments and variations to the Contract Price.

b. When required, the District will prepare a final Change Order showing all final adjustments to the Contract Price, which were not made previously by other Change Orders.

## **52. ACCEPTANCE OF COMPLETION**

The District, through the Board, shall accept completion of the Contract and have the Notice of Completion recorded when the entire Work shall have reached the stage of Substantial Completion or Final Completion, whichever occurs first, to the satisfaction of the Architect, the Inspector and the District.

If, after Acceptance of Completion, the Contractor fails to correct all "punch-list" items prior to the expiration of the 60 day period immediately following the recordation of the Notice of Completion and provide the District with all items set forth under Section 6(b) hereof, the District shall withhold from the final payment, in addition to any other amounts that the District may be permitted to withhold pursuant to Section 6(d) hereof, an amount equal to one hundred and fifty percent (150%) of the Architect's estimated cost of the correction of all such items until the last of the items has been corrected. At the end of the 60-day period, if there are items remaining to be corrected, the District may request the Contractor in writing

to make immediate correction of said items, and if the Contractor fails to make such correction within ten (10) days of the date of the written notice, the District may make the correction and deduct the costs incurred in connection therewith from the amount withheld therefor.

The parties hereby acknowledge and agree that the Board must formally accept Substantial Completion or Final Completion, as applicable, by Board resolution in order for Acceptance of Completion to occur.

### **53. CORRECTION OF WORK BEFORE FINAL PAYMENT**

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

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

### **54. DEFAULT; REMEDIES**

a. **Default.** The following events occurring after the execution of the Contract or existing during the performance of the Work shall constitute a Default of the Contractor under the Contract (each a "Default"):

(i) If the Contractor commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency;

(ii) If a petition is filed against the Contractor under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or if a petition is filed seeking any such equivalent or similar relief against the Contractor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed;

(iii) If the Contractor makes a general assignment for the benefit of creditors;

(iv) If a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under contract whose appointment of authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors;

(v) If the Contractor fails to perform the Work, or any portion, term or condition thereof, in accordance with the Contract Documents, including, but not limited to, failure to timely provide all required insurance certificates, supply sufficient skilled workers or suitable materials or equipment, or adhere to its construction scheduling responsibilities, or if the Contractor fails to complete the Project within the Contract Time;

(vi) If the Contractor disregards laws, ordinances, rules or regulations of any public body having jurisdiction;

(vii) If, in the opinion of the District, the Contractor at any time during the progress of the Work fails to perform any obligation or violates any provision of this Contract, including, without limitation, safety requirements;

(viii) If the Contractor admits in writing an inability to pay its debts generally as they become due; or

(ix) If the Contractor fails to make prompt and timely payment to Subcontractors or Materialmen of any tier for Work performed and/or materials furnished in connection with the Project or any such Subcontractor or Materialman files a valid stop notice, stop payment notice or lien against the District, the Project or the Project Premises.

b. **Remedies other than Termination.** If a Default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to Subsection c below, do any or all of the following: (1) permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the District may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand; (2) if the workmanship performed by the Contractor is faulty, or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with Work or materials that conform to the requirements of the Contract Documents, in which event the Contractor, at its sole cost and expense, shall proceed in accordance with the District's order and complete the same within the period of time given by the District in its notice to the Contractor; and (3) initiate procedures to declare the Contractor a nonresponsible bidder for a period of two to five years thereafter. All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date incurred until paid to the District at the rate set forth in Subsection d below. The District may retain or withhold any such amounts from the Contract Price in accordance with Section 6(d) hereof. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to clause (2) above, the Contractor shall replace the same with new Work or materials that conform to the Contract Documents, using methods and materials approved by the Architect and/or the District, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect or the District shall direct, all Work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable Work or materials. In no event shall anything in this Section 54 be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Section 54 are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

In cases other than violation(s) of safety requirements, the District shall first deliver or mail to the Contractor and its Surety at the last address on file in the District's office, a written notice giving the Contractor three (3) business days to cure the Default to the satisfaction of the District (or such longer period as may be necessary under the circumstances if the Default cannot be cured within such three (3) business day period); provided that, in the event that the District elects to terminate the Contract pursuant to Subsection c below, the District shall only be required to deliver the seven (7) day termination notice described in said Subsection c and shall not be required to deliver the notice described immediately above. In cases of violation(s) of safety requirements, the District may correct the violation(s) in accordance with clause (1) of the immediately preceding paragraph, or if in the District's opinion circumstances permit, the District will notify the Contractor orally that the violation(s) must be corrected within a specified time period. This oral notification will be followed by prompt written notice to the Contractor and the Surety.

c. **Termination of Contract.** If a Default occurs, the District may, without prejudice to any of its other rights or remedies, including its rights and remedies under Subsection b above, after giving the Contractor and its Surety seven (7) days' written notice (provided that, at the District's election, the Contract will automatically terminate upon the occurrence of an event described in Sections 54(a)(i) or (ii), above without the need for such seven (7) day notice), terminate the Contract or any or all services of

the Contractor hereunder, exclude the Contractor from the Project Premises and take possession of the Project and the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the Project Premises and use the same to the full extent they could be used by the Contractor without liability to the Contractor for trespass or conversion, incorporate in the Work all materials and equipment stored at the Project Premises or off-site and for which the District has paid the Contractor, and finish the Work as the District may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work, including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance of the Contract Price, the Contractor shall pay the difference to the District. The costs incurred by the District in completing the Contract shall be determined by the Architect. When exercising any rights or remedies under this Section 54, the District shall not be required to obtain the lowest price for work performed. All amounts due to the District or Contractor upon completion of the Work under this Section 54(c) shall be paid within thirty (30) days after such amount is determined and demand therefor is made in writing by the party to be paid, and any amount not paid within the said thirty (30) day period shall accrue interest from the date of demand until so paid at the rate set forth in Subsection d below.

d. **Interest on Amounts Due.** Except as otherwise provided with respect to progress payments (as set forth in Section 6 hereof), all amounts not paid when due under this Contract shall bear interest at the rate of ten percent (10%) per annum.

