

Section 00 72 00 - GENERAL CONDITIONS

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ARTICLE 1. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Section 1.01. Whenever the following terms, titles, or phrases are used in the Contract Documents, the intent and meaning thereof shall be as defined in this article.

Section 1.02. Addendum/Addenda.

"Addendum" or "Addenda" are written documents furnished by the District before award of the Contract, interpreting or modifying plans and specifications or answering questions of intended bidders, and shall be incorporated in and are a part of the Contract Documents.

Section 1.03. Architect.

The "Architect" is the architectural firm engaged as an agent by the District to perform the services set forth in the Contract Documents.

The Architect is designated by the District as the District's agent to perform all functions delegated to the Architect by the Contract Documents.

Section 1.04. Architect's Instruction Bulletin.

"Architect's Instruction Bulletins" are supplemental drawings or instructions which may be issued as necessary from time to time to make clear or define in greater detail the intent of the Contract Drawings and Specifications. There may be a change in Contract Sum or Contract Time involved with the work shown in the Bulletin.

Section 1.05. Bid.

"Bid" shall mean the offer of the bidder to do the work, when submitted on the prescribed bid form, properly executed and bonded, at the designated time and location.

Section 1.06. Board of Education.

"Board of Education" shall mean the duly elected officials constituting the Board of Education of the Sacramento City Unified School District.

Section 1.07. Change Order.

"Change Order" shall mean a written order to the Contractor, issued after execution of the Contract, signed by the District and the Contractor, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time. Change Orders may incorporate CCDs, some of which require DSA approval prior to being incorporated into the Change Order.

Section 1.08. Closeout Documents.

Documents as required to meet the requirements of final completion as defined in Article 21.

Section 1.09. Construction Change Directive.

"Construction Change Directive" or "Directive" shall mean a written order to the Contractor, issued after execution of the Contract, signed by the District or the District Representative directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, and which shall be used in the absence of total agreement with the Contractor on the terms of a Change Order or when time does not permit processing of a Change Order prior to implementation of the change.

Section 1.10. Contract Change Document

"Contract Change Document" or "CCD" shall mean the following documents, which may be required to be submitted to DSA for approval prior to being implemented and incorporated into a Change Order: Architect's Instruction Bulletins, Construction Change Directives, Interpretations, RFI's or Substitutions.

Section 1.11. Contract Documents.

The "Contract Documents" shall include the Notice to Bidders, the Instructions for Bidders, the Proposal Form, the Agreement for Construction, the Bid Bond, the Performance Bond, the Payment Bond, these General Conditions, the Special Provisions, the General Requirements, Exhibits, the Technical Specifications, the Contract Drawings and Plans, all duly issued Addenda, Interpretations, Change Orders, Directives, supplemental drawings, Architect's

Instruction Bulletins, the Contractor's Guarantee and Bond, the Hazardous Materials Requirements, Preliminary Construction Schedule, and the Contract Schedule.

Section 1.12. Contract Drawings or Plans.

The "Contract Drawings" (sometimes referred to as "Drawings" or "Plans") are the graphic and pictorial portions of the Contract Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. This information may be developed and stored in a 3D or 4D model of the Project. Once approved, all such drawings are incorporated into and become a part of the Contract Documents.

Section 1.13. Contract Schedule.

The "Contract Schedule" is the schedule produced by the Contractor in response to the requirements of the Contract Documents. See Section 13.02 for specific requirements.

Section 1.14. Contract Sum.

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

Section 1.15. Contract Time.

"Contract Time" shall mean the period specified for completion of the Work, as set forth in the Agreement for Construction and adjusted by any Change Order issued pursuant to the Contract Documents.

Section 1.16. Contractor.

"The Contractor" shall mean the person or persons, partnership, or corporation, who have entered into the Agreement for Construction of the Work with the District or its legal representatives, or successors, assigns, executors, or heirs. The Contractor is required by law to be licensed and will perform work or render services as a prime contractor in or about the construction of the Work.

Section 1.17. Date of Commencement.

"Date of Commencement" is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the executed Agreement for Construction or such other date as may be established therein.

Section 1.18. Date of Completion.

The "Date of Completion" for the purpose of determining when the Work is complete is the date certified by the District Representative when construction of the Work is 100% complete, including acceptance by the Architect of all punch list corrections. See Article 21 for the meaning of "completion" for the purpose of determining acceptance of the Work and when final payment is due.

Section 1.19. Day.

Unless otherwise expressly defined, a "day" shall mean a calendar day of 24 hours, including each and every day of the year.

Section 1.20. District.

"District" shall mean the Sacramento City School District, a California school district. The District is sometimes designated "Owner" in the Contract Documents.

Section 1.21. District Representative.

"District Representative" shall mean the District's designated agent engaged to perform all functions delegated to the District Representative by the Contract Documents. The District Representative may or may not be a construction manager. The District Representative will be the Contractor's primary contact during construction of the Project.

Section 1.22. Division of the State Architect.

"Division of the State Architect" or "DSA" is the California State agency responsible for checking contract documents for compliance with Title 24, California Code of Regulations, and monitoring compliance on the construction site. The Division of the State Architect also approves inspectors on all public school projects.

1 Section 1.23. Equal (as in “or equal”).

2 “Equal” shall mean a system, process, product or material which is similar in all respects to that shown or specified
3 but produced by a manufacturer not listed in the specification. See also: Substitution.
4

5 Section 1.24. First Line Supervision.

6 “First Line Supervision” shall mean a working foreman or lead craft worker other than the project superintendent.
7

8 Section 1.25. Interpretations.

9 “Interpretations” are all clarifications, additional instructions, and explanations issued by the Architect pursuant to
10 Article 5 hereof, after award of the Contract.
11

12 Section 1.26. Materials and Equipment.

13 “Materials” is a generic term which shall include all building materials, articles, supplies, and equipment delivered to
14 the project for incorporation in the Work. “Materials” includes everything incorporated into the Work except labor,
15 unless otherwise noted.
16

17 “Equipment” shall mean all pre-manufactured or partially preassembled products or components, assembled or
18 partially assembled before delivery to the Site.
19

20 Section 1.27. Milestone Completion Date.

21 The “Milestone Completion Date” is the date certified as when construction of the Work of any phase is 100%
22 complete, including acceptance by the Architect of all punch list corrections.
23

24 Section 1.28. Notice of Intent to Award.

25 The “Notice of Intent to Award” is issued following District approval of bids. It authorizes the Contractor to obtain
26 required bonds and insurance and to procure all materials and equipment necessary to fulfill its contract within the
27 time shown in the schedule.
28

29 Section 1.29. Notice to Proceed.

30 “Notice to Proceed” is the notice given to the Contractor following execution of the Agreement for Construction and
31 receipt of all required preconstruction submittals as itemized in the Notice of Intent to Award. The Notice to Proceed
32 establishes the start of the Work and authorizes the Contractor to begin construction.
33

34 Section 1.30. Office of Public School Construction (OPSC).

35 “Office of Public School Construction” or “OPSC” is the California State agency responsible for apportionment,
36 disbursement and monitoring of state-provided school district capital improvement funds.
37

38 Section 1.31. Preliminary Construction Schedule.

39 “Preliminary Construction Schedule” is a schedule that may be included in the bid documents and establishes the
40 milestone dates for completion of each major trade activity as well as the phasing of work by building and the overall
41 duration of the Project.
42

43 Section 1.32. Product Data.

44 “Product Data” shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams
45 and other information furnished by the Contractor to illustrate a material, product or system for some portion of the
46 Work.
47

48 Section 1.33. Project.

49 “Project” shall mean the total design and construction of the work of improvement described in the Contract
50 Documents, of which the Work may be the whole or a part and which may include construction by District or by
51 separate contractors.
52

53 Section 1.34. Project Inspector.

54 The “Project Inspector” shall mean the person or persons employed or engaged as (an) independent contractor(s)
55 by the District to inspect the performance of the Work by the Contractor for compliance with the Contract
56 Documents. The Project Inspector is hereby designated as an agent of the District for such purpose and no other.
57 The Project Inspector is supervised by, and reports to, the Architect. The authority of the Project Inspector to

monitor the work shall be strictly limited to that authority specified herein and in Title 24, California Code of Regulations, and no additional authority has been granted nor shall be inferred.

Section 1.35. Proposed Change Order/Work Order.

A "Proposed Change Order/Work Order" or "PCO" is the name given to a document issued by the Contractor proposing a change to the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A PCO shall be used by the Contractor to respond to a Request for Proposal, a Request for Information or an Architect's Instructional Bulletin. A PCO is not effective to authorize the proposed change to the Work, to the Contract Sum or to the Contract Time unless it is accepted in writing by the District.

Section 1.36. Provide.

"Provide" shall mean to furnish, install, and connect complete and ready for use.

Section 1.37. Reference to Codes.

Unless otherwise noted, all references to statutes are to the laws of the State of California and/or of the United States as codified in the various specified codes.

Section 1.38. Request for Information.

"Request for Information" or "RFI" is the name given to a document issued by the Contractor seeking clarification and/or additional information regarding an aspect of the Work. The response to the RFI does not constitute authorization or direction to proceed with any changed or additional work. Changed or additional work must be separately authorized by the District.

1. Should the Contractor require clarification or additional information of the Contract Documents, and after the Contractor has consulted with the Project Inspector, the Contractor will direct the request to the District Representative on a Request for Information (RFI) form. (See appendix.)
2. Each RFI will be submitted to the District Representative un-numbered. The District Representative will number each RFI sequentially and will maintain an RFI log. The Contractor shall describe on the RFI the problem or clarification being requested. The description provided should be complete and adequate to permit a written response without additional communications with the Contractor. The Contractor shall attach any related information or correspondence that may have been received from Subcontractors or vendors on the subject. In instances where the Contractor believes there may be a conflict between elements of the plans and specifications, the Contractor should identify the conflict and indicate the manner in which it interprets the Contract Documents.
3. The District Representative will review the request and take one or more of the following steps:
 - a. Return the request to the Contractor for additional information.
 - b. Forward the request to the A/E for response, copying the Project Inspector.
 - c. Provide response and return to the Contractor with copies to the A/E and Project Inspector.
4. The A/E or other appropriate party receiving the RFI, will attempt to provide a response to the District Representative within seven (7) calendar days of receipt. The District Representative will in turn review the response and forward it to the Contractor. Should the response to an RFI be required by a specific critical date the Contractor shall indicate that date on the RFI.
5. If the A/E's review indicates a change or revision is necessary to the Contract Documents, the A/E will prepare the appropriate drawings and/or specifications required to define the change or revision and obtain DSA approval, if necessary. These documents will be transmitted to the District Representative for review and incorporation into the Contract Documents. The District Representative will transmit the revised documents to the Contractor.
6. If the Contractor believes the clarification or direction provided by the response to the RFI will impact the cost or schedule of the Project, the Contractor shall provide prompt notification to the District Representative, according to the General Conditions. After consultation with the A/E, the District Representative may prepare a Request for Proposal, PCO/Work Order and/or Change Order (see appendix) that shall be processed as outlined in the Change Order Procedure section of the Manual.

Section 1.39. Request for Proposal.

A “Request for Proposal” or “RFP” is the name given to a document issued by the District Representative requesting pricing information and/or an adjustment in Contract Time for a described scope of work. An RFP is not a Change Order, a Directive or a direction to proceed with the scope of work described in the RFP. The Contractor’s response to the RFP shall be in the form of a Proposed Change Order.

Section 1.40. Samples.

“Samples” shall mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Section 1.41. Shop Drawings.

“Shop Drawings” shall mean drawings, diagrams, schedules and other data specifically prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Section 1.42. Site.

“Site” is the area within which the Project is to be constructed.

Section 1.43. Special Inspector.

The “Special Inspector” shall mean the person or persons employed or engaged as (an) independent contractor(s) by the District to inspect the performance of specific aspects of the work as required by Title 24, California Code of Regulations.

Section 1.44. Special Provisions.

The “Special Provisions” are specific clauses setting forth conditions or requirements peculiar to the Work, and supplementary to the General Conditions and Technical Specifications.

Section 1.45. Specifications.

“Specifications” include the special provisions, general conditions, general requirements, and technical specifications applicable to the Work, all duly executed and issued addenda and interpretations, and all modifications approved by the District pursuant to a Change Order.

Section 1.46. Subcontractor.

“Subcontractor” shall mean each person or firm who is required by law to be and who is licensed to and will perform work, labor, or render services to the Contractor in or about the construction of the Work, or who, under subcontract to the Contractor, fabricates and installs a portion of the work or improvement.

“Subcontractor” shall include all persons or firms within the authority of the Subletting and Subcontracting Fair Practices Act, Chapter 2 of Division 5, Title I of the Public Contract Code, commencing with Section 4100.

Section 1.47. Submittal.

“Submittal” shall mean all product data, shop drawings, manufacturers’ instructions, samples, Equals, substitution requests and all other submissions that the Contractor is required to provide to the District and/or the Architect.

Section 1.48. Substitution.

“Substitution” shall mean a system, process, product or material similar in form or function and equal in quality and performance to that shown or specified, but differing in some essential element, e.g., chemical composition, mechanism of action, surface finish, dimensions, durability, electrical or mechanical or plumbing requirements. See also: Equal.

Section 1.49. Supply.

“Supply” shall mean to furnish only, complete and ready for installation, including shipping, delivery, protection, and any assembly required prior to installation.

Section 1.50. Work.

The “Work” shall mean that scope of work defined in Section 00 73 00, Article 1 of these Specifications and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project.

ARTICLE 2. CONTRACT DOCUMENTS

Section 2.01. The Contract.

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the District and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order as defined in Section 1.07. Nothing contained in the Contract Documents shall create any contractual relationship between the District, the District Representative or the Architect and any Subcontractor or sub-subcontractor, or between the District Representative or the Architect and the Contractor.

Section 2.02. General Intent of Contract Documents.

It is the overriding intent of the Contract Documents that the work performed shall result in a complete and operable project in satisfactory condition for occupancy, with all mechanical equipment in functional operating condition and fit for the use for which it is intended, and which complies in all respects with the Contract Documents. No extra compensation will be allowed for anything omitted but fairly implied to be included in the Contract Documents. The prices paid for the various items in the bid shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, and doing all items necessary to complete the Work as provided by the Contract Documents.

Section 2.03. Labor and Materials.

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, light, heat, utilities, transportation and other facilities and services necessary for the execution and completion of the Work in accordance with the Contract Documents and any applicable code or statute, whether or not specifically described herein, as long as same is reasonably inferable there from as being necessary to produce the intended results, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

Section 2.04. Complementary Feature of Various Parts of Contract Documents.

The Contract Documents, including the Specifications and Plans and Drawings, are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict, large scale (detail) Drawings shall govern over small-scale Drawings, the Specifications shall govern over the Contract Drawings except as noted below, special provisions shall govern over both the Contract Drawings and the general conditions, and subsequent addenda, Interpretations, or approved change orders shall govern over the original documents, unless a different order of precedence is noted elsewhere in conjunction with a specific portion of the documents.

In case of conflict between the Drawings and Specifications, the Drawings shall govern in matters of quantity and size, the Specifications in matters of quality. In case of conflict within the Drawings involving quantities or within the Specifications involving quality, the greater quantity and the higher quality shall be provided.

Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Work. Where ornament or other detail is indicated as starting, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Work, unless otherwise indicated.

Scale drawings, full-size details, and specifications are intended to be fully coordinated and to agree. Where not specifically stated otherwise, all work and materials necessary for each unit of construction, even though only briefly mentioned or indicated, shall be furnished and installed fully and completely, including, but not limited to, the manufacturer's instructions and/or recommendations, as part of this Contract.

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

1 Section 2.05. Ownership and Use of Documents.

2 All original Drawings and Specifications prepared by the Architect are and shall remain the property of the District.
3

4 Section 2.06. Successors and Assigns.

5 The District and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the
6 other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect
7 to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign
8 the Contract or sublet it in whole or part without the written consent of the District nor shall the Contractor assign any
9 moneys due or to become due to it hereunder without the prior written consent of the District.
10

11 Section 2.07. Written Notice.

12 Written notice may be accomplished by personal delivery, United States mail, delivery receipt email, facsimile or
13 any other form of commercially accepted communication. The written notice shall become effective upon delivery.
14 Delivery is complete when the notice is hand delivered to Contractor's home office, job-site office, or to Contractor's
15 superintendent; or when the facsimile transmission is complete; or two days after mailing by U.S. mail; or upon
16 actual delivery as evidenced by a delivery receipt.
17

18 Section 2.08. Rights and Remedies.

19 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the
20 District available there under shall be in addition to and not a limitation of any duties, obligations, rights and
21 remedies otherwise imposed or available by law.
22

23 The failure of the District, the District Representative, the Project Inspector or the Architect to insist in any one or
24 more instances upon the strict performance of any one or more of the provisions of this Contract or to exercise any
25 right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of
26 such provision or right(s) or of the right to subsequently demand such strict performance or exercise such right(s)
27 and the rights shall continue unchanged and remain in full force and effect.
28

29 The Contractor agrees that it can be adequately compensated by money damages for any breach of this Contract
30 which may be committed by the District and hereby agrees that no default, act or omission of the District, the District
31 Representative, the Project Inspector or the Architect, shall constitute a material breach of the Contract entitling the
32 Contractor to cancel or rescind the provisions of the Contract or to suspend or abandon performance of all or any
33 part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or
34 become entitled, saving only its right to money damages.
35

36 Section 2.09. Unenforceability of any Clause.

37 If any clause or provision of the Contract Documents is held to be unenforceable or invalid, then that provision of the
38 Contract shall be stricken and the remaining portion shall remain in full force and effect.
39

ARTICLE 3. BONDS AND BONDING; INDEMNIFICATION AND INSURANCE

Section 3.01. Bonds: Time to Submit.

Within ten (10) days after receipt of Notice of Intent to Award, and before the District will execute the Agreement for Construction, the Contractor to whom the Work is awarded shall furnish and deliver to the District bonds as set forth below in Sections 3.03, 3.04 and 3.05, except that contracts for amounts less than \$25,000 will not be required to be accompanied by bonds.

Section 3.02. Qualifications of Surety.

All bonds shall be duly executed by a responsible corporate surety listed in the current version of the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," admitted by the State of California Department of Insurance to do business in the State of California and acceptable to District.

Section 3.03. Performance Bond.

The Contractor shall submit a faithful Performance Bond on the form provided with the Contract Documents, conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. The amount of the bond shall be in a sum no less than one hundred percent (100%) of the total Contract Sum.

Section 3.04. Labor and Materials Payment Bond.

The Contractor shall also submit a bond on the form provided with the Contract Documents, which in all respects complies with California Civil Code sections 9550, 9552, and 9554. This bond, hereinafter referred to as a "Payment Bond," shall be in a sum no less than one hundred percent (100%) of the Contract Sum.

Section 3.05. Supply Bond.

If work under the Contract is limited to supplying of materials or equipment only, a supply bond in the amount of one hundred percent (100%) of the Contract Sum will be required in lieu of performance and labor and materials bonds.

Section 3.06. Additional Bonding Requirements.