## **55. TERMINATION OF CONTRACT FOR CONVENIENCE**

Notwithstanding anything to the contrary stated in the Contract Documents, the District may terminate the Contract for convenience at any time upon ten (10) days' prior written notice to the Contractor. Upon receipt of any such notice of termination for convenience, the Contractor shall immediately, in accordance with the instructions from the District, proceed as follows:

- a. Cease operations as specified in the notice; provided that, the District, in its sole and absolute discretion, may require the Contractor to complete any Work necessary to facilitate transfer of the Contractor's responsibilities to another contractor;
- b. Place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;
- c. Terminate all subcontracts and orders to the extent they relate to Work terminated (unless the District expressly agrees to assume the same in accordance with Section 15(d), hereof);
- d. Proceed to complete the performance of Work not terminated;
- e. Take actions that may be necessary, or that the District, Architect, Inspector or other District representative may direct for the protection and preservation of the terminated Work; and
- f. Transfer to the District, in writing, good title to all materials on the Project Premises, or used or to be used on the Project, for which payment has been received from the District, including, without limitation, materials in the process of being fabricated off-site.

Upon such termination, the District's total obligation to the Contractor shall be limited to payment for all Work completed, and materials delivered to the Project Premises (and stored thereon or properly stored off-site in accordance with Section 6(a) hereof) in connection with the Work, as of the effective date of

the termination. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, any claim for anticipated profits.

The District shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims which the District has against the Contractor under the Contract (or any other amounts that the District may withhold or offset against the Contract Price pursuant to the Contract Documents), and (iii) the value of the materials, supplies, equipment and other items that are to be disposed of by the Contractor that are part of the Contract Price.

Final payment to the Contractor hereunder shall be made upon receipt and approval of a final Contractor Payment Request from the Contractor in accordance with the terms and provisions of Section 6 hereof.

## **56. DISPUTE RESOLUTION**

a. **Resolution of Construction Claims of \$375,000 or Less.** Construction Claims (as defined herein) by the Contractor in the amount of \$375,000 or less in the aggregate, and all other disputes between the parties relating to the Contract Documents or the Project in the amount of \$375,000 or less in the aggregate (even if such claims are not expressly covered by the terms and provisions of sections 20104 et seq. of the California Public Contract Code), shall be made and processed pursuant to the terms and provisions of, and the procedures outlined in, California Public Contract Code sections 20104 et seq. (as may be amended or recodified from time to time), which procedures (as of September 1, 1996) are set forth in Exhibit L attached hereto. As used herein, "Construction Claims" shall mean a separate demand by the Contractor for (1) an extension to the Contract Time, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for in the Contract Documents or the Contractor is otherwise entitled, or (3) an amount the payment of which is disputed by the District for any reason. All mediations and arbitrations shall take place in the City of Los Angeles, California, at a location selected by the arbitrator.

b. **Resolution of Construction Claims in excess of \$375,000 and Non-Construction Claims.** Any controversy or Claim arising out of or related to the Contract Documents or breach thereof, which involves any sum in excess of \$375,000 in the aggregate, shall be resolved by formal judicial proceedings initiated in a Federal or State court within the greater Los Angeles metropolitan area. All judicial proceedings brought against any person arising out of or relating to the contract documents may be brought in any state or federal court of competent jurisdiction in the greater Los Angeles, California metropolitan area, and by execution and delivery of the contract documents each party hereto accepts for itself, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any judgment rendered thereby in connection with the contract documents.

Each of the parties to this contract hereby agrees to waive its respective rights to a jury trial of any claim or cause of action based upon or arising out of the contract documents, the work or the project. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of that relationship, including, without limitation, contract claims, tort claims, antitrust claims, breach of duty claims, and all other common-law or statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into this contract and all other contract documents and instruments provided for herein, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with legal counsel of its own choosing, or has had an opportunity to do so, and that she/he/it knowingly and voluntarily waives hers/his/its jury trial rights having had the opportunity to consult with legal



counsel. This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and this waiver shall apply to any subsequent amendments, renewals, supplements, or modifications to this contract or any other contract documents or document entered into between the parties in connection with this contract or the project. In the event of litigation, this contract may be filed as a written consent to a trial by the court without a jury.

CONTRACTOR'S INITIALS: \_\_\_\_\_ DISTRICT'S INITIALS: \_\_\_\_\_

c. Joinder notwithstanding anything to the contrary stated herein (including, without limitation, the terms and provisions of this section 56 above providing certain dispute resolution procedures), district and contractor each hereby consent to the joinder of any claim or cause of action arising out of or relating to the contract documents, the work of the project in any other legal action or proceeding relating to the project, including any mediation, arbitration or litigation proceeding involving the district, a construction manager, architect, other contractors and/or any subcontractors with respect to the project, and each party agrees to the joinder of any claim or cause of action relating to the project by or against the district and a construction manager, architect, other contractor and/or any subcontractor in any action prosecuted under this contract. It is hereby expressly acknowledged and agreed by the district and contractor that a claim or cause of action arising out of or relating to the contract documents may be related to various claims and/or other causes of action involving other persons working on the project (such as the construction manager, other contractors, or architect), that it would be most expeditious and efficient to resolve all claims in a single proceeding and that, in entering into the contract, each party is relying upon the other's consent and agreement to permit any claim or cause of action relating to the contract documents, the work or the project to be joined in any such other proceeding or cause of action involving such other persons, or to permit any claim or cause of action involving such other persons to be joined in any proceeding or action under (or relating to) this contract, notwithstanding any contrary provisions of this section 56 or any mediation, arbitration or litigation requirements set forth herein.

d. **Continuing Contract Performance.** Pending final resolution of any claim hereunder (whether or not such claim is a Construction Claim), unless otherwise provided by any term or provision of the Contract Documents or instructed by the District in writing, the Contractor shall proceed diligently with performance of the Work, and the District shall continue to make payment of all undisputed amounts in accordance with the Contract Documents.

## 57. GUARANTY-WARRANTY

Beside guaranties required elsewhere in the Contract Documents, and notwithstanding any manufacturer's waiver or limitation of any guaranty or warranty to the contrary, the Contractor shall, and hereby does, guaranty and warrant that the Project and all Work executed and materials furnished under the Contract will be free from defects of materials and workmanship for a period of one (1) year after the date of Acceptance of Completion, except that certain specific items of the Work and Project may require a guaranty or warranty for a greater period of time when so provided in any Contract Document and the guaranty period for certain portions of the Work may commence prior to Acceptance of Completion as provided in Section 52 hereof. Immediately upon receipt of written notice from the District, but in no event later than one (1) business day thereafter, the Contractor shall repair or replace, at its own expense, any defective material or Work which may be discovered before Acceptance of Completion or within the above guaranty period, any material or Work damaged thereby, and all adjacent material or Work which may be displaced in connection with the repair or replacement required hereunder. Inspection of or failure to inspect the Work or the Project by the District shall not relieve the Contractor from these

obligations. The Contractor shall notify the District upon completion of the repairs.

If the Contractor fails to repair or replace the material or Work as indicated in the preceding paragraph within one (1) business day from the date of receipt of a written notice from the District notifying the Contractor of the defect, the District, with its own workforce or by contract with an outside contractor, may proceed with the repair or replacement and assess the costs thereof against the Contractor, which costs will bear interest at the rate set forth in Section 54(d) from the date incurred until repaid to the District, and which amount may be withheld or retained from any portion of the Contract Price outstanding and otherwise owing to the Contractor in accordance with Section 6(d) hereof. When necessary to keep school open or safely operating, the District, with its own workforce or by contract with an outside contractor, may make such repairs or replacement without advance notice to the Contractor and assess the costs thereof (together with interest as specified above) against the Contractor. Such action by the District will not relieve the Contractor of the guaranties provided in this Section 57 or elsewhere in the Contract Documents. If Contractor fails to repair or replace any Work or material covered by any guaranty or warranty set forth in the Contract Documents within the applicable guaranty or warranty period, the District may elect to declare the Contractor a non-responsible bidder on future District projects in accordance with Section 54(b) hereof.

Whether the Contractor or the District actually repairs or replaces defective material or Work within the applicable guaranty period pursuant to either of the preceding two paragraphs, the warranty period shall begin anew from the date of completion of the repair or replacement. For example, if an item with a one-year warranty requires repair or replacement during the guaranty period, then the guaranty for that item shall expire one (1) year after the completion of the repair or replacement of such item and not one (1) year after Acceptance of Completion.

Contractor further warrants that title to all Work, materials and equipment will pass to the District upon receipt of payment by Contractor therefor, free and clear of all lien rights, stop notice rights, stop payment notice rights, security interests or encumbrances (collectively referred to as liens). The Contractor shall also indemnify, defend and hold harmless the District, at the Contractor's sole cost and expense, against any and all actions, lawsuits or proceedings brought against the District as a result of claims, liens, stop notices or stop payment notices filed against the District, the Project Premises or otherwise. The Contractor hereby indemnifies, defends and holds harmless the District against any and all such claims, liens stop notices and stop payment notices and agrees to pay the District's attorney's fees, costs, expert witness fees, duplication costs, messenger fees, overnight courier expenses, electronic legal research expenses, and any judgment, lien, stop notice claim or stop payment notice claim against the District or the District's property resulting from any actions, lawsuits or proceedings brought to enforce such liens, stop notices, stop payment notices or other claims.

This Section 57 does not in any way limit the guaranty on any items for which a longer guaranty is specified, or on any items for which a manufacturer gives a guaranty for a longer period. Contractor shall furnish the District all appropriate guaranty or warranty certificates immediately upon completion of the Project.

No payment by the District, or any partial or entire use or occupancy of the Project by the District, shall constitute an acceptance of any Work not performed in accordance with the Contract Documents and all applicable laws, rules and regulations.

## **58. OPERATIONAL-TRAINING**

a. The Contractor shall train District personnel to the District's satisfaction in the operation of the systems and equipment incorporated, supplied or otherwise delivered in connection with the Work

and the Project, and as may be required in other sections of the Contract Documents. The Contractor shall co-ordinate with the District in order to determine the hours of instruction and scope of material to be covered by such training sessions. Except as otherwise provided herein, training of the District's personnel shall not begin until (i) the District has approved the final submitted copy of the operations manuals and training programs and (ii) the building systems and equipment are completed, operational and formally turned over to the District.

b. The Contractor shall submit to the District the proposed scope of training and materials and instruction schedule for the District's review and approval approximately thirty (30) days before the scheduled completion of the buildings for which training is to occur. Mutually agreeable dates for training shall be arranged with the District's representative; provided, however, that the District may, in its sole discretion, require the entire training to be completed before the final operational test.