All bonds submitted shall include the following:

1. Full name and address of the Contractor, Surety, and District
2. Contract Date
3. Exact Contract Sum
4. Project name, address, and bid package number.
5. Signature of the Contractor
6. Corporate Seal if Applicable
7. Signature of authorized Surety representative.
8. Notarization of the Contractor and Surety
9. Power of Attorney
10. Local contact for Surety, with name, phone number, and address to which legal notices may be sent

Section 3.07. Bond Costs in Bids.

All costs for applicable Bid Bonds, Labor and Material Payment Bonds, Performance Bonds, and Supply Bonds shall be included in base bid.

Section 3.08. Indemnification.

To the fullest extent permitted by law, the Contractor shall defend with counsel acceptable to the District, indemnify and save harmless the District, the District Representative, and the Architect and any of their respective officers, agents, and employees from and against, any and all losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions hereof, or in any way arising out of or connected with this Contract, including but not limited to, equitable relief, stop notice actions, or any acts or omissions, any wrongful act, or any negligent act or omission to act, whether active or passive, on the part of the Contractor or any of its agents, employees, independent contractors, subcontractors or suppliers; provided, further, without limiting the foregoing, that the defense and indemnity is intended to apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by the Contractor and the Contractor's agents, employees,

1 independent contractors, or subcontractors or suppliers, and the District, its agents, employees, or independent
2 contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to
3 indemnify the District in contravention of Section 2782 of the Civil Code for the active or sole negligence or willful
4 misconduct of the District.
5

6 To the fullest extent permitted by law, the Contractor's duty to defend shall extend, without limitation, to any suit or
7 action founded upon any losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every
8 nature arising out of or in any way connected with the performance or attempted performance of the provisions
9 hereof, or in any way arising out of or connected with this Contract.
10

11 The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages,
12 costs, expenses, or liability occasioned as a result of damages to adjacent property caused by the conduct of the
13 Work.
14

15 The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages,
16 costs, expenses, or liability occasioned as a result of the violation by the Contractor, the Contractor's agents,
17 employees, or independent contractors, subcontractors or suppliers of any provisions of federal, state or local law,
18 including applicable administrative regulations.
19

20 The defense and indemnity obligations also expressly extend to and include any claims, demands, damages, costs,
21 expenses, or liability occasioned by injury to or death of any person, or any property damage to property owned by
22 any person while on or about the Site or as a result of the Work, whether such persons are on or about the Site by
23 right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.
24

25 In claims against any person or entity herein indemnified that are made by an employee of the Contractor or an
26 employee of any of the Contractor's agents, independent contractors, subcontractors or suppliers, a person
27 indirectly employed by the Contractor or by any of the Contractor's agents, independent contractors, subcontractors
28 or suppliers, or anyone for whose acts the Contractor or any of the Contractor's agents, independent contractors,
29 subcontractors or suppliers may be liable, the defense and/or indemnification obligation herein shall not be limited by
30 any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or the
31 Contractor's agents, independent contractors, subcontractors or suppliers under workers' compensation acts,
32 disability acts, or other employee benefit acts.
33

34 The defense and indemnification obligations herein shall not be limited by any assertion or finding that the person or
35 entity indemnified is liable by reason of a non-delegable duty.
36

37 The defense and indemnities set forth herein shall not be limited by the insurance requirements set forth in the
38 Contract Documents.
39

40 The defense and indemnification requirements herein set forth shall extend to claims occurring after this Contract is
41 terminated as well as while it is in force.
42

43 Section 3.09. Indemnification of Adjacent Property Owners.

44 In the event the Contractor enters any agreement with the owners of any adjacent property to enter upon or adjacent
45 to such property for the purpose of performing this Contract, the Contractor shall fully indemnify, defend and save
46 harmless such person, firm, or corporation, state or other governmental agency which owns or has any interest in
47 the adjacent property. The form and content of the indemnification agreement shall be approved by the District prior
48 to commencement of any work on or about such property. The Contractor also shall indemnify the District as
49 provided in Article 10. These provisions shall be in addition to any other requirements of the owners of adjacent
50 property.
51

52 Section 3.10. Insurance.

53 The Contractor shall obtain, and maintain during the entire Contract Time, at its sole cost and expense, all insurance
54 required by Sections 3.13 and 3.14. Certificates of such insurance and copies of the insurance policies and
55 endorsements shall be delivered to the District within ten (10) days after being notified of the intent to award the
56 Contract, and before execution of the Agreement for Construction by the District. Insurance Certificates must
57 indicate Bid Package number and school name.

Every policy shall be endorsed to state that it shall not be assigned, canceled, or reduced in coverage without thirty (30) days' prior written notice to District. Every policy shall also be endorsed to state that the District shall be given notice of nonrenewal at least thirty (30) days prior to the nonrenewal date.

The Contractor shall not commence work until all required insurance documentation has been submitted to and accepted by the District.

Failure of Contractor to maintain all required insurance during the entire Contract Time shall constitute a default entitling the District to all rights and remedies that exist in the Contract Documents and/or by law.

The requirements as to the types and limits of insurance coverage, and any approval of said insurance by the District, is not intended and shall not in any manner limit or qualify the liabilities and obligations pursuant to this Agreement.

Any failure to comply with one or more of the requirements of this section by contractor shall not be deemed to be a waiver by the District of the requirements.

Section 3.11. Subcontractor's Insurance.

The Contractor shall not allow any Subcontractor to commence work on its subcontract until the Subcontractor has provided the insurance specified below. The Contractor shall require each of its Subcontractors to procure and to maintain, during the life of the subcontract, bodily and personal injury liability and property damage insurance, and workers' compensation insurance, of the type and in the same amount as specified herein, including, without limitation, the requirement that the Subcontractor's policy shall be endorsed (1) to include by name the District, Architect, District Representative, Low voltage consultant, Hazardous Materials Consultant, and any other consultant retained by the District, and their officers and employees as additional insured's and shall provide that they are primary with any insurance maintained by District as non-contributory and will have severability of interest endorsement, and (2) to waive all rights of subrogation against the District, District Representative, Architect, Low Voltage Consultant, Hazardous Materials Consultant, and any other consultant retained by the District, or any of their respective officials, employees and volunteers for losses arising from work performed by the Contractor for the District .

It shall be the responsibility of the Contractor to ensure that all Subcontractors comply with this provision, and to verify their compliance when requested by the District.

If requested by the District, the Contractor shall deliver certificates of insurance or copies of the insurance policies and endorsements of all Subcontractors; provided, however, that this authority shall not relieve the Contractor of its obligation to ascertain the existence of such insurance.

Section 3.12. Effective Date of Policies.

The insurance required by this article shall be maintained by the Contractor in full force and effect at all times during prosecution of the Work and until two (2) years after the final completion and acceptance thereof by District.

Section 3.13. Workers' Compensation and Employers' Liability Insurance.

In accordance with the provisions of Section 3700 of the Labor Code, the Contractor, and each subcontractor, shall secure the payment of compensation to its employees. The Contractor and each subcontractor shall provide workers' compensation insurance and occupational disease insurance as required by law and employers liability insurance with minimum limits of \$1,000,000 covering all workplaces involved in the Contract Documents.

The Contractor shall sign and file with the District the following certificate on the form provided by the District:

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 each subcontractor to file such statement prior to allowing that subcontractor to commence work.

The Contractor shall furnish a certificate of insurance or a certificate of permission to self-insure under the Workers' Compensation and Employers' Liability Insurance statutes of the State of California. The certificate shall provide that at least thirty (30) days' prior written notice shall be served on District prior to the cancellation or change of such insurance or self-insurance. Said certificate shall also provide that the insurer shall waive all rights of subrogation against the District, District Representative, Architect, Low Voltage Consultant, Hazardous Materials Consultant, and any other consultant retained by the District, and each of their respective officials, employees and volunteers for losses arising from work performed by the Contractor for the District. Such insurance shall be delivered to the District Representative within ten (10) days of being notified of the intent to award the Contract, and before the District will execute the Agreement for Construction.

Section 3.14. Liability Insurance.

Insurance is to be placed with insurers approved by the State of California Department of Insurance and with a Bests' rating of no less than (A-) Level VII.

A. The Contractor and its Subcontractors shall procure and maintain insurance on all of their operations during the progress of the Work, with reliable insurance companies, on forms acceptable to District, for the following minimum insurance coverage's:

1. Comprehensive general liability insurance, including but not limited to, Owner's contingent coverage, and protection for claims of bodily injury and property damage liability, personal and advertising injury liability, and products completed operations liability. Coverage shall be with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

The insurance shall cover all operations of the Contractor and its Subcontractors, including but not limited to the following: (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by the Contractor and its Subcontractors under the Contract Documents; (4) independent contractor's contingent coverage; (5) explosion, collapse, and underground property damage; (6) broad form property damage liability endorsement; (7) personal injury liability endorsement.

2. Automobile bodily injury and property damage insurance, including all owned, hired and non-owned equipment with combined bodily injury and property damage liability of \$1,000,000.
3. Additional coverage's and/or limits may be required in the Special Provisions, Section 00 73 00. If the Special Provisions require limits of general liability and automobile liability insurance exceeding those stated above, the Contractor shall carry excess or umbrella liability insurance providing excess coverage at least as broad as the underlying coverage with a limit equal to the amount stated in the Special Provisions per occurrence and aggregate.
4. Any excess liability coverage used to supplement the general and automobile liability must either (1) be from the same carrier as the primary insurance, or (2) include the policy statement wherein it describes what the underlying primary coverage must be before the excess liability coverage takes effect.

B. The following terms shall be included in the liability insurance, either within the policy or by endorsement:

1. All policies shall be endorsed to include by name the District, Architect, District Representative, Low Voltage Consultant, Hazardous Materials Consultant, and any other consultant retained by the District, and their officers and employees as additional insured's and shall provide that they are primary with any insurance maintained by District as non-contributory. Such policies will have severability of interest endorsement.
2. The limits established under Section 3.14 shall apply separately to the Contractor's Work under this agreement. All liability insurance shall be written on an occurrence basis.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District, District Representative, Architect, Low Voltage Consultant, Hazardous Materials Consultant, or any other consultant retained by the District, or any of their respective officials, employees or volunteers.

4. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The insurer shall by separate endorsement agree to waive all rights of subrogation against the District, District Representative, Architect, Low Voltage Consultant, Hazardous Materials Consultant, and any other consultant retained by the District, or any of their respective officials, employees and volunteers for losses arising from work performed by the Contractor for the District.
6. The policy shall state that it is primary insurance and that any insurance or self-insurance fund maintained by or available to the District, District Representative, Architect, Low Voltage Consultant, Hazardous Materials Consultant, or any other consultant retained by the District, and each of their respective officers, agents, employees or volunteers shall be in excess of the Contractor's insurance and shall not be called upon to contribute to a loss covered by the policy.
7. The policy must provide that it shall not be canceled, suspended, voided or changed nor may the "retroactive date" of the policy or any renewal or replacement policy be changed without thirty (30) days' prior written notice to the District. The standard cancellation clause on the certificate shall read:

Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder.

8. A cross liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.
9. The liability coverage may be either on a blanket basis or a policy which specifically identifies this agreement with a contractual liability endorsement.
10. Any deductibles or self-insured retentions must be declared to and approved by the District. Any and all deductibles or self-insurance retentions in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Contractor.

Section 3.15. Builder's Risk Insurance.

The Contractor shall, at its sole expense, purchase, maintain and keep in force at all times during the term of the Contract and until the date of transfer of the insurable interest to and acceptance by the District, insurance as to protect the District, the District Representative and the District's agents and employees, the Architect, Low Voltage Consultant, Hazardous Materials Consultant, or any other consultant retained by the District, and each of their respective officers, agents, employees or volunteers, the Contractor, Subcontractors and sub-subcontractors from loss or damage to work in the course of construction. This insurance shall be in the form of "Builders All-risk", "All-risk Installation Floater" or the equivalent, and the limits of liability shall be equal to one hundred-fifty percent (150%) of the contract value.

A. The following terms shall apply to such coverage:

1. Coverage shall be written on a completed value, non-reporting form, on a replacement cost basis, and shall cover the property against all risks of physical loss or damage, including:
 - a. Loss or damage that ensues damage from design error (only if the contractor or subcontractors are designing any portion of the project), defective materials, faulty workmanship, mechanical breakdown or electrical damage. Loss from electrical damage will include any loss or damage arising out of testing, magnetic disturbance and changes in temperature or humidity.
2. The property covered shall include the Work, including any materials, equipment or other items to be incorporated therein while the same are located at the construction site, stored offsite, while in transit or at the place of manufacture. The policy shall contain a provision that both the interests of the District and the Contractor are covered and that any loss shall be payable to the District and the Contractor as their interests may appear.

- 1 3. When stated in the Special Provisions (Section 00 73 00), Builder's Risk insurance shall include Delay
2 in Opening coverage with limits of liability, and for the period of time, as set forth in the Special
3 Provisions. Coverage shall include interest and/or principal payments that become due and payable by
4 the District upon completion of construction or other date as set forth in the Special Provisions, debt
5 service, expense, loss of earnings or rental income or other loss incurred by the District, without
6 deduction, due to the failure of the Project being completed on schedule.
7
- 8 4. The policy shall be endorsed to name the District as an additional payee.
9
- 10 B. If not covered by Builder's Risk insurance or any other property or equipment insurance required by the
11 Contract Documents, the Contractor shall, at its sole expense, purchase, maintain and keep in force at all
12 times during the term of the Contract property insurance (equal to one hundred-fifty percent (150%) of the
13 contract value) for portions of the Contractor's work and/or equipment to be incorporated therein stored
14 offsite or in transit.
15

ARTICLE 4. PERMITS, LICENSES, ORDINANCES, AND REGULATIONS

Section 4.01. Basic Standard.

The Contractor shall conduct the Work so that all laws and ordinances for the protection of the public and the workers shall be obeyed fully both by the Contractor and by all subcontractors on the Site.

The Contractor shall comply with the requirements of the California State Licensing Board and have a valid contractor's license which is to be active as to the date of the receipt of bids and maintained in "Good Standing" from the receipt of bids throughout the Project. The class of license required is as indicated in Section 00 73 00, Special Provisions.

The Contractor, and any subcontractor listed in accordance with Public Contract Code section 4104, shall be registered pursuant to Labor Code section 1725.5 prior to engaging in the performance of any public work contract that is subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code, and shall maintain current registration throughout the term of this Contract.

Section 4.02. Permits.

The District will pay all fees required by the Division of the State Architect, Department of General Services, State of California. The District will reimburse the Contractor for utility connection fees, encroachment permits, utility service charges other than temporary utility charges unless otherwise indicated, necessary for the completion of the Work. All other fees and permits shall be at the expense of the Contractor. Proper documentation of fee, permit, and utility service charges shall be submitted to the District through the District Representative. No mark-up shall be allowed the Contractor on these reimbursable charges.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations or orders of any public authority bearing on the performance of the Work.

Except as provided above, the District shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

Section 4.03. Compliance with Laws and Regulations.

The Contractor shall keep itself fully informed of and shall observe and comply with, and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all federal and state laws, and county or municipal ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the Work, or the materials used in the Work, or in any way affect the conduct of the Work.

All work shall be performed in accordance with the rules and regulations, Title 24, Parts 1-5 and 9, California Code of Regulations, and Division of the State Architect, and a copy shall be kept on the job at all times during construction.

ARTICLE 5. INTERPRETATION OF DRAWINGS AND SPECIFICATIONS

Section 5.01. Familiarity with Project Site Conditions and Contract Documents.

Submission of a bid by the Contractor is a representation that the Contractor has visited the Site, is satisfied as to the nature and location of the Work, is satisfied as to the character, quality and quantity of the Work, has become familiar with the local conditions under which the Work is to be performed, has made whatever contact and investigation with utility companies that it deems necessary, and has correlated its site observations with the requirements of the Contract Documents. Failure to visit the Site will not relieve the Contractor of responsibility for observing and considering those conditions which a qualified contractor would have observed.

Section 5.02. Subsurface Conditions.

Where investigations of subsurface conditions have been made by or on behalf of the District with respect to subsurface conditions, utilities, foundations, or other structural designs, and that information is shown on the Drawings or Plans, it represents only a statement by the District as to the character of the materials which have been encountered by the District's investigation. This information is only included for the convenience of bidders, including the Contractor.

Investigations of subsurface conditions are made for the purpose of design only. The District assumes no responsibility with respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations or of the interpretation thereof. There is no guaranty, express or implied, that the conditions indicated are representative of those existing throughout the Project or the Work, or any part of the Project or the Work, or that unanticipated conditions may not occur. When a log of test borings, soils studies and/or any other report of subsurface conditions is included with the Drawings or Plans, it is expressly understood that such log, soils studies and/or report of subsurface conditions does not constitute a part of the Contract Documents, represents only an opinion of the District as to the character of the materials to be encountered, and is included in the Drawings or Plans only for the convenience of bidders, including the Contractor. Making such information available to bidders, including Contractor, is not to be construed in any way as a waiver of the provisions of these General Conditions, and bidders, including Contractor, must satisfy themselves through their own investigations as to the conditions to be encountered.

Section 5.03. Sections of Drawings and Specifications.

For convenience, the specifications and drawings in the Contract Documents are arranged in several sections, but this separation shall not be considered as the limits of the work required of any separate trade. The scope of work is that indicated in Specification 00 73 00 Special Provisions, Article 1, Scope of Work. The terms and conditions of the work to be performed by any Subcontractor are strictly between the Contractor and the Subcontractor.

Section 5.04. Diagrammatic Drawings.

Drawings showing the locations of equipment, wiring, piping, etc., unless dimensioned, are diagrammatic, and conditions will not always permit their installation in the exact location shown. In such event, the Contractor shall submit an RFI and obtain a response before proceeding with the work in question. Unless there is a material increase in the Contractor's scope of work, installation as specified in the response to the RFI shall be without any additional compensation to the Contractor and without any increase in the Contract Time. Any work done after discovery of the issue, until authorization to proceed based on the response to the RFI, will be done at the Contractor's risk.

Section 5.05. Interpretation and Additional Instructions.

Should the Contractor discover any conflicts, omissions, or errors in the Contract Documents, or have any question concerning interpretation or clarification of the Contract Documents, or if it appears that the Work to be done or any matters relative thereto are not sufficiently detailed or explained in the Contract Documents, then before proceeding with the work affected, the Contractor shall within 48 hours notify the District Representative in writing and request interpretation, clarification, or additional detailed instructions and/or drawings concerning the work. All such questions shall be resolved and instructions to the Contractor issued by the Architect.

Should the Contractor proceed with the work affected before receipt of instructions from the Architect, and, in the case of a change to the Work, before receipt of authorization to proceed, it shall remove and replace or adjust any work which is not in accordance therewith, and it shall be responsible for any resultant damage, defect, or added cost without an extension of the Contract Time.