c. The training required in this Section 58 is in addition to any other scope of training that may be required by the Contract Documents. The Contractor, or Contractor-provided professional training firm, shall work closely with District personnel in the development and implementation of the training program, including, without limitation, preliminary meetings to set guidelines for the program and choose the required written training materials, all of which are subject to the District's approval. Said training shall include, as may be applicable and acceptable to the District, classroom and on-the-job (hands-on) instruction by qualified installation and operation personnel having the necessary knowledge, experience and teaching skills. The use of videotaping during the instruction period is encouraged. If the instruction period is videotaped, all tapes shall be cataloged and delivered to the District as soon as the training is complete and shall be deemed the District's property.

d. The Contractor may use professional training firms or its own personnel; provided, however, any person engaged in any part or manner of the training program shall be of a professionally qualified and certified level of expertise in his or her particular field. Persons without certifications for training shall not be acceptable.

e. The entire training program shall be furnished by the Contractor at no additional or separate cost to the District. The training program shall not be the subject of any added costs to the District, Change Orders or increases to the Contract Price. The training program shall be reviewed, evaluated, rejected or accepted by the District, with variances as directed if any are deemed convenient. The entire program, materials, tools and other items shall become the property of the District, which shall include, but not be limited to:

- (i) Adequate lesson plans, teacher's guides or training aids used to instruct the students (one full set to be delivered for the District's records and used to instruct students); and
- (ii) All written materials, e.g., workbooks, manufacturer's instructions, brochures, student tests, charts or other printed or photographed visual aids (these sets, with one complete reproducible master, to be given to the District).

f. Classroom training shall be conducted in a classroom furnished by the Contractor at no additional cost to the District or, when necessary and if convenient to the District, and with the District's approval, in some District-owned facility.

## **59. CONTRACT AUDITS**

Contractor agrees that the District will have the right to review, obtain and copy all records pertaining to the performance of the Work under the Contract. Contractor agrees to provide the District with any relevant information requested and shall permit the District access to Contractor's premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting

and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the Contract or with California Public Contract Code sections 10115 et seq. (as may be amended from time to time). Contractor further agrees to maintain such records for a period of three years after final payment under the Contract. The District may cause a separate audit of the Project and/or Contractor's books and records kept in connection therewith to be made by a certified public accountant from time to time, but in no event more often than once in any six (6) month period. If any statement of Change Order costs incurred by the Contractor in connection with the Project or amounts paid to the Contractor shall be found to be in error such that the Contractor has been overpaid by an amount in excess of two percent (2%) of the amount rightfully due the Contractor pursuant to this Contract, the Contractor shall immediately pay the cost of such audit. Otherwise, the cost of such audit shall be paid by the District. If any such audit shows that the Contractor has been overpaid to any extent, then the Contractor shall immediately refund to the District the amount of such overpayment, or, at the District's election, the District may deduct such amounts from later payments due to the Contractor under this Contract. All amounts due to the District hereunder shall bear interest from the date of demand until repaid at the rate set forth in Section 54(d) hereof.

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

## **60. WAGE RATES**

In compliance with the provisions of the California Labor Code, hereby incorporated herein, to the extent the Contract requires payment of prevailing wages, all workers employed by the Contractor or any Subcontractor of any tier performing Work under this Contract shall be paid not less than the general prevailing rate of per diem wages in effect at the time of execution of the Contract for each craft, classification or type of worker needed to execute the Work under this Contract. Although the District will rely upon the determinations made by the California State Director of Industrial Relations for wage rates, the District reserves the right to establish wage rates and determine classifications in the event of a dispute, as allowed by law.

Pursuant to the provisions of Article 2 (commencing at section 1770), Chapter 1, Part 7, Division 2 of the California Labor Code, the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to execute the Contract copies of which are on file at the District's principal office, located at 16703 Clark Avenue, Bellflower, California, 90706-5203, Building A, Reception Desk, and shall be made available to any interested party on request. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in section 6700 of the California Government Code, pursuant to section 1773 of the California Labor Code.

Per diem wages pursuant to California Labor Code section 1773.1 shall be deemed to include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in said section 1773.1 of the California Labor Code, apprenticeship or other training programs authorized by

section 3093 of the California Labor Code, and similar purposes when the term per diem wages is used herein.

“Prevailing Wage Rate Tables” as used herein means (i) all General Prevailing Wage Determinations, issued by the Director of the Department of Industrial Relations pursuant to sections 1770, 1773, and 1773.1 of the California Labor Code, of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to execute the Contract; (ii) all Special Determinations, if any, as described in section 16202 of Title 8 of the California Code of Regulations, with regard to each craft, classification or type of worker needed to execute the Contract that is not addressed by a general determination made pursuant to section 16201 of Title 8 of the California Code of Regulations (items (i) and (ii) collectively are referred to herein as the “Issued Rates”); and (iii) in the event the work of any craft, classification or type of worker needed to execute the Contract is not addressed by the Issued Rates, the prevailing wage applicable to such worker(s) determined by agreement between the District and the Contractor by reference to, without limitation, the minimum rate of wages specified in the Issued Rates for the classification which most nearly corresponds to the work performed by such worker, or, in the event of a dispute, established by the District as allowed by law.

Pursuant to section 1773.6 of the California Labor Code, if during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in the prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, he shall make the change available to the District, but the change shall not affect any request for bids or the Contract subsequently awarded.

Pursuant to section 1815 of the California Labor Code, holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one half (1 1/2) times the specified rate of per diem wages, unless otherwise specified.

There shall be paid to each worker of the Contractor, or any Subcontractors of any tier engaged in Work on the Project, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor of any tier and such worker.

Pursuant to California Labor Code section 1775, the Contractor shall forfeit as a penalty to the District not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the prevailing wage rates for such work or craft in which such worker is employed for any Work performed under the Contract by the Contractor or any Subcontractor of any tier, except as otherwise provided in section 1775(b). The difference between the prevailing rates and the amount actually paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall also be paid to each worker by the Contractor or Subcontractor. Such amounts may be retained or withheld from the Contract Price in accordance with Section 6(d), hereof. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor’s or Subcontractor’s mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his or her prevailing wage obligations, or the willful failure by the Contractor or Subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or Subcontractor had knowledge of his or her obligations under this Section 60. All penalties or forfeitures from prevailing wage violations shall, where applicable, be deposited into the District’s general fund, pursuant to the California Labor Code.

Any contract executed between the Contractor and any Subcontractor for the performance of Work under this Contract shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813 and 1815

of the California Labor Code. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by each Subcontractor to each Subcontractor's employees, by periodic review of the certified payroll records of each Subcontractor.

Upon becoming aware of the failure of any Subcontractor to pay his or her workers the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for any Work performed under the Contract.

Prior to making final payment to any Subcontractor for any Work performed under the Contract, the Contractor shall obtain and provide to the District an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees in connection with the Work and any amounts due pursuant to California Labor Code section 1813.

The Division of Labor Standards Enforcement shall notify the Contractor within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of any Subcontractor to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of any Subcontractor were not paid the general prevailing rate of per diem wages and if the District did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a Subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within one hundred eighty (180) days of the filing of a valid notice of completion or District's acceptance of the Project, whichever occurs later, the Contractor shall pay all moneys retained from the Subcontractor to the District. If the Subcontractor prevails in the enforcement action, the District shall release any funds retained pursuant to this Section 60.

Contractor shall post the Prevailing Wage Rate Tables at appropriate, conspicuous, weatherproof points on the Project Premises.

The Contractor is responsible for complying with all rates for all crafts utilized in and during the Work. Questions pertaining to prevailing wages should be directed to the following address:

Division of Labor Statistics and Research  
P. O. Box 420603  
San Francisco, California 94142  
(415) 703-4281

Pursuant to California Labor Code section 1775(a)(2)(E), the parties hereby stipulate that California Labor Code section 1775 will be complied with.

CONTRACTOR'S INITIALS: \_\_\_\_\_ DISTRICT'S INITIALS: \_\_\_\_\_

Pursuant to California Labor Code section 1771, the payment of prevailing wage rates is not required on any project of One Thousand Dollars (\$1,000) or less.

## 61. RECORD OF WAGES PAID: INSPECTOR

Pursuant to section 1776 of the California Labor Code:

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

(1) The information contained in the payroll record is true and correct.  
(2) The employer has complied with the requirements of sections 1771, 1811, and 1815 of the California Labor Code for any work performed by his or her employees in the public work project under this Contract.

b. The payroll records enumerated under Subsection a shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

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

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

e. Any copy of records or payroll checks made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor performing the Contract shall not be marked or obliterated.

f. The Contractor shall inform the District of the location of the records enumerated under Subsection a, including the street address, city and county, and shall, within five (5) working days,

provide a notice of a change of location and address.

g. The Contractor or Subcontractor shall have ten (10) days in which to comply subsequent to receipt of a written notice requesting the records enumerated in Subsection a. In the event that the Contractor or Subcontractor fails to comply within the ten-day period, he or she shall, as a penalty to the state or the District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments otherwise due the Contractor hereunder in accordance with Section 6(d) hereof. The Contractor is not subject to a penalty assessment pursuant to this Subsection g due to the failure of a Subcontractor to comply with this Section 61.

Pursuant to California Labor Code section 1776(i), the parties hereby stipulate that California Labor Code section 1776 will be effectuated.

CONTRACTOR'S INITIALS: \_\_\_\_\_ DISTRICT'S INITIALS: \_\_\_\_\_

## **62. HOURS OF WORK**

As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the California Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any work employed at any time by the Contractor or by any Subcontractor upon the Work, or upon any part of the Work contemplated by this Contract, is limited and restricted to eight (8) hours during any one (1) calendar day and forty (40) hours during any one (1) calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of the Contractor or any Subcontractor in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon this public work; provided that, compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be at not less than one and one half (1 1/2) times the basic rate of pay.

As provided in section 1813 of the California Labor Code, the Contractor shall pay to the District a penalty of Twenty Five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day or forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3, (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one half (1 1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day or forty (40) hours per week, as applicable. The District may retain or withhold any such amounts from the Contract Price in accordance with Section 6(d), hereof.

Any work required to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to the District.

## **63. APPRENTICES**

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



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

When the Contractor to whom the Contract is awarded by the District or any Subcontractor on the Project, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. Every Contractor and Subcontractor shall submit contract award information to the applicable Joint Apprenticeship Committee, which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work, to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentices' work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in section 1777.5 of the California Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

Any ratio shall apply during any day or portion of a day when any journeymen, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the job site and shall be computed on the basis of the five (5) hours worked during the day by journeymen employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

The Contractor or Subcontractor, if he, she or it is covered by this Section 63 and California Labor Code section 1777.5, upon the issuance of the approval certificate, or if he, she or it has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor or Subcontractor that it employs apprentices in the craft or trade in the State on all of its contracts on an annual average or not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor or Subcontractor from the one (1) to five (5) hourly ratio as set forth in this Section 63 and said section 1777.5. This Section 63 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or

forty (40) hours per week shall not be used to calculate the hourly ratio required by section 1777.5. "Apprenticeable craft or trade", as used in section 1777.5 and this Section 63, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. The Joint Apprenticeship Committee has the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the one (1) to five (5) ratio set forth in section 1777.5 and this Section 63 when it finds that any one of the following conditions is met:

- a. In the event unemployment for the previous three (3) month period in such area exceeds an average of 15 percent (15%), or
- b. In the event the number of apprentices in training in the area exceeds a ratio of one (1) to five (5), or
- c. If there is a showing that the apprentice able craft or trade is replacing at least one thirtieth (1/30) of its journeymen annually through apprenticeship training, either (1) on a statewide basis or (2) on a local basis, or
- d. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life, safety or property or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When exemptions are granted to an organization that represents contractors in a specific trade from the one (1) to five (5) ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

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

The responsibility of compliance with California Labor Code section 1777.5 and this Section 63 for all apprentice able occupations is with the Contractor.