1 Section 5.06. Architect's Instruction Bulletins and Drawings.

2 In addition to the Drawings incorporated in the Contract Documents, the Architect, through the District
3 Representative, may furnish such supplemental drawings or instructions from time to time as may be necessary to
4 make clear or to define in greater detail the intent of the Contract Drawings and Specifications. In furnishing
5 additional drawings or instructions, the Architect shall have the authority to make minor changes in the Work, not
6 involving any extra cost, and not inconsistent with the overall design of the Project. If extra cost is known to be
7 involved, these instructions will be accompanied by an RFP. These supplemental drawings and instructions shall
8 become a part of the Contract Documents; the Contractor shall make its work conform to them.
9

10 Section 5.07. Notification of Disagreement Regarding Scope of Work.

11 If agreement cannot be reached as to cost, and the Contractor does not agree that work due to an interpretation or
12 supplemental drawing or instruction is within the scope of the Contract Documents, the Contractor shall, within
13 seven (7) days after receipt of the interpretation or instruction, submit a Proposed Change Order to the District
14 Representative specifying in detail in what particulars the contract requirements were exceeded and the change in
15 cost resulting there from. The District Representative shall then determine whether a Change Order shall be issued
16 in accordance with Article 15 of these General Conditions. The Contractor shall nevertheless perform such work
17 without delay.
18

19 The time during which the protest is pending shall not affect the Contract Time.
20

21 Section 5.08. As-Built Drawings and Specifications.

22 The Contractor shall maintain a hard copy or PDF master set of red line Drawings and Specifications at the Site
23 which shall be updated weekly to reflect current as-built conditions of the Work as the Work progresses. The
24 information to be recorded by the Contractor will be determined by the Architect, who will be responsible for
25 preparing the final, reproducible as-built drawings based upon the information submitted by the Contractor. The
26 Contractor's as-built information shall be clear and legible, and at a minimum, the following information shall be
27 inserted and dimensioned on those Drawings and Specifications, in RED, by the Contractor: the exact horizontal
28 and vertical location of all installations in their finished condition, including all electrical, plumbing and mechanical
29 installations; all changes in construction, materials and installed equipment; posting of all issued addenda,
30 Request for Information (RFI) signed by the Architect and Architect's Instruction Bulletins with back-up to the bid
31 documents in all applicable locations along with adequate dimensional data, both horizontal and vertical, to allow
32 location of covered installations; the identification of each change authorized by Directive, and the number of that
33 Directive. The updated drawings and specifications shall be available for review by the District Representative
34 and the Inspector. If as-builts are marked up in PDF format, the file shall be made available remotely in a manner
35 acceptable to the District Representative and Inspector.
36

37 Written confirmation from the District Representative that the as-builts have been properly updated weekly shall be
38 submitted with each pay application request, and the existence of such properly updated as-builts shall be a
39 condition precedent to payment. Failure to comply with the preparation and submission of as-builts may result in the
40 District withholding the current progress payment.
41

42 As a condition to certification of final completion, the Contractor shall provide signed and dated original as-built
43 drawings and specifications in a PDF color format, with a resolution of 600 DPI and each plan sheet and
44 specification section bookmarked by name, number or title, together with all additional information requested by the
45 Architect to enable the Architect to prepare a set of final, reproducible as-built drawings and specifications. Timely
46 submission of complete as-built documents shall be a condition precedent to certification of final completion and to
47 final payment. Delays in the submission of complete as-built documents may subject the Contractor to liquidated
48 damages.
49

ARTICLE 6. SUBCONTRACTOR LISTING AND SUBSTITUTION

Section 6.01. Subcontracting.

If the Contractor subcontracts any work to be performed or materials to be supplied pursuant to this agreement, the Contractor shall be as fully responsible to the District for the acts and/or omissions of such Subcontractor or supplier and of the persons either directly or indirectly employed or engaged as subcontractors by such Subcontractor or supplier as it is for its own acts and omissions.

The Contractor shall bind every Subcontractor or supplier, and every subcontractor of a Subcontractor, by the terms of the Contract Documents.

The Contractor shall cause each of its Subcontractors by contract, to have an active contractor's license pertaining to its classification of work maintained in "good standing" from commencement of the Subcontractor's work through final completion of the Project.

All Subcontractors listed in accordance with Public Contract Code section 4104 shall be registered pursuant to Labor Code section 1725.5 prior to engaging in the performance of any public work contract that is subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code, and shall maintain current registration throughout the term of this Contract.

The Contractor shall not perform work on the Project with a Subcontractor who is ineligible to perform work on public works project pursuant to Labor Code sections 1777.1 or 1777.7.

Section 6.02. Disputes Between Subcontractors and/or the Contractor.

If, through acts or neglect on the part of the Contractor, including failure to supervise and control its Subcontractors or suppliers, any other contractor, subcontractor or supplier or supplier on the Project, or worker suffers loss or damage, the Contractor agrees to settle with such other contractor, subcontractor, supplier, or worker by agreement or arbitration, if such other contractor, subcontractor, or worker shall assert any claim against the District or any of its officers, agents, or employees, on account of any damage alleged to have been so sustained.

In the event of the receipt of any such claim, the District shall notify the Contractor, who shall defend, indemnify, and save harmless the District and all of its officers, agents, and employees against any such claim.

Section 6.03. Listing of Subcontractors.

The Contractor shall comply with the requirements in the Instructions to Bidders regarding the listing of Subcontractors and shall comply with the requirements of the Subletting and Subcontracting Fair Practices Act, Chapter 4 of Part 1 of Division 2 of the Public Contract Code, commencing with Section 4100, forbidding bid shopping and bid peddling, requiring accurate listing of all Subcontractors, and requiring Subcontractors to be licensed.

Should the Contractor violate any of the provisions of this Section, the violation shall be deemed a breach of this Contract and the District shall have all remedies provided by California law, including but not limited to those provided in Public Contract Code Section 4110, allowing termination of the Contract or a penalty assessment of ten percent (10%) of the subcontract amount.

Section 6.04. Dealings with Subcontractors.

The District and its representatives will deal only with the Contractor, and the Contractor shall be responsible for the proper execution of the Work. Any and all discussions between any subcontractor or supplier and the District or any of its representatives shall be initiated through the Contractor or its representative.

Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor or supplier and the District or any of its representatives, nor shall this Contract be construed to be for the benefit of any subcontractor or supplier.

1 Section 6.04. Subcontractor List for Labor Compliance.

2 The Contractor shall provide the District with a list of all subcontractors performing work on the Project, regardless of
3 subcontract amount and regardless of whether the subcontractor is under contract with the Contractor or under
4 contract with a Subcontractor, for the purpose of labor compliance monitoring. It shall be the Contractor's
5 responsibility to notify the District of any additions or deletions to this subcontractor list from the commencement of
6 the Work through final payment.
7

8 Section 6.05. Termination of Unsatisfactory Subcontractors.

9 When any portion of the Work that has been subcontracted by the Contractor is not being prosecuted in a
10 satisfactory manner, or when materials supplied do not conform to the Contract Documents and these deficiencies
11 form the basis of a default notice issued pursuant to Article 16, the District may direct the Contractor to discharge the
12 subcontractor or supplier.
13

14 Any subcontractor or supplier which is discharged shall not again be employed on this Project.
15

16 Any termination of a Subcontractor pursuant to this Section shall be in strict conformity with the requirements of the
17 Subletting and Subcontracting Fair Practices Act, Part 1 of Division 2 of the Public Contract Code, commencing with
18 Section 4100.
19

20 Section 6.06. Payment of Subcontractors and Suppliers.

21 The Contractor shall make all payments to Subcontractors and suppliers as expeditiously and timely as possible,
22 consistent with any applicable law so as to prevent any stop notices, liens or claims from being filed against the
23 District or the Site.
24

ARTICLE 7. STATE REQUIREMENTS REGARDING WAGES, HOURS, AND EQUAL OPPORTUNITY

Section 7.01. Prevailing Wage Rate; Notice.

As provided under Labor Code Sections 1726-1861, the Director of the Department of Industrial Relations (DIR) of the State of California has determined the prevailing rate of wages in the locality in which the work on the project is to be performed for each craft, classification, or type of worker needed to execute this Contract. The prevailing rates so determined are on file with the District, and they are available for public inspection. They may also be obtained on the internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Those prevailing wage rates hereby are incorporated in this agreement and made a part hereof.

The Contractor shall obtain and post copies of these prevailing wage rates in a prominent place at the job site, in accordance with the regulations of the Department of Industrial Relations.

The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Contractor shall post on the jobsite a Notice containing the following language:

This public works project is subject to monitoring and investigative activities by the Department of Industrial Relations ("DIR"), State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the DIR to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the DIR at any office of the Division of Labor Standards Enforcement ("DLSE").

Local Office Telephone Number: _____

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the Project that the DIR may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the DIR website found at:
www.dir.ca.gov/dlse/PublicWorks.html.

Section 7.02. Payment of Prevailing Wage Rates.

Pursuant to Labor Code Section 1772, workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work as defined in Labor Code Sections 1720-1725. Therefore, the Contractor shall pay, and shall cause all subcontractors, whether under contract with the Contractor or under contract with any Subcontractor, to pay not less than the specified prevailing wage rates to all workers employed in the execution of this Contract.

In accordance with Labor Code Section 1775, the Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by subcontractors to employees by periodic review of the certified payrolls of the subcontractors.

Section 7.03. Wage Rate for Crafts Not Listed.

The responsibility to check prevailing wage rates is the Contractor's. Pursuant to Labor Code Section 1773, the Contractor may file with the Director of DIR or the Chief of the Division of Labor Standards Enforcement ("DLSE") a petition to review a determination of any rate or rates made by the Director of DIR. The Contractor may also petition the Director of DIR to make a determination for a particular craft, classification or type of work not covered by a general determination. Pending the review or determination, the wages may be assumed to be those in the applicable collective bargaining agreement, but no adjustment in the bid or Contract Price shall be made if such assumption is incorrect.

Section 7.04. Records of Hours Worked and Wages.

The Contractor shall keep, and shall cause all subcontractors on the Project to keep, certified payroll records of the hours and wages of all employees employed on the Project, and those records shall be open at all times for inspection by the District and/or the Division of Labor Statistics and Enforcement, in accordance with Sections 1776 and 1812 of the Labor Code. The certified payroll records shall contain at least the following information: the name, address, social security number, work classification, dates of payroll period, 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 the Contractor and/or each subcontractor in connection with the Work.

In the event that the Contractor and/or any subcontractor fails to submit certified payroll records to the District within ten (10) calendar days of a request from the District for the records, the Contractor and/or the subcontractor shall, as a penalty, forfeit one hundred dollars (\$100) per calendar day, per worker, until strict compliance is effectuated. These penalties shall be withheld from progress payments then due and/or to become due. The Contractor is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if the Contractor can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.

The Contractor shall not carry on its payrolls any person not actually employed by the Contractor, nor shall it carry on its payrolls employees of any subcontractor. The Contractor shall show on its payrolls all persons actually employed by the Contractor on the Project, in any capacity. The Contractor shall cause all subcontractors on the Project, whether under contract with the Contractor or under contract with any Subcontractor, to comply with this Section.

In accordance with Government Code Section 8546.7, or any amendments thereto, all books, records, and files of the Contractor, or any subcontractor connected with the performance of this Contract, shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment. Contractor shall preserve and cause all subcontractors to preserve such books, records and files for the audit period.

Section 7.05. Additional Requirements for Labor Compliance.

The Contractor shall comply with the following additional requirements and shall cause all subcontractors on the Project, whether under contract with the Contractor or under contract with any Subcontractor, to comply. The records kept by the Contractor and all subcontractors of the hours and wages of all employees employed on Project also shall be open at all times for inspection by the DIR and DLSE, in accordance with Sections 1776 and 1812 of the Labor Code. Such records shall be furnished electronically to the Labor Commissioner of the DIR monthly, unless more frequent submission is required herein, and shall be furnished within 10 days of any separate request by the DIR or DLSE. Payroll records shall be furnished in a format prescribed by the DIR and uploaded into the electronic certified payroll reporting (eCPR) system.

On a random basis and at such other times as it deems appropriate, the DIR also may confirm the accuracy of payroll reports, including by corroboration of information in payroll reports through independent sources, including without limitation worker interviews, examination of any time and pay records found within the definition of "Payroll Records" in section 16000 of Title 8 of the California Code of Regulations, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations) through third-party recipients of those payments, or any other legal and reasonable method of corroboration. As part of its confirmation process, the DIR may require Contractor and any of its subcontractors to furnish for inspection itemized statements prepared in accordance with Labor Code Section 226. The DIR may conduct random confirmation based on a recognized statistical sampling of the records submitted.

The DIR may conduct in-person inspection(s) at the site or sites at which the Work of the Project is being performed (“On-Site Visits”). On-Site Visits may include visual inspection of required job site notices, including but not limited to (1) the determination(s) of the Director of DIR of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2; (2) the Notice of pay days and time and place of payment required by Labor Code Section 207; and (3) any other notices prescribed by law. On-Site Visits may also include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the DIR to ensure compliance with prevailing wage requirements. In accordance with Labor Code Section 90, the Labor Commissioner and his deputies and agents shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner, including but not limited to evidence of compliance with Labor Code Section 226 (itemized wage statements for employees) and any other laws enforced by the Labor Commissioner.

In accordance with Section 16463 of Title 8 of the California Code of Regulations (“8 CCR Section 16463”), the District may, on its own or if required by the Labor Commissioner, withhold funds due to the Contractor when payroll records are delinquent or inadequate. The amount withheld shall be those payments due or estimated to be due to the Contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the Contractor or subcontractor whose payroll records are delinquent or inadequate. The Contractor shall cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency. When payments are withheld under 8 CCR Section 16463, the Labor Commissioner will provide the Contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies what amounts the District has been directed to withhold; and (3) informs the Contractor or subcontractor of the right to request an expedited hearing to review the withholding of payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Commissioner has exceeded his or her authority under 8 CCR Section 16463. Where the violation is by a subcontractor, the Contractor shall be notified of the nature of the violation and reference shall be made to Contractor’s rights to withhold or recover payments from the subcontractor under Labor Code Section 1729. The withholdings under 8 CCR Section 16463 do not preclude assessment of penalties under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records, as set forth below.

Section 7.06. Underpayment of Wages.

The Contractor agrees that in the event of underpayment of wages to any employee on the Project, whether by the Contractor or any subcontractor on the Project, the District may retain from payments due to the Contractor, an amount sufficient to pay such worker the difference between the wages required to be paid by the DIR, and the wages actually paid such worker for the total number of hours worked, plus any penalties and forfeitures. The District may disburse such retention to such employees.

Section 7.07. Apprentices.

Attention is directed to the provisions of Sections 1777.5, 1777.6 and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor.

The Contractor and all subcontractors on the Project shall comply with the requirements of Sections 1777.5 and Section 1777.6 of the Labor Code in the employment of apprentices. Violation of these requirements shall subject the Contractor and/or subcontractor to the penalties set forth in Section 1777.7 of the Labor Code and/or otherwise provided by law or Contract.

Information relative to apprentice standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, from the Division of Apprenticeship Standards or its branch offices, and/or on the DLSR website at www.dir.ca.gov/DLSR/PWD. Apprentices employed on the Project must at all times work with or be under the direct supervision of a journeyman or journeymen.

Section 7.08. Penalties.

In accordance with Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, particularly Sections 1775, 1776, 1777.7 and 1813, the Contractor shall forfeit to District as a penalty the sum specified below, over and above any retention or withholds otherwise authorized by the agreement, as follows:

- A. Up to two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wages for any work done by him/her under this Contract or under any subcontract on the Project, with the amount to be determined by the Labor Commissioner in accordance with the considerations set forth in Labor Code section 1775. If a worker employed by a subcontractor on the Project is paid less than the prevailing wages by the subcontractor, the Contractor is not subject to this penalty assessment if the Contractor can demonstrate that it did not have knowledge of that failure of the subcontractor to pay the prevailing wages and that it strictly complied with the requirements of Labor Code Section 1775(b).
- B. Twenty-five dollars (\$25) for each worker employed in the execution of this agreement by the Contractor or by any subcontractor on the Project for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3.
- C. Failure to provide certified payroll records to the District or to the Labor Commissioner within ten (10) calendar days of a request, shall, in addition to resulting in a withholding of payments due or estimated to be due, result in a penalty in the amount of one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. The Contractor is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if the Contractor can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.
- D. Knowing violation of Labor Code Section 1777.5 shall yield a penalty in an amount not exceeding one hundred dollars (\$100) for each full calendar day of non-compliance. A Contractor or subcontractor who knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty the sum of no more than three hundred dollars (\$300) for each full calendar day of noncompliance.

Section 7.09. Hours of Work; Approval of Schedules.

Eight (8) hours of labor constitutes a legal day's work, and forty (40) hours constitutes a legal work week. No worker employed at any time by the Contractor, or by any subcontractor upon the Project, shall be required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one week, except as provided in Labor Code Sections 1810 through 1815.

Overtime shall be paid at the rate of not less than one and one-half (1-1/2) times the basic rate of pay, or at such other rate as stated on the applicable Determination issued by the DIR, or as may be required by applicable statutes or collective bargaining agreements.

The District reserves the right to approve or disapprove the days scheduled for work, and the hours during which work is in progress.

Section 7.10. Compliance with State Anti-Discrimination Laws.

The Contractor shall comply with Section 1735 of the Labor Code, which provides as follows:

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

ARTICLE 8. SUPERVISION AND LABOR

Section 8.01. Supervision Procedures.

The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures and for coordinating all portions of the Work under the Contract.

The Contractor shall be responsible to the District for the acts and omissions of its employees, subcontractors and their agents and employees and other persons performing any of the Work.

It is prohibited to hire undocumented workers. The Contractor shall secure and cause its Subcontractors to secure proof of eligibility/citizenship to work from all workers.

The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect or the District Representative in their administration of the Contract or by inspections, tests or approvals (or the lack thereof) required or performed under Article 9 by persons other than the Contractor.

Section 8.02. Skilled Labor.

All non-apprentice labor shall have the skills of a journeyman in the applicable trade. All workmanship shall be of the highest quality and finish in all respects.

Section 8.03. No Tenancy.

All workers, contractors, or contractors' representatives are admitted to the Site only for the proper execution of the Work, and have no tenancy.

Section 8.04. Dismissal of Unsatisfactory Employees.

All employees engaged in the Work will be considered employees of the Contractor.

The Contractor shall at all times enforce strict discipline and good order among all employees including compliance with the District Guidelines for Conduct on School Sites and shall not employ on the Work any unfit person or anyone not skilled in the assigned task as defined in Section 8.02. The Contractor shall remove, or cause a subcontractor to remove from the Project, any incompetent employee, or any employee not skilled for the type of work required as defined in Section 8.02, or any employee who does not comply with the District Guidelines for Conduct on School Sites. The District may require that the Contractor immediately remove from the Work any employee for cause.

Section 8.05. Personal Attention and Superintendence; Contractor's Agent.

The Contractor shall supervise the work to the end that it shall be faithfully prosecuted. The Contractor shall at all times while the Contractor's scope of work is in progress keep a full-time superintendent who is fully empowered to act as agent for the Contractor on the Site. The Contractor shall advise the District in writing of its agent prior to the start of any work. The Contractor shall provide résumés for all of the Contractor's supervisory employees to be assigned to the Project for District review, and the District may reject any supervisory employees not deemed to be qualified at the sole discretion of the District. The Contractor shall be responsible for the faithful observation of all instructions delivered to its authorized agent(s).