All decisions of the Joint Apprenticeship Committee under this Section 63 and California Labor Code section 1777.5 are subject to the provisions of California Labor Code section 3081.

Pursuant to section 1777.6 of the California Labor Code, it shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender

expression, age, or sexual orientation of such employee, except as provided in section 3077 of the California Labor Code and section 12940 of the California Government Code.

Pursuant to California Labor Code section 1777.7, upon a determination by the Labor Commissioner that the Contractor or any Subcontractor has knowingly committed a serious violation of any provision of this Section 63 or section 1777.5 of the California Labor Code, the Labor Commissioner may deny to the Contractor or Subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one (1) year for the first violation and for a period of up to three (3) years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

Pursuant to California Labor Code section 1777.7, a Contractor or Subcontractor that is determined by the Labor Commissioner to have knowingly violated California Labor Code section 1777.5 or this Section 63 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. Notwithstanding Labor Code section 1727, upon receipt of a determination that a civil penalty has been imposed by the Labor Commissioner, the District shall withhold the amount of the civil penalty from Contract progress payments then due or to become due, pursuant to Section 6(d). In lieu of such penalty, the Labor Commissioner may, for a first-time violation and with the concurrence of the Joint Apprenticeship Committee, order the Contractor or Subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

Any funds withheld by the District pursuant to this Section 63 and/or the California Labor Code shall be deposited in the general fund of the District.

Pursuant to California Labor Code section 1777.5(n), the parties hereby stipulate that California Labor Code section 1775 will be effectuated, and Contractor is responsible for compliance with California Labor Code section 1775 for all apprentice able occupations.

CONTRACTOR'S INITIALS: \_\_\_\_\_ DISTRICT'S INITIALS: \_\_\_\_\_

The interpretation and enforcement of section 1777.5 and section 1777.7 of the California Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council and/or the Labor Commissioner.

#### **64. ASSIGNMENT OF ANTITRUST CLAIMS**

In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the District tender's final payment to the Contractor, without further acknowledgment by the parties.

If the District receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with section 4550) of Division 5 of Title 1 of the California Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred

and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the District shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Section 64 if the assignor has been or may have been injured by the violation of law for which the cause of action arose, and (a) the District has not been injured thereby, or (b) the District declines to file a court action for the cause of action.

## **65. REQUIRED ATTENDANCE AT JOB START MEETING**

The Contractor and all Subcontractors (to the extent required by the District) are required to attend a mandatory Job Start Meeting (Pre-Job Conference) that shall be conducted by the District in accordance with section 1771.5 of the California Labor Code, whether or not specifically required by such section, and its proceedings tape recorded. For major projects, multiple Job Start Meetings may be held before each significant phase of the Work.

At that meeting the District representatives shall discuss the Federal and State labor law and District requirements applicable to the public works contract, including a checklist of prevailing wage requirements, the recordkeeping responsibilities, the requirement for the reporting of certified payroll records to the District, and the prohibition against discrimination in employment. The Contractor and all Subcontractors will then be required to sign the checklist.

## **66. FAIR EMPLOYMENT PRACTICES**

a. The following provisions pertaining to fair employment practices are incorporated into this Contract. All references to “contractor” in this Section 66 shall be deemed to refer collectively to the Contractor and all Subcontractors of any tier performing Work on the Project.

b. In connection with the performance of the Work under this Contract, each contractor agrees as follows:

(i) During the performance of the Contract, contractor will not unlawfully discriminate against, or deny the Contract’s benefits to, any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall contractor discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(ii) The contractor shall comply with the provisions of the California Fair Employment and Housing Act (Cal. Gov. Code, sections 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Cal. Gov. Code, sections 11135-11139.7), and the regulations or standards adopted by the District to implement such article.

(iii) The contractor shall give written notice of their obligations under this Section 66 to labor organizations with which the contractor has a collective bargaining or other agreement.

(iv) The contractor agrees to post at the Project Premises in conspicuous places, available to employees and applicants for employment, notices to be provided by the District setting forth the provisions of this Section 66.

(v) In all advertisements for labor or other personnel, or requests for employment of any nature, the contractor shall encourage persons of all races and ethnic groups to apply and state the intention of the company to hire qualified minority and female applicants.

(vi) The contractor shall permit access by representatives of the Department of Fair Employment and Housing and the District upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or the District shall require to ascertain compliance with this Section 66.

(vii) The contractor's commitment to specific goals for minority and female utilization, as herein required, shall constitute a commitment to make every good faith effort to meet such goals. If the contractor fails to meet the established goals, a determination of good faith in achieving those goals will be based in part upon those efforts used to broaden the recruitment base.