If the Contractor's superintendent performs labor on the Project, the Contractor shall cause the superintendent to be paid at the prevailing wage for the classification of work performed. However, no additional compensation will be paid by the District for any work performed by the full-time superintendent.

In the event that the Contractor fails to provide a qualified full-time superintendent on the Site on any given day when work is being performed, the District may assess a liquidated damage of \$500/day, which amount allows for the hiring of a replacement superintendent.

Section 8.06. Inspection of the Work of Other Contractors.

It shall be the duty of the Contractor and all subcontractors, before beginning any work, to examine all construction and work of other contractors and/or subcontractors that may affect their work, and to satisfy themselves that

1 everything is in proper condition to receive such work. The Contractor shall notify the District Representative in
2 writing prior to starting work of any discrepancies or conditions which deviate from the Contract Documents or are
3 otherwise unacceptable. Failure on the part of the Contractor to so notify the District Representative shall constitute
4 an acceptance by the Contractor and all subcontractors of all construction in place as being suitable in all respects to
5 receive further work by the Contractor or subcontractors.
6

7 Section 8.07. Contractor's Coordination of Work.

8 The District reserves the right to do other work in connection with the Project by separate contract or otherwise. The
9 Contractor shall at all times conduct its work so as to impose no hardship on the District or others engaged in the
10 Work. The Contractor shall adjust, correct and coordinate its work with the work of others so that no delays or
11 discrepancies shall result in the whole Project.
12

13 Section 8.08. Daily Reports.

14 No less than on a weekly basis, the Contractor's superintendent shall submit to the District Representative daily
15 reports on the District's furnished form (via Constructware), which daily reports shall include, without limitation, the
16 identity of subcontractors on the Site; an accurate headcount of workers on the Site; materials and equipment
17 delivered to the Site; visitors to the Site; work performed; and any problems encountered.
18

19 Section 8.09. Fingerprinting.

20 Education Code section 45125.1 and 45125.2 apply to this Agreement. The Contractor shall, prior to
21 commencement of Work, comply with either of the methods of ensuring safety set forth in Education Code section
22 45125.2(a)(1) (installation of a physical barrier) or 45125.2(a)(2) (continual supervision by an employee of
23 Contractor who has not been convicted of a serious or violent felony). If the Contractor elects to provide continual
24 supervision pursuant to Education Code section 45125.2(a)(2), Contractor shall require any person affiliated with
25 Contractor (or, in appropriate cases, himself or herself) to be fingerprinted by the Department of Justice ("DOJ") if
26 that person will have unsupervised access to school campuses. Upon verification from DOJ that those persons
27 fingerprinted have no record of a serious or violent felony, the Contractor will so certify by signing and submitting
28 to the Governing Board of District the certification form attached as Exhibit A to the Agreement for Construction.
29 In addition, Contractor shall submit the names of those persons who have received clearance and are authorized
30 to have unsupervised access to school campuses on a form as indicated in Exhibit B to the Agreement for
31 Construction. Any person whose name is not on the cleared list may not have such access. In that case,
32 Contractor must make arrangements with District for appropriate access. No person with a violent or serious
33 felony as reported by DOJ may have access to the school campuses.
34

35 Failure to comply with these terms, or permitting unsupervised access by an employee whose name has not been
36 cleared by DOJ as certified by the Contractor shall constitute grounds for termination of this Agreement.
37

ARTICLE 9. INSPECTION AND TESTING

Section 9.01. Inspection.

Inspection shall be provided as required under CCR Title 24, current edition. All inspection costs will be paid for by the District, including special inspection required by Title 24, except as noted otherwise below. A list of required inspections for the Project is included in the Contract Documents.

The Inspector shall be approved by the District, DSA and the Architect. The Inspector will be employed by the District and will perform all inspections in accordance with Title 24, parts 1-5.

Section 9.02. Authority of Project Inspector; Stop Work Notices.

The designated Project Inspector shall be considered to be a representative of the District. It is the inspector's duty to inspect the Work.

The Project Inspector shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Contract Documents or any orders issued by the District, its representatives, or the Architect. The failure of the Project Inspector to order the work stopped does not excuse the Contractor from complying with the Contract Documents for that work.

Upon issuing a stop work notice, the Project Inspector shall notify the Architect, who shall inspect the work in question and determine whether it does or does not comply with the Contract Documents. The decision of the Architect shall be final, subject to the disputes procedures in Article 23. The Contractor shall thereafter comply with the instructions of the Architect regarding corrections needed to cure the defect. The suspended work shall be resumed only when the Architect's instructions are fulfilled. The Contractor shall not be entitled to an extension of time in the event of such suspension of work, provided the stop work notice is determined to be supported by the facts.

Section 9.03. Effect of Inspections.

Neither the final inspection and payment, nor any interim inspection or progress payment shall relieve the Contractor of its obligation to fulfill the Contract as required by the Contract Documents.

Any work, materials or equipment not meeting the requirements and intent of the Contract Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefore may have been made.

Section 9.04. Notice to District of Inspection.

Where the Contract Documents, instructions by the Project Inspector, District Representative or the Architect, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested or approved before the work proceeds, such work shall not proceed, nor shall it be covered up without inspection. If any part of the Work is covered prior to inspection, the District may order the work to be uncovered so that inspection may be accomplished. The Contractor shall bear all expenses of such examination and satisfactory reconstruction.

The Contractor shall provide written notice to the Project Inspector at least twenty-four (24) hours in advance of the readiness for inspection.

All work shall be available for inspection and the Project Inspector shall have full access to review all work during all working times. The Contractor shall provide all necessary means of safe access (e.g. ladders) for the Project Inspector to perform his/her duties. The Contractor shall furnish the Project Inspector with any information necessary to fully inform him/her of conditions. Inspection does not relieve the Contractor from fulfilling the requirements of the Contract Documents.

Section 9.05. Inspection of Completed Work.

Should the District Representative or the Architect determine that it is necessary or advisable to make an inspection of work already completed at any time before final inspection and acceptance of the Work, by removing or exposing any work, the Contractor shall, upon instruction of the District Representative, promptly furnish all necessary facilities, labor, and materials to do so. If the work is found to be defective in any respect due to the fault of the Contractor or any subcontractor, the Contractor shall bear all expenses of such examination and satisfactory

1 reconstruction. If, however, the work is found to meet the requirements of the Contract Documents, the additional
2 cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor
3 and a change order shall be issued for such cost and any time extension justified by delays to the critical path.
4

5 Section 9.06. DSA Field Representative.

6 For contracts requiring DSA approval, the Division of the State Architect will designate a field representative who will
7 visit the Site periodically to review with the Project Inspector compliance of the Project with CCR Title 24
8 requirements. The DSA field representative may require certain modifications to the Project as constructed. In the
9 event the Contractor believes they are outside the scope of this Contract, it shall proceed as in Section 5.06.
10

11 Section 9.07. Overtime work.

12 Whenever the Contractor arranges to work at night or any time when work is conducted other than the normal
13 40-hour week, or to vary the period during which work is carried on each day, it shall give the District Representative
14 and the Project Inspector a minimum of 48-hours notice so that inspection may be provided. Additional inspection
15 costs incurred because of overtime or shift work shall be paid by the District. If this overtime work is necessitated by
16 the Contractor's error or failure to perform, the cost of inspection will be borne by the Contractor.
17

18 Section 9.08. Materials Which May be Tested.

19 The District reserves the right to require the Contractor to provide samples, and to perform tests on any materials,
20 articles, equipment, installations, or construction performed by the Contractor in addition to those specified in the
21 Contract Documents. The District shall assume the cost of sampling and testing materials only when the Contract
22 Documents do not require the Contractor to do so.
23

24 Section 9.09. Testing.

25 All tests shall be performed under the supervision of the testing laboratory or consultant employed by the District,
26 and listed on the DSA-approved list, and at such times as are convenient to the District. The Contractor shall
27 provide written notice to the District Representative at least 24 hours prior to the need for off-site tests or inspections,
28 and the District Representative will arrange such tests or inspections. The Contractor shall bear all expenses of
29 tests performed where the Contractor failed to provide this minimum notice.
30

31 Section 9.10. Selection of Samples.

32 All samples and specimens for testing shall be selected by the Project Inspector or by the testing laboratory, but not
33 by the Contractor.
34

35 Section 9.11. Delivery of Samples.

36 The Contractor shall, at the Contractor's sole cost and expense, furnish, package, mark, and deliver all samples to
37 be tested at locations other than the Site. Samples shall be delivered either to the Project Inspector or to the testing
38 laboratory or such other address specified in the Contract Documents.
39

40 Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without
41 delaying construction. No extra time will be allowed for the completion of the Work by reason of delay in testing
42 samples required by the Contract Documents or due to the Contractor's request for substitution.
43

44 The Contractor shall allow free access at all times to the representatives of the testing laboratory to the Work, and
45 shall point out the sources from which samples are taken.
46

47 All test reports shall be sent to all parties specified in the Contract Documents.
48

49 Section 9.12. Approval of Samples.

50 No materials or work of which samples and/or tests are required shall be used or covered until the District
51 Representative or the Project Inspector informs the Contractor that such samples and/or tests have been approved.
52 If the Contractor installs, uses, or covers any such material, article, or work prior to testing and approval, such shall
53 be at the Contractor's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement
54 thereof.
55

56 The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no
57 other. No approval of any samples shall be deemed a change or modification in any requirement of the Contract

Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects and shall be accompanied by documentary proof that the material and work sampled is actually representative of that installed.

Section 9.13. Damage Due to Testing.

The Contractor shall, at its sole cost and expense, repair all damage resulting from testing specified in the Contract Documents. The District shall issue a Change Order for repair of damage due to sampling or testing other than specified in the Contract Documents.

The Contractor shall not make any tests upon portions of the Project already completed, except with the prior written consent and under the direction and supervision of the District Representative.

Section 9.14. Retesting.

If as a result of any test, whether originally specified or not, any material or work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by the District or District Representative shall be at the Contractor's expense.

Section 9.15. Effect of Sampling and Testing.

The District assumes no obligation, and the Contractor shall be relieved of no obligation undertaken pursuant to the Contract Documents by virtue of sampling and testing specified in this article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Contract Documents in the work rest entirely with the Contractor, notwithstanding any prior samples or tests.

ARTICLE 10. PROTECTION OF WORKERS, PUBLIC AND PROPERTY

Section 10.01. Safety Precautions and Programs.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, for maintaining all safety and health conditions on the Site and for ensuring against and/or correcting any hazardous conditions on the Site. Also, in no case shall the District, the District Representative, the Architect, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work, or for maintaining any safety or health conditions on the Site, or for ensuring against or correcting any hazardous conditions on the Site.

Certain work may be ongoing at the time school is in session; therefore, the Contractor shall take precautions to prevent injury and access to children and staff and shall comply with the District's Guidelines for Onsite Safety. Material storage and vehicle access and parking shall be subject to District approval.

The Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and overall jobsite safety for contractors/subcontractors employees and visitors. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the District Representative.

Section 10.02. Protection of Persons and Property.

The Contractor shall at all times, until final acceptance and payment hereunder, maintain adequate protection against injury to persons, including employees, or damage to property, on or near the Project, or adjacent to the Site. The Contractor shall be responsible for maintaining all safety and health conditions on the Site and for ensuring against and/or correcting any hazardous conditions on the Site. In no case shall the District, the District Representative, the Architect, the Inspector or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions, on or near the Site, or adjacent to the Site.

The Contractor shall provide a safe environment for all functions to be performed by the District Representative, Architect and Project Inspector, and a safe place for all employees to work. The use of alcohol, drugs, or tobacco will not be permitted on District property.

The Contractor shall comply with all Occupational Safety laws, rules and regulations applicable to the work.

Section 10.03. Protection and Repair of Work.

The Contractor shall protect the District's structures, facilities, equipment, tools, materials, and any other property on or adjacent to the Site against damage, loss, or theft by providing adequate security measures for its work. The Contractor shall, until final payment hereunder, maintain protection of all of its work and work performed by others under this Contract from damage, loss, defacement, or vandalism. The Contractor shall provide protection of completed work which may be subject to damage as a result of the Contractor's failure to perform as scheduled.

The Contractor shall repair or replace any damage and remove any damaged or defaced material and/or equipment from the Site at no cost to the District, and Article 17 shall apply to such material or equipment.

Section 10.04. Protection of Workers.

The Contractor shall take every precaution for the safety of all employees and others on the Work, and to comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed.

The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public, and shall post danger signs warning against hazards created by construction including, but not limited to, protruding nails or reinforcing steel, hod hoists, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

The Contractor shall immediately replace or repair any unsafe ladder, scaffolding, shoring, or bracing, or correct any other dangerous or hazardous situation that may exist.

The responsibility for maintaining a safe working site shall be the Contractor's, and the District and District Representative undertake no obligation to suspend the work or notify the Contractor of any hazardous conditions or noncompliance with safety laws. See hazardous materials exhibit for further information.

In no case shall the District, the District Representative, the Architect, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions on the Site.

Section 10.05. Working Limits and Regulations.

The Contractor shall confine its apparatus, storage and materials, and construction operations within the limits established by the District Representative, and shall not unreasonably encumber the Site or adjacent areas with its materials and/or equipment.

The Contractor shall enforce any instructions from the District Representative or District regarding fires, placement of signs, danger signals, barricades, radios, noise and smoking.

Section 10.06. Protection of Existing Improvements.

The Contractor shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Work, normal maintenance due to use by District employees or the public excepted.

The Contractor shall take all necessary precautions to protect all existing improvements and facilities from any damage resulting from the operations, equipment or workers of the Contractor during the course of the construction, and Contractor shall be strictly liable for failure to adequately protect any existing improvements and/or facilities.

The Contractor shall take all necessary precautions to protect existing facilities against the effects of the elements and Contractor shall be strictly liable for failure to adequately protect any facility.

All damaged improvements and facilities shall be replaced, repaired, and restored to their original condition without additional cost to the District and without an extension of the Contract Time.

Section 10.07. Traffic Signals and Traffic Control.

Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times. All such items shall be protected from the Contractor's operations and shall not be obliterated or obscured by its equipment or materials.

Should it be necessary to cover up, move, or alter such items, this shall be done only with permission of the authorities having jurisdiction over the items involved.

Should it be necessary to block a street or sidewalk, the Contractor shall first notify the District Representative and the police and fire departments and other agencies with jurisdiction, and shall comply with their instructions, including scheduling limitations.

Section 10.08. Security of the Site.

The Contractor's attention is directed to Specifications Section 01500 regarding requirements for fencing the Site, gates, and screening.

Section 10.09. Removal of Barricades.

Upon completion of the work, the Contractor shall remove from the Site all materials used for barricades, temporary scaffolding, or any other temporary uses.

Section 10.10. Protection of Adjacent Property; Notices.

In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin, and protect as may be necessary all foundations and other parts of all existing structures on the Site or adjacent to the Site which are in any way affected by the excavations or other operations connected with the completion of the Work.

1 Prior to excavation, the Contractor shall notify all public utilities and governmental agencies of the work proposed,
2 and shall ascertain from them the exact location of their utilities.
3

4 Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public
5 utilities, the Contractor shall notify the District Representative, who will send the District and occupants thereof a
6 notice, which specifies the type of work to be done, the schedule of the work, the impacts expected from the work
7 and the protective measures being taken by the Contractor. The notice shall also specify that any person receiving
8 notice who has questions regarding it may contact the District Representative.
9

10 Whenever any notice is required to be given to any adjoining or adjacent landowner, utility, governmental agency or
11 other party before commencement of any work, the notice shall be given by the Contractor at least seven days in
12 advance of the work, or longer if required by law or regulation, with a copy delivered to the District Representative.
13

14 The Contractor shall, at the written instruction of the District Representative, meet with any recipient of such notice to
15 explain and discuss the proposed work.
16

17 Section 10.11. Fire Protection.

18 The Contractor shall take all steps necessary to protect all structures from fires and sparks originating from the
19 Work, shall comply with all laws and regulations regarding fire protection, and shall comply with all instructions of the
20 fire department with jurisdiction.
21

22 The Contractor shall notify the District Representative and the fire department in writing at least 72 hours prior to
23 disconnection of either water or electrical service to the Site, and shall comply with the fire department's instructions
24 regarding fire safety.
25

26 The Contractor must keep the fire and intrusion detection systems operational throughout the duration and scope of
27 its work.
28

29 Section 10.12. Repairs or Replacement.

30 Any damage to existing conditions, or to any other improvement or property above or below the surface of the
31 ground, whether private or public, arising from performance of this Contract shall be repaired within 48 hours by the
32 Contractor without expense to the District, unless disruption of school operation or creation of a safety hazard has
33 occurred, in which case damage will be corrected immediately.
34

35 If, in the opinion of the Architect, the best interest of the District requires that repairs be made prior to the execution
36 of any further work, the District Representative will so notify the Contractor who shall delay or discontinue that part of
37 the Work until the necessary repair has been made. Such delay shall be considered non-compensable, and no
38 extension of the Contract Time will be granted therefore.
39

40 Upon the failure of the Contractor to comply with any such order, or upon the Contractor's failure to make immediate
41 emergency repairs which are necessary to protect the Work, the District shall do that work itself as is necessary to
42 protect life and property, in its sole discretion, and deduct the total cost of such work from the next progress
43 payment. No prior notice to the Contractor shall be necessary for the District to take this action.
44

45 Section 10.13. Emergency Safety Actions.

46 In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without previous
47 instructions or authorizations from the District, is authorized and shall act at its discretion and risk to prevent such
48 threatened loss or injury, and the Contractor shall bear all costs of that action. The Contractor shall immediately
49 notify the District Representative of such actions, and thereafter shall comply with any instructions issued by the
50 District Representative.
51

ARTICLE 11. SUBMITTALS

Section 11.01. Submittals.

The Contractor, at its sole cost and expense, shall furnish to the District Representative all Submittals and other descriptive material as are required by the Specifications or requested by the Architect.

Shop drawings shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the District and Architect to determine compliance with the Specifications and with the design and arrangement shown on the working drawings.

The Contractor shall check and coordinate all Submittals with the work of all trades involved before they are submitted. The Contractor shall review each Submittal for conformance with the requirements of the Contract Documents.

All Submittals for the Project shall be made within thirty-five (35) days of the Notice of Intent to Award; however, the Contractor shall have the additional responsibility to coordinate the schedule of its Submittals with the requirements of the Contract Schedule so as not to delay the Project. No delay claims related to Submittals will be entertained on the Project for any Submittal originally received after the thirty-five (35) day submittal period. The District shall not accept limitations in materials, colors, quality, or any other aspect of products or materials due to the Contractor's failure to provide Submittals as required. At the District's discretion, the Contractor may be directed to furnish and install temporary materials until the District selected material is available. Further, the District may require the Contractor to install the District selected materials during non-school hours/days without an increase in the Contract Sum and without an extension of the Contract Time.

Contractor shall submit a schedule of Submittals organized by Specification section required for the Project. It shall delineate whether product data, installation instructions, shop drawings, samples, extra stock or mock-ups are required. The schedule of Submittals shall indicate whether the Submittal will be in electronic format, as set forth below. In general, other than items requiring color selections, samples and shop drawings, Submittals will be in electronic format. This schedule of Submittals shall be submitted using the approved Constructware Excel Template within ten (10) calendar days of the issuance of the Notice of Intent to Award. Any omissions or inaccuracies shall not relieve the Contractor of the obligation for conforming to the requirements in the Contract Documents. The Contractor's Submittal schedule shall provide sufficient time for delivering the Submittal to the Architect, the Architect's review of each Submittal, delivering the Submittal to the Contractor and re-submittal as necessary. In no case shall the Contractor allow fewer than fourteen (14) days, exclusive of delivery time, for the District Representative and the Architect to review each Submittal.

Section 11.02. Submission of Submittals.

Most Submittals shall be submitted electronically. Electronic Submittals which are submitted together shall be compiled into a single, bookmarked PDF file, containing links to enable navigation to each item within the Submittal package. The Contractor shall name the electronic Submittal file with a consistent project identifier, composed of the project name, bid package number, and specification section number. Electronic Submittals shall be transmitted via the District Representative's Collaboration Site address. Submittals shall be submitted The District Representative will not review the Submittals for technical compliance, but may reject any Submittal found, in the District Representative's judgment, to be incomplete. The District Representative will maintain a Submittal log, and weekly meeting minutes shall note if Submittals have been accepted. Submittals requiring color selections, samples, or shop drawings will be logged into Constructware.

For shop drawings, color selections and samples, the Contractor shall submit no less than three (3) originals. All Submittals of shop drawings, color selections and samples shall be marked with the project name, the Contractor's name, and the specification section number, and shall be accompanied by a letter of transmittal to the District Representative. The letter of transmittal for shop drawings shall list the identifying number of the drawings submitted and cross-reference them to the page or sheet in the specifications and/or working drawings to which they are related.

By approving and submitting shop drawings, product data, manufacturers' instructions, and samples, the Contractor represents that it has determined and verified all materials, field measurements and field construction criteria related thereto and that it has checked and coordinated the information contained within those Submittals with the

requirements of the Work and to the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Submittals as may be issued by the District Representative.

The District Representative will not accept shop drawings, product data or manufacturers' instructions which are not sufficiently dimensioned and detailed to demonstrate compliance with the Contract Documents.

The Submittals shall be submitted promptly, so as to cause no delay in the work. The Submittals shall be submitted so as to allow the District Representative and the Architect a review period of no less than fourteen (14) days, and in accordance with the schedule of Submittals provided by the Contractor.

Section 11.03. Review of Submittals.

Following submission, the Submittals will be reviewed and returned with one or more of five possible responses by the District Representative or Architect. These possible responses are as follows:

- A. Unreviewed: If the Submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be returned unreviewed. If the Submittal is not required, work may commence; if the Submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the work.
- B. Approved, Reviewed, or No exceptions taken: In the event the Submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved Submittal.
- C. Make Corrections Noted: If the Submittal is acceptable except for certain items which have been noted by the Architect, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.
- D. Revise and Resubmit: This status indicates that revisions are noted on the Submittal, and an additional Submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.
- E. Rejected: A Submittal may be rejected if it is not in compliance with the Contract Documents, or if it proposes an "or equal" or substitution which is not acceptable to the Architect. A superseding Submittal shall be submitted and approved prior to commencement of the work.

Should the Contractor proceed with the work shown on a Submittal before approval is received, it shall remove and replace or adjust any work which is not in accordance with the Submittal as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost. The District shall be under no obligation to pay for work installed prior to approval of Submittals, until the Submittals are approved and the work in place is found to be in compliance with the Contract Documents.

The Contractor shall resubmit Submittals in categories "D" and "E" above after making any changes required so that Submittals will comply with the Contract Documents. When resubmitting, the Contractor shall direct specific attention to deficient areas. Resubmittals shall be made within ten (10) days of return of the previous Submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the ten (10) days.

The Architect shall determine the adequacy and completeness of all Submittals. Where the Architect deems a Submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, the Contractor shall submit all additional information requested by the Architect. There shall be no change to the Contract Time or the Contract Sum when such additional information is required.

Section 11.04. Submittals Showing Variation from Contract.

It shall be the responsibility of the Contractor to specifically point out any variation or discrepancy between the Submittals submitted and the Contract Documents.

The Contractor shall make specific mention of all variations, along with an explanation of why they are requested, in its letter of transmittal.

1 Failure by the contractor to identify in its letter of transmittal any variation, discrepancy, or conflict with the contract
2 documents shall render the approval null and void, and the contractor shall bear all risk of loss and reconstruction
3 costs or delays.
4

5 If any architectural, plumbing, mechanical, electrical, or structural modifications are required as a result of the
6 approval of Submittals which deviate from or do not comply with the Contract Documents, those modifications shall
7 be made without extra cost to the District, and without extension of the Contract Time. Any other resultant costs,
8 including but not limited to design fees, construction management fees, costs incurred by other contractors, or
9 inspection fees, shall be at the expense of the Contractor.
10

11 Section 11.05. Effect of Approval of Submittals.

12 The approval of Submittals shall not relieve the Contractor of the obligation for accuracy of dimensions and details;
13 for conforming the work to the requirements of the Contract Documents; or from responsibility to fulfill the Contract at
14 no extra cost to the District, within the Contract Time.
15

16 Section 11.06. Equal Materials.

17 Unless otherwise provided in the technical specifications, whenever in the Contract Documents any systems,
18 processes, products, or materials are indicated or specified by the name brand of the manufacturer, or by patent or
19 proprietary names, those specifications shall be deemed to be a measure of quality and utility or a standard, and
20 shall be deemed to be followed by the words, "or equal." It is the intent of this article to comply with Public Contract
21 Code Section 3400.
22

23 If the Contractor desires to use any other brand or manufacturer of equal quality and utility to that specified, it shall
24 make application to the District Representative in writing, within ten (10) business days after Notice of Intent to
25 Award, and shall submit samples and all other information necessary to substantiate its claim of "or equal". Such
26 application constitutes a certification that the Contractor:
27

- 28 A. Has investigated the proposed Equal and determined that it meets or exceeds, in all respects, the specified
29 system, process, product, or material.
- 30
- 31 B. Will provide the same warranty for the proposed Equal as for the specified system, process, product or
32 material.
- 33
- 34 C. Will coordinate installation and make other changes which may be required for work to be complete in all
35 respects and at no additional cost to the District.
- 36
- 37 D. Waives claims for additional costs and/or Contract Time which may subsequently become apparent.
38

39 The Architect then will determine whether or not the proposed system, process, product or material is equal in
40 quality and utility to that specified, and its decision shall be final. The Architect will render its decision within twenty
41 one (21) business days after submission of all required information for the application. If the request is not accepted,
42 the Contractor shall provide the specified system, process, product or material without an increase in the Contract
43 Sum and/or Contract Time.
44

45 Neither the submission of a request for an Equal, nor the Architect's review of the application, will extend the time for
46 submission of any required Submittals.
47

48 Requests for Equal systems, process, products or materials will be considered only when offered by the Contractor
49 as required by this article.
50

51 Section 11.07. Substitutions.

52 Unless otherwise provided in the technical specifications, the Contractor may make proposals for Substitutions to
53 systems, process, products or materials shown or specified only under one or more of the following conditions:
54

- 55 A. Unavailability: If the specified system, process, product, or material, or an Equal, is no longer available in
56 the marketplace.
57

- B. Delay: If obtaining the specified system, product, process or material, or an Equal, will delay completion of the Work through no fault of the Contractor.
- C. Better system, process, product or material: If a better system, product, process or material is available at no additional cost.
- D. Savings: If a system, process, product or material which meets all of the performance requirements of that specified is available at a savings to the District.

A proposal for Substitution shall include all information required by the Architect to evaluate the substitute system, process, product or material. All Substitutions shall be submitted with an approved "Substitution Request Form". Reference the District's Standard Forms. Such proposal constitutes a certification that the Contractor:

- A. Has investigated the proposed Substitution and determined that it meets or exceeds the performance requirements of the specified system, process product or material.
- B. Will provide the same or better warranty for the proposed Substitution as for specified system, process, product or material.
- C. Will coordinate installation and make other changes which may be required for the work to be complete in all respects at no additional cost to the District.
- D. Waives claims for additional costs and/or Contract Time, which may subsequently become apparent.

The District Representative and the Architect shall evaluate a timely Substitution request, and shall approve, deny, approve with conditions, or initiate the procedure for a change order in response to the Contractor's request. This decision shall be final. This decision will be rendered within twenty one (21) business days after submission of all required information for the proposal. If the request is not accepted, the Contractor shall provide the specified system, process, product or material without an increase in the Contract Sum and/or Contract Time.

Failure by the Contractor to identify all deviations from the Contract Documents in its request for substitution shall render any District action taken thereon null and void. The Contractor shall bear all costs resulting from any error in the request for Substitution.

Only one request for Substitution will be considered for each product.

Substitutions may be subject to DSA approval, in which case the time to review will be extended by the duration of the DSA approval process.

Neither the submission of a request for substituted systems, processes, products or materials, nor the District Representative's and/or Architect's review of the application, will extend the time for submission of any required Submittals.

Section 11.08. Time for Proposing Substitution.

Substitution proposals will not be considered prior to bidding. All requests for Substitutions shall be made within the same time requirement for initial submittals. Failure to timely submit a Substitution request shall constitute a waiver by the Contractor and an acceptance of the specified systems, processes, products and materials. Late submittals may be considered only when the District Representative consents in writing, and the District's best interests so require.

Section 11.09. Samples and Testing of Proposed Substitutions; Costs of Adapting to Work.

When the District Representative or Architect determines that samples and testing are required to evaluate a request for a Substitution, the District Representative shall so advise the Contractor, and specify the systems, processes, products, materials or work to be sampled. The Contractor shall, at no cost to the District, provide samples as required by these General Conditions dealing with samples and testing, or the Technical Specifications.

The Contractor shall bear all costs of sampling and testing required to decide a request for Substitution, and if a Substitution is accepted, the Contractor shall bear all costs associated therewith, including the cost of the District Representative's, Architect's and/or engineer's services required to adapt the Substitution to the design to the complete satisfaction of the District, and all costs of mechanical, electrical, structural, or other changes needed to adapt the Substitution to the Work.

Section 11.10. Effect of Approval of Equal Materials or Substitution Request.

If an application for an Equal or Substitution request is approved, the Contractor shall be solely and directly responsible for setting approved Equal or Substitution systems, processes, products, materials and/or equipment into the available space, and for the proper operation of the Equal or Substitution systems, process, products, materials and/or equipment with all other systems, processes, products, materials and/or equipment with which it may be associated, all in a manner acceptable to the District.

No time extensions nor any increases in the Contract Sum shall be granted on account of an Equal or Substitution. In the event of a savings, the Contract Sum shall be adjusted by the price difference between the approved Equal or Substitution and the originally specified item.

Section 11.11. Quality of Materials and Products.

The Contractor shall, if required by the Architect, Project Inspector, or District Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The District Representative may require, and the Contractor shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Work nor installed therein until after the District Representative has approved the list.

Contractor shall certify that the materials and equipment installed comply with the Contract Documents and to the best of the Contractor's knowledge, no installed materials or equipment contain asbestos.

Section 11.12. Better Material or Process.

In the event that the Contractor furnishes a material, product, process, or article better than that specified in the Contract Documents, the difference in cost of that material, product, process, or article shall be borne by the Contractor.

Section 11.13. Industry Standards.

- A. Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision thereof, including any amendments or supplements thereto, in effect on the date of the Bid, except as limited to type, class, or grade, or modified in that reference.
- B. The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in these specifications. These standards are not furnished to the bidder for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.
 1. Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.
 2. Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.
 3. Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.

4. Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the American Society for Testing Materials, unless specifically noted.

Section 11.14. Materials and Products Storage.

The Contractor shall confine the storage of all materials, products, and equipment required in the performance of this contract to the areas specified by the District. The Contractor shall obtain prior approval from the District Representative regarding areas for storage and methods of protection. All material, products, and equipment shall be brought and used upon the premises in such manner as to leave driveways and parking areas clear for the regular use of the public and District employees.

Section 11.15. Original Packages or Containers; Labels.

All materials delivered to the Site shall be new, unless otherwise specified, of the type, capacity, and quality specified, and free from defects. All materials shall remain in their original packages or containers until ready for use. The labels of all packages or containers shall remain affixed, and kept legible. No product shall be stored in any container, the label of which does not accurately describe the contents of the container.

Section 11.16. Protection of Materials and Equipment.

The Contractor shall protect the work, materials, and equipment from damage due to the action of the elements, trespassers, or other causes. The Contractor shall properly store materials and equipment and, when necessary, erect temporary structures to protect them from damage. The Contractor shall replace any items damaged as a result of improper protection at no expense to the District.

Section 11.17. Providing and Paying for Materials.

Except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, products, articles, processes, labor, tools, equipment, and installation, and all associated superintendence of every nature whatsoever necessary to execute and complete the Work within the Contract Time.

Section 11.18. Warranty of Title.

No material, article, product, supplies, or equipment for the Work shall be subject to any chattel mortgage, or a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier.

The Contractor warrants good and sufficient title to all material, supplies, and equipment installed or incorporated in the Work, and agrees upon completion of the Work to deliver the premises, together with all improvements and appurtenances, constructed or placed thereon by the Contractor, to District, free from any claims, liens, or charges.

The Contractor agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to a lien upon the premises or any improvement or appurtenances thereon; provided, however, that nothing contained in this Section shall defeat or impair the rights of persons furnishing materials or labor under the payment bond given by the Contractor, nor any rights under any law permitting such persons to look to funds due to the Contractor but retained by District.

The Contractor shall cause the provisions of this Section to be inserted in all subcontracts and material contracts executed by the Contractor and notice of this provision shall be given to all persons furnishing materials for the Work.

This Section shall not disallow the Contractor's installing any devices or equipment of utility companies or of governmental agencies, the title to which is commonly retained by the utility company or the agency.

Section 11.19. Patents and Royalties.

All fees, claims, or royalties for any patented or copyrighted invention, article, arrangement, or plan that may be used upon or in any manner connected with the doing of the work or any part thereof shall be included in the price bid for doing the work. The Contractor and its sureties shall protect, defend, indemnify and hold harmless the District, District Representative, the Project Inspector, the Architect and its consultants, and each of their respective officers, agents, and employees against any and all demands made for such fees or claims and against any and all suits,

1 demands, claims or causes of action brought or made by the holder of any invention, patent, copyright, or
2 trademark, or arising from any alleged infringement of any invention, patent, copyright, or trademark.
3

4 Before final payment is made on account of this Contract, the Contractor shall furnish acceptable proof to District of
5 proper release from all such fees or claims.
6

7 Section 11.20. Payment of Federal or State Taxes.

8 Any federal, state or local tax, specifically including sales and use taxes, payable on materials furnished by the
9 Contractor pursuant to the Contract, shall be included in the Contract Sum and paid by the Contractor.
10

ARTICLE 12. PROGRESS PAYMENTS

Section 12.01. Schedule of Values.

As part of required post bid submittals, and at least fourteen (14) days prior to the first payment application, the Contractor shall submit to the District Representative a schedule of values broken down by phase, and within each phase by building, in sufficient detail to evaluate progress at any point in the Work. In no event shall an individual line item on a schedule of values exceed five (5) percent of the Contract Sum unless so approved in advance by the District Representative. Costs shall be segregated by phase, and within each phase by building. Labor, material, and subcontract costs shall be shown separately. Cost of Contract closeout shall be shown as individual line items, including, but not limited to, closeout documents, punchlist, and as-built documentation. Each of these line items shall be no less than three (3) percent of the total Contract Sum.

All other General Conditions items should be prorated among the actual construction values. The schedule of values must be prepared in sufficient detail and supported by such data to substantiate its accuracy as the District Representative and the District may require. This schedule, when approved, shall be used as a basis for the Contractor's applications for payment, and the approved schedule of values is an express condition precedent to processing the Contractor's payment application(s).

Section 12.02. Application for Payment.

- A. Prior to the date for each progress payment review established in the Preconstruction Meeting, the Contractor shall submit to the District Representative a copy of the schedule of values, marked in pencil to show the percentage of completion proposed by the Contractor for each line item. No extension of dollar amounts is required.
- B. At a meeting held on or before the assigned billing date of each month, the District Representative, Architect, Project Inspector, and the Contractor will review the Contractor's proposed percentages of completion and agree on a final percentage to be paid for that month. The progress payment will be based on the estimated percentage complete. No progress payment will be made unless all general conditions items demonstrate satisfactory progress. Upon agreement of the amount due, the Contractor will prepare a hard copy of the Application of Payment Summary and transmit it to the District Representative for processing by the assigned day of each month.
- C. Release of Liens: For each monthly application for payment, following agreement on percentages of completion, the Contractor shall submit a conditional lien release in the form provided in the Contract Documents warranting that title to all work, labor, materials and equipment covered by the application is free and clear of all liens, claims, security interests or encumbrances. Additionally, the Contractor shall submit unconditional lien releases for all work through the prior progress payment. For final payment, the Contractor and all of its Subcontractors and material suppliers shall submit final conditional and final unconditional lien releases.

Contractor shall submit a list of all Subcontractors and material suppliers including company name, address, business and emergency telephone numbers, and contact person. This Subcontractor and material supplier list shall be submitted prior to the issuance of the Notice to Proceed.
- D. The signing of a certificate of payment will constitute a representation by the District Representative, Project Inspector and the Architect to the District that, based on their observations at the Site, and the data comprising the application for payment, the Work has progressed to the point indicated and that, to the best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to any specific qualifications stated in the certificate for payment); and that the contractors are entitled to payment in the amount certified. However, by signing a certificate for payment, the District Representative and the Architect shall not thereby be deemed to represent that either has made exhaustive or continuous on-site inspections to check the quality or quantity of the work, that either has reviewed the construction means, methods, techniques, sequences or procedures, or that either has made an examination to ascertain how or for what purpose the contractors have used the monies previously paid on account of the Contract Sum.