(viii) Following the award, but within ten (10) days after issuance of the Notice to Proceed, the contractor shall meet the following standards for affirmative action compliance, and shall ensure that each Subcontractor of every tier will meet these requirements within ten (10) days after receiving a notice to proceed from the contractor, unless the District provides for a greater time period:

(A) Provide evidence, as required by the District, that all Subcontractors of every tier, the contractor's supervisors, and other personnel have been notified, in writing, of the content of this Fair Employment Practices section and their responsibilities under it by posting notices in conspicuous places, including, without limitation, the Project Premises, the contractor's offices, and in other places available to supervisors and other personnel; and

(B) Provide evidence, as required by the District, that all sources of employee referrals (including, but not limited to, unions, employment agencies, and the State Employment Development Office) have been notified of the content of the Fair Employment Practices provisions set forth herein.

(ix) After a determination by the District that a contractor has knowingly committed a violation of Fair Employment Practices as set forth herein or of the California Fair Employment and Housing Act (if a State funded project), or of any applicable federal law or executive order concerning equal employment practices, the District shall cause written notice to be served on the contractor and to any Subcontractor of any tier involved in such violation. The notice shall set forth the nature of the violation. Upon the District's request, the contractor shall meet with representatives of the District in order to determine the means of correcting the violation and the time period within which the violation shall be corrected. If within ten (10) days the parties are unable to agree upon a means of remedying the violation or upon the time period within which said remedy shall be affected, the District shall serve a second written notice upon the manner in which the violation shall be corrected. If the contractor has not corrected the violation in the manner prescribed by the District within fifteen (15) days after receipt of the second notice, the District may impose any or all of the following penalties:

(A) Determine the contractor not to be a responsible bidder for any future contract until such time as the contractor has satisfied the District that the requirements of this Section 66 have been met;

(B) Terminate the entire Contract, in which case the District shall not be liable for any further payments thereunder, or for any damages to the contractor caused by such termination, except as provided in Subsections (xii) and (xiii) below;

(C) Terminate and cancel any portion of the Contract or Work hereunder, or require the contractor to terminate and cancel (or cause to be terminated and cancelled) the subcontract of any offending Subcontractor, which is related to the violation in which case the District shall not be liable for any further payments as to said portion of the contract or for any damages caused by such termination, except as provided by Subsections (xii) and (xiii) below, and may engage another contractor or Subcontractors to perform said Work; or

(D) Assess as liquidated damages payable as provided by law the penalties provided in the California Labor Code for each calendar day, or portion thereof, for each person who was denied employment as a result of such violation.

(x) Nothing contained in these Fair Employment Practices provisions shall be construed so as to prevent the District from pursuing any other remedies that may be available to it at law

or in equity.

(xi) The contractor shall include the provisions of this Section 66 in every first tier subcontract and require each Subcontractor to bind each further Subcontractor with whom a contract exists to such provisions so that such provisions will be binding upon every Subcontractor of every tier who performs any of the Work required by the Contract.

(xii) Should the termination, under the provisions of Subparagraph (b)(ix) above, of part or all of any contract be finally determined by a court of law to have been improper and unauthorized, the District shall compensate each employee of any affected contractor who was actually working on the Project Premises at the time of the contract termination for wages that such employee would have received had such contract not been so terminated, less any wages the employee earned or had the opportunity to earn during the time the employee otherwise would have been employed on the Project Premises.

(xiii) Should the termination, under Subparagraph (b)(ix) above, of part or all of any contract be finally determined by a court of law to have been improper and unauthorized, then the District shall reimburse the contractor for all direct damages which it may have incurred by reason of such termination.

(xiv) The District shall have the right, but not the obligation unless requested in writing by the contractor within three (3) days of service of any summons and complaint or other pleading, to defend the contractor against any legal action which may be brought by reason of any action that the District may have taken under the provisions of Subparagraphs (b)(ix)(B) or (b)(ix)(C) above. In the event a dispute arises between the District and the contractor as to whether or not the contractor was acting upon District direction, the decision of the matter by the District, made by and through the Assistant Superintendent, Business Services, shall be final.

#### **67. CONTRACTOR NOT A PARTNER, OFFICER, EMPLOYEE OR AGENT OF THE DISTRICT**

While engaged in carrying out and complying with the terms and conditions of the Contract, the Contractor is an independent contractor and not a partner, officer, employee or agent of the District, and the District shall not be liable for any of the Contractor's acts, omissions, liabilities or other obligations as such.

#### **68. ATTORNEYS' FEES**

In the event of any dispute between the District and the Contractor relating to the Work, the Project or this Contract, each party shall make a demand for payment, setoff, reduction in damages, or elimination of damages, as the case may be. The prevailing party (as determined by the court or arbitrator, as applicable) shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses incurred in connection therewith. The term "attorneys' fees" or "attorneys' fees, costs and expenses" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding, at rates customary in the Project locality and shall include, specifically, all fees, costs and expenses of expert witnesses. For purposes of the Contract Documents, the term "prevailing party" as used in this Section 68 shall mean the party obtaining a more favorable judgment or award than such party's initial demand, as described in California Code of Civil Procedure section 998. If both or neither parties obtain(s) a more favorable judgment or award than such party's initial demand, the court or arbitrator, as applicable, shall determine which party is the prevailing party for purposes of this Section 68.

**69. CHANGE IN NAME OR NATURE OF CONTRACTOR'S LEGAL ENTITY**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the District in order that proper steps may be taken to have the change reflected on the Contract Documents.