- 1 E. No progress payment will be released until District Representative has received all of the following items in
2 acceptable form: as-built updates, schedule updates, certified payroll and other pay records if requested by
3 the District, and lien releases.
4

5 Section 12.03. Payment for Stored Materials.

6 Payments may be made by the District, at its discretion, on account of materials or equipment not incorporated in
7 the Work but delivered to the Site and suitably stored by the Contractor. Payments for materials or equipment
8 stored shall only be considered upon submission by the Contractor of satisfactory evidence demonstrating that it has
9 acquired title to such material, that the material will be used in the Work, that it is satisfactorily stored, protected and
10 insured, and that the Contractor has undertaken such other procedures satisfactory to the District Representative,
11 Project Inspector, and Architect, to protect the District's interests. Materials stored off-site, to be considered for
12 payment, shall, in addition to the above requirements, be stored in a bonded warehouse, fully insured, and available
13 to the Architect and District Representative for inspection. The District Representative shall have complete
14 discretion as to the amount of material and equipment that may be stored on the Site at any given time.
15

16 Section 12.04. Payment; Retention.

17 There shall be reserved from the monies earned by the Contractor on estimates a sum equal to five percent of such
18 estimates. It is understood that, if payment requests are made in accordance with established time schedule,
19 payment requests received and approved by District will be processed within thirty (30) days following approval.
20 Payment for Change Orders, if any, under this Contract shall be made in like manner.
21

22 Section 12.05. Posting Securities in Lieu of Withholds.

23 Pursuant to Public Contract Code Section 22300, at the request and expense of the Contractor, securities equivalent
24 to the amount withheld pursuant to Section 12.04 shall be deposited with the District, State Treasurer or with a state
25 or federally chartered bank in California as the escrow agent, who shall then pay the retainage to the Contractor.
26 Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.
27

28 Alternatively the Contractor may request, pursuant to Public Contract Code Section 22300, and the District shall
29 make payment of retentions under Section 12.04 directly to the escrow agent. The Contractor shall receive the
30 interest earned on the investments upon the same terms provided for in Section 22300 for securities deposited by
31 the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all
32 securities, interest and payments received by the escrow agent from the District.
33

34 Either alternative under this Section may be exercised only if requested in writing by the Contractor within five (5)
35 days after receipt of Notice of Intent to Award. The Contractor shall notify its Subcontractors in writing within fifteen
36 (15) days of exercising this option.
37

38 Securities eligible for investment under this Section shall include those listed in Government Code Section 16430 or
39 bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit,
40 or any other security mutually agreed to by the Contractor and the District.
41

42 The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any
43 interest thereon.
44

45 Section 12.06. Withholding Additional Amounts; Grounds.

46 In addition to the amounts which the District may retain as provided in Section 12.04, the District may withhold a
47 sufficient amount from any payment or payments otherwise due to the Contractor as in the District's sole discretion
48 may be necessary to protect the District in the event of the following:
49

- 50 A. Third party claims filed or reasonable evidence indicating probable filing of such claims;
51
52 B. Defective work not remedied;
53
54 C. Failure of the Contractor to make proper payments to any of its Subcontractors or for labor, materials or
55 equipment;
56

- 1 D. The occurrence of reasonable doubt that the Contract can be completed for the balance of payments then
2 unpaid to the Contractor, or in the time remaining until expiration of the Contract Time;
3
4 E. Failure of the Contractor to comply with any lawful or proper direction concerning the Work given by any
5 District representative authorized to have given such instruction;
6
7 F. Claims and/or penalties which state law assesses against the Contractor for violation of such law;
8
9 G. Any claim or penalty asserted against the District by virtue of the Contractor's failure to comply with the
10 provisions of all governing laws, ordinances, regulations, rules, and orders;
11
12 H. Any liquidated damages which may accrue as a result of the Contractor's progress failing to meet the
13 schedule milestones or failing to achieve completion within the Contract Time.
14
15 I. Any reason specified elsewhere in the Contract Documents as grounds for a retention or that would legally
16 entitle the District to a set-off.
17

18 In order to adequately protect the District, the Contractor agrees that the basic standard to determine the amount to
19 be withheld pursuant to this Section shall be one hundred fifty percent (150%) of the amounts claimed or the value
20 of the work not done or defectively done; provided, however, that District reserves the authority to retain greater
21 sums should such sums be necessary in the District's discretion to adequately protect it.
22

23 Section 12.07. Disbursement of Withheld Amounts.

24 The District, in its sole discretion, may apply any withheld amount or amounts to the payment of any claim resulting
25 in a withhold. The Contractor agrees and hereby designates the District as its agent for such purposes, and any
26 payment so made by the District shall be considered as a payment made under this Contract by the District to the
27 Contractor. The District shall not be liable to the Contractor for any payments made in good faith. Such payments
28 may be made without a prior judicial determination of the claim or claims. The District shall render to the Contractor
29 a proper accounting of any funds disbursed on behalf of the Contractor.
30

31 Prior to disbursing any amounts, District shall afford the Contractor an opportunity to present good cause, if any it
32 has, why the claim or claims in issue are not valid or just claims against the Contractor. The District reserves the
33 right then to take such further steps as are appropriate, in its sole discretion, including, but not limited to, seeking a
34 judicial resolution of the controversy.
35

36 Section 12.08. Correction of Statement and Withholding of Payment.

37 No inaccuracy or error in any statement provided by the Contractor shall operate to release the Contractor or any
38 surety from the error, or from damages arising from such work, or from any obligation imposed by the Contract
39 Documents. The District shall retain the right subsequently to correct any error made in any previously issued claim
40 for the progress or other payment, or payment of any kind issued, by adjustments to subsequent payments.
41

42 Section 12.09. Effect of Progress Payments.

43 Neither the payment, the withholding, nor the retention of all or any portion of any progress payment claimed to be
44 due and owing to the Contractor shall operate in any way to relieve the Contractor from its obligations under this
45 agreement. The Contractor shall continue diligently to prosecute the Work without reference to the payment,
46 withhold, or retention of any progress payment. The payment, withhold, or retention of any progress payment shall
47 not be grounds for an extension of the Contract Time.
48

ARTICLE 13. TIME OF WORK

Section 13.01. Not applicable.

Section 13.02. Contract Schedule Development.

Within ten (10) days after receiving the Notice to Proceed, the Contractor shall submit a detailed proposed Contract Schedule presenting an orderly and realistic plan for completion of the Work, in conformance with the requirements of this Article. The proposed Contract Schedule shall be in hard copy and on a CD in electronic format other than pdf.

The Contract Schedule shall furnish or comply with the following requirements:

- A. A time scaled CPM type schedule prepared in Microsoft Project software.
- B. No activity on the schedule shall have a duration longer than fourteen (14) days, with the exception of fabrication and procurement activities, unless otherwise approved by the District Representative. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.
- C. Procurement of major equipment, through receipt and inspection at the job site, identified as a separate activity.
- D. Owner furnished materials and equipment if any, identified as separate activities.
- E. Dependencies (or relationships) between activities.
- F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.
- G. Separate buildings and other independent project elements shall be individually identified in the network.
- H. Fourteen (14) days for developing punch list(s), completion of punch list items, and final clean up for the work or any designated portion thereof. No other activities shall be scheduled during this period.
- I. Interface with the work of other Contractors (or entities).

The District Representative will review the proposed Contract Schedule for conformance with the requirements of the Contract. Within ten (10) days after receipt, the District Representative will accept the proposed Contract Schedule or will return it with comments. If the proposed Contract Schedule is not accepted, the Contractor shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within seven (7) days after receiving it. The accepted schedule shall become the Contract Schedule.

The Contract Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the Contract Schedule and monitoring actual progress as compared to the schedule rests with the Contractor.

Failure of the Contract Schedule to include any element of the work or any inaccuracy in the Contract Schedule will not relieve Contractor from responsibility for accomplishing all the Work in accordance with the Contract.

Acceptance of the Contract Schedule will not relieve the Contractor of the responsibility for accomplishing the Work in accordance with the Contract.

Failure to obtain the accepted Contract Schedule within forty (40) calendar days of the Notice to Proceed may result in the District withholding ten percent (10%) of each progress payment, or \$1000, whichever is greater, until an accepted Contract Schedule is obtained.

Section 13.03. Monthly Updates.

Contractor shall submit to the District Representative each month an up-to-date status report of the Work. The status report shall be in hard copy and on a CD in electronic format other than pdf and shall include:

- A. Contractor's estimated percentage complete and remaining duration for each activity not yet complete.
- B. Actual start/finish dates for activities as appropriate.
- C. Identification of processing errors, if any on the previous update reports.
- D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.
- E. Identification of activities that are affected by requested or proposed changes to the Work.
- F. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the Contract Schedule because of actual construction progress, the Contractor shall submit revision to schedule logic to conform to current status and direction.

The District Representative will review the updated information and meet with Contractor each month at the Site to determine the status of the Work. If agreement cannot be reached on any issue, the Contractor will use the District Representative's determination in the processing of the update.

Progress payments pursuant to the Contract will be based on the update of the Contract Schedule. No progress payments will be made without the required monthly update of the Contract Schedule.

Section 13.04. Schedule Revisions.

If the sequence of construction differs significantly, as determined by the District Representative, from the Contract Schedule, Contractor shall submit within fifteen (15) days a revised schedule to the District Representative for approval.

When a requested or proposed change to the Work will have an impact on the critical path, the Contractor shall submit a schedule fragnet or Network Window showing this impact. If the requested or proposed change is accepted by the District, the schedule fragnet or Network Window shall be incorporated into the Contract Schedule. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Article 14 of these General Conditions. No additional cost beyond that provided in Article 15 will be allowed for the incorporation of approved changes into the Contract Schedule.

Should the Contractor, after acceptance of the Contract Schedule, intend to change its plan of construction, it shall submit its requested revisions to the District Representative, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to Intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to the District Representative, they will be incorporated into the Contract Schedule in the next reporting period.

Schedule revisions shall be submitted at least seven (7) days prior to the date of submission of update information. The District will have seven (7) days to review the revisions.

Section 13.05. Short Interval Schedules.

Contractor shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of Work. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. The SIS shall be submitted in hard copy and electronic PDF format to the District Representative prior to the weekly construction meeting. The Contractor shall participate in short interval scheduling coordination during the weekly construction meetings.

Section 13.06. Owner's Right to Revise Schedule.

In the event of a delay affecting the occupancy date of the Project and not the fault of the Contractor, the District Representative may elect to resequence work or otherwise modify the schedule in an attempt to maintain the Date of Completion. It shall be the responsibility of the Contractor to cooperate in this effort. It is not the District's responsibility to ensure the Contractor the ability to use "optimal" crew size throughout the Project and no adjustment of the Contract Sum will be made for minor variations in crew size or claimed loss of efficiency or disruption that result from schedule adjustments. However, overtime work or weekend work required by the District Representative to meet schedule objectives other than those of the individual contractor will be reimbursed per the provisions of Article 15, provided that Contractor has not contributed to the delay which the District Representative is seeking to overcome. If the Contractor contends that a schedule adjustment will cause a significant disruption of its work sequence or ability to perform work efficiently, it shall notify the District Representative within forty-eight (48) hours of receipt of the adjustment. Failure to provide timely notice constitutes a waiver by Contractor of any claim for compensation arising out of the schedule adjustment.

Section 13.07. Commencement of Work.

The Contractor shall commence procurement of long lead materials and equipment after receipt of Notice of Intent to Award and appropriate Submittals have been approved.

Section 13.08. Time of Essence.

Time is of the essence of this agreement. The Contractor shall, to the fullest extent possible, carry on the various classes or parts of the Work concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the Work, without the express approval of the District Representative.

Section 13.09. Date of Completion.

The Contractor shall fully and satisfactorily complete the Work within the Contract Time. The Date of Completion is defined in Article I.

Section 13.10. Responsibility for Completion.

The Contractor shall furnish sufficient manpower, materials, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the Contract Time. If work on the critical path is seven (7) days or more behind the currently updated Contract Schedule and it becomes apparent that the Work will not be completed within the Contract Time, the Contractor will implement whatever steps it deems necessary to make up all lost time. If the Contractor's solution is not successful, it will make further attempts using the following sequence of events:

- A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- B. If the above cannot be achieved then;
 1. The Contractor shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the District Representative, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the District Representative the backlog of work.
 2. In addition, the District Representative may require the Contractor to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the District Representative finds the proposed recovery schedule unacceptable, it may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are unsatisfactory, the District Representative may require the Contractor to take any of the actions set forth in the previous paragraph without additional cost to the District to make up the lag in scheduled progress.

Failure of the Contractor to comply with the requirements of this Section 13.09 shall be considered grounds for a determination by the District, pursuant to Article 12, Section 12.06D, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

1 Section 13.11. Payments Withheld.
2 Progress Payments may be withheld in whole or in part should the Contractor fail to comply with the requirements
3 of this Article.
4

ARTICLE 14. DELAYS AND EXTENSIONS OF TIME

Section 14.01. Extensions of Time; Unavoidable Delays.

The Contractor shall not be granted an extension of time except on the issuance of a Change Order by the District, upon a finding of good cause for such extension.

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

1. "Excusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of the Contractor. These events may include strikes, embargoes, fire, unavoidable casualties, national emergency, and stormy and inclement weather conditions in which the District Representative and Project Inspector agree that work on the critical path cannot continue. The financial inability of the Contractor or any Subcontractor or supplier and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an extension of the Contract Time, in accordance with this Section of the general conditions, but shall not entitle the Contractor to any adjustment of the Contract Sum.
2. "Compensable Delay" means any delay in the completion of the Work beyond the expiration date of the Contract Time caused solely by the wrongful acts of the District and which delay is unreasonable under the circumstances and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract Time, in accordance with this Section of the General Conditions and/or an adjustment of the Contract Sum, in accordance with Article 15. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.
3. "Inexcusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed in Subparagraphs A1 and A2, above. An Inexcusable Delay will not entitle the Contractor to an extension of the Contract Time or an adjustment of the Contract Sum.

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

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. Any adjustment of the Contract Sum shall be in accordance with Article 15 and shall be based only on the non-concurrent portion of any Compensable Delay.
2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the duration of the Excusable Delay and/or the Compensable Delay calculated in accordance with subparagraph B1, if applicable, exceeds the Inexcusable Delay. The duration of the concurrence is non-compensable.

Delays in the prosecution of parts or classes of the Work which do not prevent or delay the completion of the whole Work within the Contract Time are not to be considered Excusable or Compensable.

Section 14.02. Notice of Delays; Requests for Time Extensions.

Whenever the Contractor foresees any delay in the prosecution of the Work, and in any event immediately upon the occurrence of any delay which the Contractor regards as good cause for an extension, the Contractor shall notify the District Representative in writing of the delay. The notice shall specify with detail the cause asserted by the Contractor to constitute good cause for an extension together with a detailed schedule analysis showing the effect of the delay on the critical path of the Contract Schedule and a quantification of the length of the requested extension of time. Failure of the Contractor to submit such a notice within ten (10) days after the initial occurrence of the event giving rise to the delay shall constitute a waiver by the Contractor of any entitlement to a time extension, as well as to any associated additional compensation, and no extension shall be granted as a consequence of such delay.

1 The District shall have no obligation to consider any time extension request unless the requirements of the Contract
2 Documents are complied with. The District shall not be responsible or liable to the Contractor for any constructive
3 acceleration due to failure of the District to grant time extensions under the Contract Documents, should the
4 Contractor fail to comply with the submission and justification requirements of the Contract Documents for time
5 extension requests. The Contractor's failure to perform in accordance with the Contract Schedule shall not be
6 excused because the Contractor has submitted time extension requests, unless and until such requests are
7 approved by the District.

8
9 Section 14.03. Investigation; Procedure.

10 Upon receipt of a request for extension, the District Representative shall conduct an investigation of the facts
11 asserted by the Contractor to constitute good cause for an extension. The District Representative shall report the
12 results of this investigation, as well as the propriety of the time extension requested, to the Contractor in writing
13 within ten (10) days of receipt of the request and shall indicate whether it will recommend for or against the
14 extension.

15
16 Upon receiving the District Representative's recommendation, the Contractor may either concur in the
17 recommendation, or reject the recommendation and proceed with a claim as provided for in Articles 21 and 23.

18
19 Section 14.04. Discretionary Time Extensions for Best Interest of District.

20 The District reserves the right to extend the time for completion of the Work if the District determines that such
21 extension is in the best interest of the District. In the event that a discretionary extension is granted at the request of
22 the Contractor, the District shall have the right to charge to the Contractor all or any part, as the District may deem
23 proper, of the actual cost of construction management, engineering, inspection, supervision, incidental and other
24 overhead expenses that accrue during the period of the extension, and to deduct all or any portion of that amount
25 from the final payment for the Work.

26
27 In the event a discretionary time extension is ordered over the objection of the Contractor, and the decision rests
28 solely with the District and is not legally compelled for any cause, the Contractor shall be entitled to a contract
29 change pursuant to Article 15 adjusting the price paid to reflect the actual costs incurred by the Contractor as a
30 direct result of the delay, upon its written application therefore, accompanied with such verification of costs as the
31 District Representative requires. The decision of the District on any discretionary time extension and the costs
32 thereof shall be final and binding on the District and the Contractor.

33
34 Section 14.05. Liquidated Damages.

35 If the Work is not completed by the Contractor in the time specified in Section 00 73 00, Special Provisions, or within
36 any period of extension authorized pursuant to this Article, the Contractor acknowledges and admits that the District
37 will suffer damage, and that it is impracticable and infeasible to fix the amount of actual damages. Therefore, it is
38 agreed by and between the Contractor and the District that the Contractor shall pay to the District as fixed and
39 liquidated damages, and not as a penalty, the sum specified in the Agreement for Construction for each calendar
40 day of delay until the Date of Completion, and that both the Contractor and the Contractor's surety shall be liable for
41 the total amount thereof, and that District may deduct Liquidated Damages from any monies due or that may
42 become due to the Contractor. If it appears during the course of construction that the Contractor is behind schedule
43 and the imposition of liquidated damages is likely, or if liquidated damages begin to accrue prior to the time for final
44 payment, the amount accrued shall be withheld from any progress payment that would otherwise be due. This right
45 to withhold funds is intended to complement the District's rights under Section 12.06.

46
47 This liquidated damages provision shall apply to all delays of any nature whatsoever, save and except only delays
48 found to be excusable or compensable pursuant to Section 14.01, or time extensions granted by the District
49 pursuant to Section 14.04.

50
51 Pursuant to Government Code Section 4215, the Contractor shall not pay fixed and liquidated damages for delay in
52 completing the project caused by the failure of the District or the owner of utility facilities located on the Project Site
53 to provide for removal or relocation of such facilities.

54
55 Payment by the District of any progress payments after expiration of the Contract Time shall not constitute a waiver
56 by the District of its right to claim liquidated damages in accordance with this Section.
57

1 If the Contract is terminated before or after the Contract Time, as adjusted by any extensions of time that the District
2 may have granted, pursuant to Section 18.07, the Contractor shall remain liable to the District for liquidated
3 damages for all periods of time from such termination date until the Date of Completion.
4

5 Section 14.06. Extension of Time Not a Waiver.

6 Any extension of time granted the Contractor pursuant to this Article shall not constitute a waiver by the District of,
7 nor a release of the Contractor from the Contractor's obligation to perform this Contract in the time specified by the
8 agreement, as modified by the particular extension in question.
9

10 The District's decision to grant a time extension due to one circumstance set forth in one request, shall not be
11 construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other
12 time, and shall not be viewed by the Contractor as a precedent for any other request for extension.
13

14 Section 14.07. Suspensions Exceeding One Year.

15 Should the Work be suspended for a period exceeding one calendar year due to war conditions, labor conditions,
16 legal actions, or for other conditions constituting the legal defense of impossibility of performance, the Contractor
17 and District agree to enter into an agreement terminating the agreement upon the following terms and conditions.
18

19 District shall be responsible only to pay the Contractor the actual value of the work performed from the Date of
20 Commencement or from the date of the last progress payment, whichever is later, plus the five percent (5%)
21 retention from prior progress payments, less any deductions authorized by the Contract Documents.
22

23 As between the Contractor and District, it shall be conclusively presumed that the actual value for the Contractor's
24 work to the date of the last progress payment is no more than the actual amount of prior progress payment plus the
25 five percent (5%) retention from those progress payments; provided, however, that this Section shall not preclude
26 District from deducting charges for work or materials which do not meet the requirements of the Contract
27 Documents.
28

29 Section 14.08. Effect of Stop Work Notice.

30 If the District orders a stop work notice pursuant to Article 9, the days on which the suspension is in effect shall be
31 included in determining the required completion date, and shall not otherwise modify or extend the time within which
32 the Contractor is to perform. In such event, the Contractor shall not be entitled to any damages or compensation on
33 account of such suspension or delay, unless the Contractor can establish that stop work notice was not warranted.
34

ARTICLE 15. CHANGES TO THE WORK

Section 15.01. No Changes Without Consent.

No extra work shall be performed, and no change shall be made, except pursuant to a written Change Order or Proposed Change Order signed by the District, or by a Directive signed by either the District or the District Representative, stating that the extra work or change is authorized, and no claim for any addition to the Contract Sum or Contract Time shall be valid unless so authorized; provided, however, that nothing in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed. The Contractor shall, when required by the District Representative, furnish an itemized breakdown of the quantities and prices used in computing the value of any change requested by the Contractor, or that may have been ordered by the District, including all items listed in Sections 15.06 and 15.07, below.

Change Orders shall specify the cost adjustments associated therewith, and in no case shall the District pay or become liable to pay any sums different than those specified or those established under Section 15.06 and 15.07.

Certain CCDs must be submitted to, and approved by, DSA prior to being implemented. Substitutions are considered CCDs and, if DSA approval is required, are to be approved by DSA prior to fabrication or use.

Section 15.02. Change Orders.

Subject to legal requirements relating to competitive bidding, the District may require changes in, additions to, or deductions from the work to be performed or the materials to be furnished pursuant to the Contract Documents. Changes may be made pursuant to a written Change Order signed by the District, which shall state the agreement of the District, the Contractor, the Architect, and, if applicable, DSA upon all of the following:

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

The District may also issue unilateral change orders based upon previously issued Directives. Unilateral change orders shall be approved by the District, the Architect, DSA if applicable and the District Representative, but need not be signed by the Contractor.

If the Contractor believes that conditions have changed, or that it has been directed to do additional work requiring a change in time or cost, the Contractor may submit to the District Representative a Proposed Change Order (PCO).

Except for Minor Change Orders described below, all adjustments to the Contract Sum or the Contract Time must be approved by the District.

Signature by the Contractor on the Change Order constitutes its agreement with and acceptance of the adjustments in the Contract Sum and Contract Time, if any, set forth in the Change Order as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by the Contractor in connection with performance of the change work.

Section 15.03. Minor Change Orders by District Administration.

The Board of Education of the District has authorized the District Superintendent or his/her designated deputy to order minor changes or additions in the Work. This authorization allows any change or addition in the Work to be ordered in writing by the Superintendent or designated deputy when the extra cost to the District for any such change or addition does not exceed the amount specifically authorized by the Board of Education.

Section 15.04. Change Orders Regarding Time for Completion.

Any time extension authorized by the District pursuant to Article 14 hereof shall be set forth in a Change Order signed by the District.

Section 15.05. Construction Change Directive/Directive.

Changes also may be made pursuant to a Directive, which shall direct a change in the Work and state a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A Directive shall be used in the absence of total agreement on the terms of a Change Order, or when time does not permit processing of a Change Order prior to implementation of the change. Directives shall be approved by the District, the Architect, and, if applicable, DSA, but need not be signed by the Contractor. Upon receipt of a Directive, the Contractor shall promptly proceed with the change in the work involved. It is the intent of the District that all Directives will be converted to a Change Order.

When a Directive is used because time does not permit processing of a Change Order prior to implementation of the change, signature by the Contractor on the Directive constitutes its agreement with and acceptance of the adjustments in the Contract Sum and Contract Time, if any, set forth in the Directive as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by the Contractor in connection with performance of the change work.

If the Contractor disagrees with the method for adjustment in the Contract Sum, the adjustment shall be determined by the District Representative on the basis of any of the methods described in Section 15.06A, paragraphs 2, 3, or 4.

Section 15.06. Pricing of Changes.

A. If a Change Order or Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. Unit prices stated in the Contract Documents or subsequently agreed upon;
3. The District Representative's estimate of the value of the change; or
4. Time and materials, as set forth in Section 15.07 and 15.08.

Section 15.07. Allowable Costs.

A. Allowable costs for any Change Order shall be limited to the following:

1. Costs of labor, including social security, medical and unemployment insurance, fringe benefits required pursuant to Article 7, and workers' compensation insurance;
2. Costs of first line supervision labor, including labor burden as described in Paragraph 1. "First Line Supervision" shall mean a working foreman or lead craft worker other than the project superintendent;
3. Actual cost of the project superintendent associated with any period of compensable delay caused by issuance of the change order. In the absence of a compensable delay, all of the project superintendent's time is considered to have been paid for as part of the Overhead;
4. Actual costs of materials, including sales tax and delivery;
5. Rental costs of machinery and equipment, exclusive of small tools, whether rented from the Contractor or others;
6. Overhead and Profit as specified below. "Overhead" shall include the following:

Preparation of all paperwork related to changes in the Work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the project superintendent; vehicles including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and as-built drawings; general office and administrative

expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Paragraph A above.

- B. The Contractor's combined overhead and profit for work performed by its own forces shall be fifteen percent (15%) of the costs specified in Section 15.07(A)(1)-(5). If the changed work is performed by a Subcontractor, the Subcontractor shall be entitled to an allowance of fifteen percent (15%) of its actual labor, material and rental costs for overhead and profit. The Contractor shall be allowed to mark-up the Subcontractor's price ten percent (10%) for its overhead and profit. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed thirty percent (30%).
- C. If the net value of a change results in a credit from the Contractor or Subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for Overhead and Profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

Section 15.08. Time and Materials Adjustment.

- A. Pricing and Record Keeping. In the event that the pricing method selected is the time and materials method described in Section 15.06A, paragraph 4, the pricing shall be calculated using the formula and costs set forth in Section 15.07 except that time and material (T & M) labor rates shall be pre-approved by the District Representative for T & M work. The Contractor shall keep and present daily, in such form as the District Representative may prescribe, an itemized accounting together with appropriate invoices and other supporting data of the labor, materials, and equipment used during that day. All labor shall be recorded on separate time sheets clearly identified with the Directive number and scope of extra work involved. These time sheets shall be signed daily by the Project Inspector or the District Representative. No costs will be allowed for time not recorded and signed the same day the work takes place. The Contractor and the District Representative shall discuss and attempt to resolve any disputes concerning the Contractor's daily records at the time the report is submitted.
- B. Reconciliation. The Contractor shall, on a monthly basis accompanying the progress payment request, submit a reconciliation for all work performed under a time and materials Directive during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the work of the Directive is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

Section 15.09. Effect on Sureties.

All changes authorized by the Contract Documents may be made without notice to or consent of the sureties on the contract bonds, and shall not reduce the sureties' liability on the bonds.

The District reserves the right to require additional payment or performance bonds to secure a change order.

Section 15.10. Unforeseen Site Conditions.

If this Contract requires the digging of trenches or other excavations that extend deeper than four feet below the existing surface, the following provision shall apply to those trenches or excavations:

- A. In the event that any of the following described conditions is suspected to exist in the trench or excavation, the Contractor shall promptly, and before the condition is disturbed, notify the District Representative, in writing, of any:
1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents.

- 1 3. Unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily
2 encountered and generally recognized as inherent in work of the character provided for in the Contract
3 Documents.
4
- 5 B. Upon receipt of notice from the Contractor, the District Representative, the District and the Architect shall
6 promptly investigate the conditions, and if it is determined that the conditions do materially so differ or do
7 involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required
8 for, performance of any part of the work shall issue a Change Order or Directive under the procedures
9 described in the Contract Documents.
10
- 11 C. In the event that a dispute arises between the District and the Contractor as to whether the conditions
12 materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or
13 time required for, performance of any part of the work, the Contractor shall not be excused from any
14 scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be
15 performed under the Contract Documents. The Contractor shall retain any and all rights provided either by
16 the Contract Documents or by law which pertain to the resolution of disputes and protests between the
17 contracting parties.
18
- 19 D. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has
20 provided the required written notice under paragraph A of this Section 15.10.
21
- 22 E. No contract adjustment will be allowed under the provisions specified in this section for any effects caused
23 on unchanged work.
24

25 Section 15.11. Notice of Dispute

26 If the Contractor intends to make a claim for a change in the Contract Sum or Contract Time, the Contractor must
27 give the District Representative written notice within ten (10) days of the occurrence of the event giving rise to the
28 claim. Thereafter, the Contractor may proceed with a claim as provided for in Articles 21 and 23. Failure to provide
29 the written notice within ten (10) days of the occurrence of the event giving rise to the claim shall constitute a waiver
30 by the Contractor of any claim for a change in the Contract Sum or Contract Time.
31

ARTICLE 16. DISTRICT'S RIGHT TO CARRY OUT THE WORK

Section 16.01. Notice of Default; Deduction of Cost.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three (3) days after receipt of written notice from the District to commence and continue correction of the default or neglect with diligence and promptness, the District may, without prejudice to any other remedy it may have, correct the deficiencies and may further elect to complete that portion of the Work through such means as the District may select, including the use of a new contractor. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting the deficiencies, and any other appropriate costs, including compensation for the Architect's, the Project Inspector's and the District Representative's additional services made necessary by the default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the District.

Section 16.02. Disputed Work.

If a dispute arises as to who is responsible for cleaning up pursuant to Section 19 or for accomplishing coordination or doing required cutting, filling, excavating or patching, the District may carry out such work and charge the cost to the responsible contractors, as the District may determine.

Section 16.03. Assignment of Work.

The District reserves the right to perform any portion of the Project with its own forces or with other contractors as it sees fit. The Contractor will cooperate and coordinate with the District's efforts in this regard. The Contractor may be assigned work by other District contractors when required to properly coordinate project activities.

ARTICLE 17. REJECTION AND REPLACEMENT OF WORK AND MATERIALS

Section 17.01. Rejection of Materials and Workmanship.

The District shall have the right to reject materials and workmanship which are determined by the District Representative, the Architect, or the Project Inspector to be defective or fail to comply with the Contract Documents. Rejected workmanship shall be corrected to the satisfaction of the District and/or Architect, and rejected materials shall be removed from the premises and replaced, all without added cost to the District and/or an increase in the Contract Time.

If the Contractor does not correct such rejected work and/or materials within a reasonable time, fixed by the District Representative or the Architect in a written notice to the Contractor, the District may correct the same and charge the expense to the Contractor, and deduct such expense from the next progress payment otherwise payable to the Contractor.

If the District determines that it is in its best interest not to correct defective workmanship and/or materials, or work not done in accordance with the Contract Documents, the Contractor agrees that an equitable deduction from the Contract Sum shall be made therefor, and deducted from the next progress payment otherwise payable to the Contractor.

Section 17.02. Correction of Work.

The Contractor shall promptly correct all work rejected by the District Representative, Project Inspector or the Architect as defective or as failing to conform to the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work including compensation for the Architect's, Project Inspector's and the District Representative's additional services.

If within two (2) years after the Date of Completion and acceptance of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct any or all such work, together with any other work which may be displaced in so doing, without expense to the District, promptly after receipt of a written notice from the District unless the District has previously given the Contractor a written acceptance of such condition. The District shall issue a correction notice promptly after discovering the condition. The Contractor shall notify the District upon completion of repairs. This obligation shall survive termination of the Contract with respect to work in place prior to termination.

The Contractor shall bear the cost of making good work destroyed or damaged by such correction or removal.

Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligations which the Contractor might have under the Contract Documents or by operation of law. The establishment of the time period of two (2) years after the Date of Completion, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which an action may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the work.

ARTICLE 18. DISTRICT'S RIGHT TO TERMINATE CONTRACT

Section 18.01. Termination by the District for Convenience.

The District may at any time and for any reason, terminate, in whole or in part, Contractor's Work at the District's convenience. Termination shall be by written notice to Contractor. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Contractor's work and the placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to the District, or at the option of the District, the District shall have the right to assume those obligations directly, including all benefits to be derived there from. Contractor hereby assigns to the District all of its interest in said orders and/or contracts, and the assignment of said orders and/or contracts shall be effective upon notice of acceptance by the District in writing, and only as to those orders and/or contracts which the District designates in writing. Following receipt of notice of termination, Contractor shall thereafter do only such work as may be necessary to preserve and protect portions of its work already in progress and to protect materials and equipment on or in transit to the Project.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) Contractor's direct, actual cost of the Work allocable to the portion of the Work completed in conformity with the Contract, but in no event to exceed the amount of the Contract Sum allocable to the portion of the Work completed in conformity with the Contract; plus (2) previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work, but in no event to exceed the portion of the Contract Sum allocable to said items; plus (3) an allowance of ten percent (10%) of the foregoing costs for Contractor's overhead and profit; plus (4) any proven losses with respect to materials and equipment directly resulting from the termination; plus (5) reasonable demobilization costs. The costs referred to in this Section shall be calculated and documented as required for a change order under Article 15 of the General Conditions, except that mark-up for overhead and profit shall be only as allowed by this Section. There shall be deducted from such sums the amount of any payments made to Contractor prior to the date of the termination of this Contract. Contractor shall not be entitled to any claim or claim of lien against the District for any additional compensation or damages in the event of such termination and payment beyond that provided for in this Section.

In connection with any termination for convenience, Contractor shall allow the District, District Representative or any authorized representative(s) to inspect, audit, or reproduce any records to the extent necessary for the District or District Representative to evaluate and verify the costs incurred by Contractor in performing the Work, including direct and indirect costs such as overhead allocations. Contractor will make this material available upon 48-hours' written notice from the District or District Representative. The District and District Representative may inspect and copy, from time to time and at reasonable times and places, any and all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), including without limitation, books, papers, documents, subscriptions, recordings, estimates, price quotations, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, and any and all other information or documentation that may, in the judgment of the District or District Representative, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Contract Documents. Such records shall include but not be limited to, the following: accounting records, payroll records, job cost reports, job cost history, margin analysis, written policies and procedures, subcontract files (contracts, correspondence, change order files, including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other documents customarily maintained by contractors performing work on public works projects or that the District or District Representative otherwise deem necessary to substantiate charges related to a Termination.

If this Contract is terminated for default under Section 18.02 and if it is later determined that the default was wrongful, such default termination automatically shall be converted to and treated as a termination for convenience under this Section. In such event, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any claim for any other amounts or damages, including any claim for consequential damages or lost profits.

Section 18.02. Termination by the District for Cause.

The District may terminate the Contract, pursuant to the provisions of this Article, for the following causes:

- A. The Contractor is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of the Contractor.
- B. The Contractor or any of its Subcontractors violate any of the provisions of the Contract Documents or fail to perform the work within the time specified in the current Contract Schedule.
- C. The Contractor or any of its Subcontractors should fail to make prompt payment to Subcontractors or material suppliers for material or for labor as required by statute.
- D. The Contractor or a Subcontractor persistently disregards laws, ordinances, or the instructions of the District Representative, Architect or the District.
- E. The Contractor fails to abide by a stop work notice issued pursuant to Article 9 or fails to correct rejected work or materials as required by Article 17.
- F. The Contractor fails to provide and keep in full force and effect all insurance required by Article 3, or fails to cause all Subcontractors to so comply.
- G. The Contractor fails to supply a sufficient number of properly skilled workers or proper materials.
- H. The Contractor commits any substantial violation of the terms and conditions of the Contract Documents which the District, in its sole discretion, finds to be a material breach of the Contract.

Section 18.03. Procedure for Termination for Cause.

The District may, without prejudice to any other right or remedy, give written notice to the Contractor and its surety or sureties of its intention to terminate the Contract.

Unless within seven (7) days of the delivery of such notice, the Contractor shall cease such violation and make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by the Contractor and the District Representative, the Contractor's right to complete the Work shall cease and terminate.

In the event of any such termination, the District shall immediately give written notice thereof to the surety and to the Contractor and the surety shall have the rights and obligations set forth in the performance bond. If the District is forced to take over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and its sureties shall be liable to the District for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, the District may, without liability, take possession of and utilize in completing the Work, the Contractor's materials whether stored at the Site or elsewhere, that are necessary for completion. Contractor hereby assigns to the District all of its interest in orders and/or contracts existing at the time of termination. The assignment of said orders and/or contracts shall be effective upon notice of acceptance by the District in writing, and only as to those orders and/or contracts which the District designates in writing. Whenever the Contractor's right to proceed is terminated, the Contractor shall not be entitled to receive any further payment until the Work is finished and shall be liable to the District for liquidated damages for all periods of time from such termination date until the Date of Completion, as well as for all losses incurred by the District in completing the Work.

Section 18.04. Option in Event of a Loss.

In the event that any destruction or loss should exceed twenty percent (20%) of the value of the construction completed to date, as determined at the end of the preceding month, or is due to an "Act of God," the District shall have the option, at its sole discretion, to terminate this Contract.

1 Section 18.05. Provisions for Termination of Contract.

2 This Contract is subject to termination as provided by Sections 4410 and 4411 of the Government Code, being
3 portions of the Emergency Termination of Public Contracts Act of 1949.
4

5 Section 18.06. Survival of Obligations.

6 No termination of this Contract or of Contractor's Work shall excuse or otherwise relieve the Contractor of its
7 responsibilities under the Contract Documents with respect to any Work performed prior to the date of termination,
8 including, without limitation, its obligation to perform the Work in a good and workmanlike manner, free of defects,
9 and in accordance with the Contract Documents, its warranty obligations with respect to the Work, and its obligation
10 to make all payments due. All of Contractor's responsibilities under the Contract Documents with respect to the
11 Work performed prior to the date of termination shall survive any termination.
12

13 Section 18.07. Termination After Contract Time.

14 In addition to any rights it may have, the District may terminate this Contract at any time after the Contract Time, as
15 adjusted by any extensions of time that the District may have granted.
16

17 Upon such termination, in addition to the Contractor's obligations under Section 18.06 and the other provisions of
18 the Contract Documents, the Contractor shall not be entitled to receive any compensation for services rendered
19 before or after such termination until the Work is completed, and the Contractor shall be liable to the District for
20 liquidated damages for all periods of time from the Contract Time, adjusted by any extensions of time that the District
21 may have granted, until the Date of Completion, as well as for all losses incurred by the District in completing the
22 Work.
23

ARTICLE 19. PRESERVATION AND CLEANING

Section 19.01. Periodic Cleaning of Project.

The Contractor shall properly clean its work and the Site, and maintain its work area in an orderly manner. The Contractor shall remove all dirt, debris, waste, rubbish, and implements of service from the Project, the adjacent sidewalks and streets, and the working area daily or as directed by the District Representative. Debris, waste, or unused construction materials shall not be left under, in, or about the Project, nor allowed to accumulate on the Site or in the working area.

The Contractor, at its sole cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

If the Contractor fails to clean up during progress or upon completion of the Work, the District may, at the Contractor's expense, do so as provided in Article 16.

Section 19.02. Final Cleaning of Project.