**70. ASSIGNMENT**

The Contractor shall not assign or transfer, by operation of law or otherwise, any or all of its rights, burdens, duties or obligations under this Contract, under any of the Contract Documents, or any part hereof or thereof without the prior written consent of the Surety(ies) on the Payment Bond and Performance Bond and the District, which may be given or withheld in their sole and absolute discretion. Should the Contractor request an assignment of monies under the Contract, the District shall be entitled to assess against the Contractor the reasonable costs for processing such assignment. Any assignment of monies due or to become due under this Contract shall be subject to (i) prior lien, stop notice and stop payment notice rights for services rendered or materials supplied for performance of the Work called for under this Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials (including, without limitation, Subcontractors and Materialmen) to the extent that claims are filed pursuant to the California Civil Code, the California Code of Civil Procedure or the California Government Code and (ii) deductions for liquidated damages if liquidated damages have been assessed against the Contractor as specified in Section 7 herein.

**71. NOTICE AND SERVICE THEREOF**

All notices, requests, demands, consents, instructions or other communications hereunder shall be in writing (which shall include telex, telegram or telecopy) and shall be deemed to have been duly given or made upon transmittal thereof by telex, answer back received, if transmitted on a business day, otherwise on the first business day after transmittal, or on the date of confirmed dispatch if sent by telecopy on a business day, otherwise on the first business day thereafter, or upon the delivery thereof to the telegraph office if sent by telegraph on a business day, otherwise on the first business day thereafter, or three (3) business days after deposit in the mails if sent by certified mail, postage prepaid, return receipt requested, or on the next business day if sent by overnight personal delivery, in each case addressed to the party to which such notice is requested or permitted to be given or made hereunder, at the address and numbers set forth underneath such party's signature line to the General Contract, or at such other address and number of which such party shall have notified in writing the party giving such notice.

**72. WAIVER**

No action or failure to act by the District, the Architect or any other District representative, or by 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.

**73. ENTIRE AGREEMENT; AMENDMENT**

The Contract Documents represent and constitute the entire and integrated agreement between the parties hereto with respect to the matters set forth therein and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a writing executed by both parties hereto or by a written Change Order issued in accordance with the terms and provisions hereof or otherwise as expressly provided herein (including, without limitation, by the issuance of an Architect/Engineer Field Directive).

# **EXHIBIT A**

## **FORM FOR PROPOSAL REQUEST**



**EXHIBIT B**

**FORM OF CONTRACTOR PAYMENT REQUEST**

# **EXHIBIT E**

## **FORM OF REQUEST FOR INFORMATION**

# **EXHIBIT F**

## **CONSTRUCTION CHANGE DIRECTIVE**

**EXHIBIT G**

**FORM OF CONTRACTOR'S SUBSTITUTION  
REQUEST**

**EXHIBIT H**

**FORM OF DAILY REPORT**

**(SUPPLIED BY CONTRACTOR)**

# **EXHIBIT I**

## **FORM OF RECORD DRAWING REVIEW LOG**

**EXHIBIT J**

**FORM OF FINAL INSPECTION CERTIFICATION**

**EXHIBIT K**

**FORM OF SUBCONTRACTOR/MATERIALMAN  
GUARANTEE**



# EXHIBIT L

## CONSTRUCTION CLAIMS RESOLUTION PROCEDURES

Pursuant to sections 930.2 and 930.6 of the California Government Code, the following provisions govern the presentation by the Contractor of all Construction Claims in the amount of \$375,000 or less in the aggregate, and all other disputes between the parties relating to the Contract Documents or the Project in the amount of \$375,000 or less in the aggregate. These provisions must be followed before the Contractor may commence any action with regard to any Construction Claim that is subject to this Exhibit. In the event that, after following the provisions of this Exhibit, the Contractor commences an action against the District on any Construction Claim subject to this Exhibit, such action shall be subject to the provisions of sections 945.6 and 946 of the California Government Code, in addition to the provisions of Section II of this Exhibit.

The procedures set forth herein are those described in sections 20104 et seq. of the California Public Contract Code as of September 17, 2013, as amended by the District. In the event that any provisions herein are found by a Court of competent jurisdiction to conflict with the provisions of any controlling statutes under California law, (a) said statutes will control; (b) only the provisions herein found to conflict with controlling statutes will be deemed null and void; and (c) all remaining provisions herein will remain in effect.

**I. CLAIMS; REQUIREMENTS; TORT CLAIMS EXCLUDED.** For any Construction Claim, the following requirements apply:

A. The claim shall be in writing, submitted to the District's Board of Trustees at 16703 South Clark Avenue, Bellflower, California 90706, and shall include all documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment under the Contract. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by the Contract for the filing of claims.

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

(2) If additional information is thereafter required, it shall be requested and provided pursuant hereto, upon the mutual agreement of the District and the Contractor.

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

C(1) For claims of over Fifty Thousand Dollars (\$50,000) and less than or equal to Three Hundred Seventy-Five Thousand Dollars (\$375,000), the District shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor.

(2) If additional information is thereafter required, it shall be requested and provided pursuant hereto, upon the mutual agreement of the District and the Contractor.

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

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

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

F. These procedures do not apply to tort claims and nothing in this Exhibit is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**II. CIVIL ACTION PROCEDURES; MEDIATION AND ARBITRATION; TRIAL DE NOVO; WITNESSES.** The following procedures are established for all civil actions filed to resolve Construction Claims subject to this Exhibit.

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

B(1) If the matter remains in dispute, the civil action shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that Code. The Civil Discovery Act of 1986 (Article 3 (commencing with section 2016.010) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes hereof shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to

exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

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

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

### **III. PAYMENT ON UNDISPUTED PORTION OF CLAIM; INTEREST ON ARBITRATION AWARD OR JUDGMENTS.**

A. The District shall not fail to pay money as to any portion of a Construction Claim which is undisputed except as otherwise provided or permitted in the Contract.

B. In any suit filed under Section II above, the District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed by the Contractor in a court of law.