At completion of the Work and prior to final acceptance/inspection and occupancy by the District, the Contractor shall thoroughly clean the interior and exterior of the buildings, and the Site and adjacent areas, of all material related to its performance of the Work. In the event the Contractor fails to do so, the District may cause this work to be done at the Contractor's expense, as provided in Article 16. The following list is not inclusive but to act as a guideline:

- A. Removal of all spots, stains, paint spots, rubbish, debris, tools, equipment, trade markings and labels, and accumulated dust and dirt from all areas and broom clean. Steam clean all carpets and mop floors.
- B. Cleaning interior and exterior of the buildings including all windows in any area affected by the Work.
- C. Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, chalk board trays and any adjoining rooms or areas that were affected by the Work.
- D. The Contractor shall clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and shall repair any Site areas damaged during the course of construction.

Prior to final completion or District occupancy, the Contractor shall conduct an inspection of sight-exposed surfaces, and all work areas, to verify that the entire work is clean. In the event the Contractor fails to do so, the District may cause this work to be done at the Contractor's expense.

ARTICLE 20. COMPLETION, INSPECTION, AND OCCUPANCY BY DISTRICT

Section 20.01. Notice of Punch List Inspection.

When the Contractor believes that a phase of its Work is complete, it shall request in writing a punch list inspection in the form provided by the District. Within five (5) days of the receipt of such request, the District Representative, the Project Inspector and the Architect shall make a punch list inspection or inform the Contractor that the work is not ready for punch list inspection; upon completion of the deficient work, the Contractor shall again request a punch list inspection. The Contractor or its representatives shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including all Change Orders, all interpretations and instructions previously issued.

If the Contractor requests a punch list inspection when the Work is not ready for the inspection, the Contractor shall pay all costs associated with the inspection.

If Contractor fails to attend any punch list inspection, the Contractor shall be charged for the cost of the District Representative, Architect, the Project Inspector, and other design professionals who attended the punch list inspection.

Completion of any phase of the Work does not result in final completion, or in any way alter the payment provisions after final completion.

Section 20.02. Punch List.

The District Representative, the Project Inspector and the Architect shall notify the Contractor in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list.

The Contractor shall remedy all items shown on the punch list prior to final acceptance by the District Representative, the Project Inspector and the Architect.

No one is authorized to amend the Contract Documents by use of the punch list; it is provided solely for the benefit of the Contractor to enable it to determine what items must be corrected before final acceptance will be recommended by the District Representative, the Project Inspector and the Architect. The District reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by the Contractor of all items on the punch list.

In the event that the Work still does not comply with the Contract Documents, the District reserves the right to issue such further punch lists as may be required, or to deduct from the final payment the cost of correcting any work not completed in accordance with the Contract Documents, but accepted by the District, without the issuance of further punch lists.

If punch list work needs to be performed after the District has taken occupancy of a phase, the work shall be conducted outside of normal school hours at the direction of the District Representative.

Section 20.03. Use of Work Prior to Acceptance.

Whenever, in the opinion of the District, the Work or any part thereof, is in a condition suitable for use, and the best interests of the District require such use, the District may take possession of, connect to, and open for public or District use that portion of the Work. Contractor acknowledges and agrees such occupancy and/or use does not constitute acceptance or completion as defined by California Civil Code section 9200.

Section 20.04. Repairs or Renewal in the Work.

Prior to the Date of Completion, the Contractor shall make all repairs or renewals in the portion of the Work occupied pursuant to Section 20.03 made necessary due to defective material or workmanship, or the operations of the Contractor, ordinary wear and tear excepted.

Section 20.05. Effect of Occupancy.

The District's occupancy as contemplated in this Article shall not constitute acceptance by the District of the Work or any part thereof. Such use shall neither relieve the Contractor of any of its responsibilities under the Contract

1 Documents, nor act as a waiver by the District of any of the terms or conditions of the Contract Documents. Any
2 damage done by the District is the responsibility of the District. Contractor acknowledges and agrees that any
3 occupancy and/or use of all or any portion of the work of improvement does not constitute acceptance or completion
4 within the meaning of California Civil Code section 9200.
5

6 Section 20.06. Coordination with Other Activities.

7 The Contractor shall conduct its operations so as not to interfere unreasonably with the District's use of the occupied
8 portions of the Site. The Contractor shall submit periodic schedules to the District Representative proposing the
9 times, areas, and types of work to be done within such areas.
10

11 If the Work produces conditions rendering the occupied portions of building, the Site, or other areas uninhabitable,
12 either because of noise, dust, vibration, smoke, fumes, or for any other cause whatsoever, the District
13 Representative may suspend the Work or direct the Contractor to modify the Contract Schedule, and the Contractor
14 shall comply.
15

16 Except as provided by Change Order, the Contractor shall not be entitled to a time extension or increase in the
17 Contract Sum by virtue of conflicts between the Contractor's work and the District's occupancy.
18

ARTICLE 21. CONTRACT CLOSEOUT

Section 21.01. Contractor's Request for Final Payment.

When the Contractor determines that all of the Work on the Project is complete and all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, the Contractor shall submit a certificate of completion and an application for final payment on the form provided.

Section 21.02. Additional Submissions.

Simultaneously with the Contractor's certificate of completion and request for final payment, the Contractor shall submit the following items to the District Representative:

- A. As-built drawing information pursuant to Section 5.08.
- B. Two (2) sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation, elevators, kitchen equipment, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.
- C. Hazardous material documentation as required.
- D. Form DSA-6 Final Verified Reports.
- E. All other required DSA, California Department of Education, State Allocation Board and Office of Public School Construction forms.
- F. Any extra stock material and equipment and manufacturer warranties/guarantees as required by the Contract Documents.
- G. Other items as required in Section 00 73 00.

No payment will be processed unless accompanied by the above listed submissions in acceptable form.

Section 21.03. Final Payment Process.

Upon approval of the submittals required by this Article and receipt of the Contractor's final payment application, and upon verification that all of the Work is complete, including all punch list items, the District Representative shall either (1) recommend to the District that the payment application be accepted, which recommendation shall be made within five (5) business days of receipt of the Contractor's final payment application, or (2) send a notice to the Contractor rejecting the payment application, stating the basis therefor, and submitting a written estimate of the sum due to the Contractor, which written estimate shall be provided to the Contractor within twenty (20) calendar days of the District Representative's receipt of the Contractor's final payment application. The District Representative's estimate shall take into account the Contract Sum, as adjusted by any Change Orders; amounts already paid; and sums to be retained for incomplete work, liquidated damages, and for any other cause under the Contract Documents. Any protest by the Contractor of the District Representative's estimate shall be as set forth in Section 21.04 and Article 23.

The Architect shall prepare a statement of final inspection, stating that the Work has been given a final inspection, that the Contractor has submitted the required documents, setting forth with detail any deviations in the Work as completed from the Contract Documents, and estimating the cost of correction of such deviations.

The Architect's statement shall be transmitted to the District along with the Contractor's application for final payment approved by the District Representative, Architect and Project Inspector. The District Representative shall provide a copy of the Architect's statement of final inspection to the Contractor.

1 Section 21.04. Protest of the District Representative's Estimate; Claims.

2 If the Contractor contests the estimate of sums due prepared by the District Representative, the Contractor may file
3 a claim in writing with the District Representative pursuant to the requirements of Article 23 and setting forth in detail
4 all grounds alleged by the Contractor to justify an adjustment to the District Representative's estimate. The
5 Contractor's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act.
6 Failure to include these required certifications will constitute grounds for immediate rejection of the claim.
7

8 Failure to file a timely claim shall constitute a waiver and acceptance by the Contractor of the District
9 Representative's estimate, which shall then become final and be forwarded to the District for approval of payment.
10

11 Section 21.05. Completion; Acceptance of Contract; Notice of Completion.

12 The Contractor acknowledges and agrees that completion shall mean the Contractor's complete performance of all
13 Work required by the Contract Documents, amendments, Change Orders, Construction Change Directives and
14 punch lists, and the District's formal acceptance of the Work, without regard to prior occupancy, substantial
15 completion doctrine, beneficial occupancy or otherwise.
16

17 Acceptance of the Work shall be made only by formal acceptance by the District. Recordation of a Notice of
18 Completion shall be in the manner prescribed by law, provided that the Work shall then be fully and satisfactorily
19 completed and the provisions of the Contract Documents fully and satisfactorily performed in all respects.
20

21 Section 21.06. Approval of Final Payment.

22 Following acceptance of the Work, the District shall authorize final payment to the Contractor of the undisputed
23 sums found due, subject to retentions for stop notices as provided in Section 21.07 below. This final payment shall
24 be made within sixty (60) days after completion, as defined in Section 21.05 above, and recordation of the Notice of
25 Completion.
26

27 Section 21.07. Withholding for Stop Notices.

28 The District may, in its sole discretion, and at any time, withhold from the Contractor any unpaid claims alleged in
29 Stop Notices filed pursuant to the California Civil Code. The District reserves all remedies it may have in the event
30 of a stop notice dispute. The basic standard to determine a sufficient withholding in the event of a Stop Notice shall
31 be one hundred fifty percent (150%) of the total of all stop notices filed; provided, however, the District reserves the
32 right to withhold different or greater sums in its discretion.
33

34 Section 21.08. Non-Waiver.

35 Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time, nor any possession
36 taken by District shall operate as a waiver of any of the provisions of this Contract, nor shall a waiver of any breach
37 of this Contract be held to be a waiver of any other or subsequent breach. In addition, recordation of a Notice of
38 Completion shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the
39 provisions of this agreement.
40

ARTICLE 22. GUARANTEES

Section 22.01. Guarantee Required.

In addition to any guarantees required elsewhere by the Contract Documents, the Contractor shall guarantee the Work for a minimum of two (2) years from and after the recordation of the Notice of Completion and completion of all contract obligations by the Contractor, including formal acceptance of the entire Project by the District. The Contractor specifically waives any right to claim or rely on the statutory definition of completion set forth in Civil Code section 9200. The Contractor specifically acknowledges and agrees that completion shall mean the Contractor's complete performance of all Work required by the Contract Documents, amendments, Change Orders, Directives, CCDs and punch lists, and the District's formal acceptance of the entire Project, without regard to prior occupancy, substantial completion doctrine, beneficial occupancy, or otherwise. Such guarantee shall be made on the form provided, as set forth in Specification Section 00420.

The guarantee period for corrected defective work shall continue for a duration equivalent to the original guarantee period.

Such guarantee is in addition to, and not in lieu of, the District's rights to enforce this Contract in all respects.

ARTICLE 23. CLAIM REQUIREMENTS

Claims shall be subject to the requirements of Public Contract Code sections 20104 *et seq.* and 9204. A summary of those provisions is set forth below. A waiver of the rights granted by the referenced statutes is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the District may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the statutory requirements, so long as the contractual provisions do not conflict with or otherwise impair the statutory timeframes and procedures. To the extent that the summary below is inconsistent with any requirement of those statutes, the statutes shall control. The terms below are intended to be consistent with the governing statutes, and any modifications shall be understood as lawful modifications or additions to the statutory requirements if at all possible.

Section 23.01. Notice of Potential Claim.

The Contractor shall promptly provide a written Notice of Potential Claim to the District upon discovery of concealed or unknown conditions or discovery of facts regarding any disagreement, protest, direction, situation, event, or occurrence that may result in a claim, including but not limited to changes in work and delays. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes adjustment to the Contract Price or Contract Time will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential claim. The Notice shall be submitted as soon as practical, but no more than five (5) working days after the discovery of any facts or event that does or may give rise to the claim, unless a different period for notice is specified in the Contract Documents. **Failure to timely submit the Notice of Potential Claim constitutes acknowledgement that the condition(s), fact(s), occurrence(s) or event(s) did not cause any increase in cost or time to perform and waives any Claim that the Contractor otherwise may have had the right to submit based on such condition(s), fact(s), occurrence(s) or event(s).**

Section 23.02. Definitions.

“Claim” means a separate demand by Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- (B) payment by the public entity of money or damages arising from work done by, or on behalf of, Contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- (C) payment of an amount that is disputed by the District.

“Mediation” means any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

“Public works contract” or “public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

“Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the Contractor or is a lower tier subcontractor.

Section 23.03. Claims Procedure.

All Claims under this Contract shall be resolved using the following procedure.

- 23.03.01 The Claim shall be in writing and include the documents necessary to substantiate the Claim. The evaluation of the Claim will be based on the District’s records and the Claim documentation submitted by the claimant, which shall include but not be limited to the

following: an explanation of the background; a chronology (including dates of all key events and date(s) that the Notice of Potential Claim was given); an explanation of the Contractor's position; supporting documentation of merit; analysis of delay for any claimed additional time, including CPM schedules; and a calculation of damages or additional amounts claimed, if any. Supporting documentation of merit may include, but not be limited to, Construction Documents, correspondence, conference or meeting notes, shop drawing logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, CPM schedules, photos, RFIs, Directives, and other such records. Supporting documentation of damages may include, but not be limited to, certified payroll reports; purchase orders; invoices; project as-planned and as-built costs; Subcontractor payment releases; quantity reports; other related records; general ledger and any other accounting materials.

Claims must be filed on or before the date of final payment, except that the Claim must be submitted no later than thirty (30) days from the date of the District Representative's estimate of sums due. Any Claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.04 below. Failure to include these required certifications will constitute grounds for immediate rejection of the Claim and shall be deemed a waiver and absolute bar of the Claim, including any right to pursue the Claim further.

- 23.03.02 If a Subcontractor, including a lower tier Subcontractor, lacks legal standing to assert a Claim against the District because privity of contract does not exist, then the Contractor may present a Claim on behalf of such a Subcontractor. A first-tier Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a Claim on behalf of the Subcontractor for work that was performed by the Subcontractor. The Subcontractor requesting that the claim be presented shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Claim and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.
- 23.03.03 Upon receipt of a Claim, the District shall conduct a reasonable review of the Claim. Within 30 days of receipt of the Claim, the District may request, in writing, any additional documentation supporting the Claim or relating to defenses to the Claim that the District may have against the claimant. Where additional information is requested by the District, the time in which the District must respond to a Claim shall be tolled until all requested information is provided. If additional information is thereafter required, then it shall be requested and provided upon mutual agreement of the District and the Contractor.
- 23.03.04 Within 45 days of receipt of the Claim, as that time may be tolled as provided in Section 23.03.03 above, the District shall provide the Contractor with a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual agreement, extend the time period for a response. Failure by the District to respond to a Claim within the time periods described herein shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by failure of the District to respond shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.
- 23.03.05 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. The District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract.
- 23.03.06 If the claimant 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 receipt of a demand, sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- 23.03.07 Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, then the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Failure by the District to provide the written statement within the time periods described herein shall result in the remaining Claim issues being deemed rejected in their entirety. Denial by failure of the District to respond shall not constitute an adverse finding with regard to the merits of the remaining Claim issues or the responsibility or qualifications of the claimant. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement.
- 23.03.08 Any remaining disputed portion of the Claim following the meet and confer conference shall be submitted to nonbinding mediation, with the District and the Contractor sharing the associated costs equally. The District and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced. This Section does not preclude arbitration if mediation under this Section does not resolve the parties' dispute.
- 23.03.09 If mediation is unsuccessful, then 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 with respect to the parts of the Claim remaining in dispute. 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 Section 23.03.01 until the time that mediation of disputed portions of that Claim is completed. This Section does not apply to tort claims, and nothing in this Section 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.
- 23.03.10 Amounts not paid in a timely manner as required by this Section shall bear interest at seven percent (7%) per year.
- 23.03.11 Claims of \$375,000 or less are subject to the following procedures for civil actions filed to resolve the claims:
- (a) The case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any such proceeding, consistent with the rules pertaining to judicial arbitration.

- (b) The parties stipulate that the arbitrator shall be experienced in construction law and 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.
- (c) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who, after receiving an arbitration award, requests a trial *de novo* but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial *de novo*.
- (d) The court may, upon request by any party, order any witnesses to participate in arbitration process.

In any suit filed under Public Contract Code Section 20104.4, 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 in a court of law.

Section 23.04. Claim Certification.

Contractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code sections 12650 *et seq.*). Submission by Contractor of any claim (as the term "claim" is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a Subcontractor or material supplier, shall constitute a representation by Contractor to the District that submission of the claim does not in any respect, violate the False Claims Act. Any party with an interest in the claim, including Contractor and any Subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim, and failure to provide such certification shall constitute a waiver of the claim.

The claim certification required by this section shall provide as follows:

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650 *et seq.* I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: _____

Company _____

Signature _____

Title _____

Section 23.05. Continuance of Work.

In the event of a dispute between the parties as to performance of the Work or the interpretation of the Construction Documents, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, the Contractor agrees to continue the Work diligently to completion. If the dispute is not resolved, except as provided otherwise in the Contract, the Contractor agrees it will neither rescind the Contract, nor stop the progress of the Work on the Project.

ARTICLE 24. ADDITIONAL PROVISIONS

Section 24.01. Conflict of Interest.

No official of the District who is authorized on behalf of the District to negotiate, make, accept, or approve, any architectural, engineering, inspection, construction, or materials supply contract, or any subcontract in connection with the construction of the Project, or any land acquisition in connection with the Project, shall become directly or indirectly interested personally in this contract or in any part thereof.

No officer, employee, architect, attorney, engineer, or inspector of or for the District who is authorized on behalf of the District to exercise any executive, supervisory, or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this contract or any part thereof.

Section 24.02. No Agreements.

No verbal agreement or conversation with any officer, agent, or employee of the District, either before, during, or after the execution of the Contract Documents shall affect or modify any term or condition contained in the Contract Documents, nor shall such verbal agreement or conversation entitle the Contractor to any additional payment or time to perform whatsoever under the terms of this agreement.

Section 24.03. Anti-Trust Assignment.

By execution of the Contract Documents, or any subcontract awarded by the Contractor, the Contractor or any Subcontractor offers and agrees to assign and hereby does assign to the District all rights, title, and interest in and to all causes of action the Contractor or Subcontractor may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16700), arising from purchases of goods, services, or materials pursuant to this public works contract or subcontract. This assignment shall be made and shall become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

Section 24.04. Contractor Not Agent, Nor Employee.

Neither the Contractor nor any subcontractor, or any officer, agent, or employee of either, is, nor shall they represent themselves to be, an officer, agent, or employee of the District for any purpose whatsoever.

No person employed by the Contractor, or by any subcontractors, are, nor shall they be construed to be in any manner or for any purpose whatsoever, employees of the District.

Section 24.05. Access to Records.

The District or the District's authorized representative shall have access, upon reasonable notice, during normal business hours, to any books, documents, accounting records, papers, project correspondence, project files, scheduling information and other relevant records of the Contractor and all subcontractors directly or indirectly pertinent to the Work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order prospective or executed, or any claim for which additional compensation has been requested.

Such books, documents and other records mentioned above shall include, but are not limited to all those reasonably necessary in the opinion of the District to determine the accurate amount of direct and indirect costs, job site, area and home office overhead, delay and impact costs, however characterized, and shall include the original bid and all documents related to the bid and its preparation, as well as the as-planned Contract Schedule and all related documents.

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

END OF SECTION