GENERAL CONDITIONS

ARTICLE 1 DEFINITIONS

1. Action of the Governing Board is a vote of a majority of the District's governing board.
2. Approval means written authorization through action of the governing board unless specific delegation of approval authority is delegated to a District representative.

   (ALTERNATE CLAUSE – This clause may only be used if the District has already delegated the authority to the Assistant Superintendent of Business prior to the commencement of the Project.)

   Approval means written authorization through action of the governing board. The governing board has delegated to the Assistant Superintendent the authority to approve certain modifications and Construction Change Documents where the aggregate sum of the Construction Change Documents do not exceed $15,000 and each individual item of the Construction Change Documents or modification does not exceed $10,000. In no case shall the Assistant Superintendent have authority to approve total Construction Change Documents or modifications to the Project exceeding 10% of the contract sum.)
3. As shown, as indicated, as detailed refers to drawings accompanying this specification.
4. Contract, Contract Documents includes all contract documents to wit: Notice inviting Bids, Instructions to Bidders, Bid Form, Designation of Subcontractors, Performance Bond, Payment Bond, Certificates of Insurance, Insurance Policies, General Conditions, Supplementary or Special Conditions (if any), Drawings, Plans, Specifications, the Agreement and all modifications, addenda, and amendments thereto.
5. Contractor, District and Architect are those mentioned as such in the Agreement. They are treated throughout the contract as if they are of singular number and neuter gender.
6. Locality in which the work is performed means the county in which the public work is done.
7. Project is the planned undertaking as provided for in the contract documents by District and Contractor.
8. Provide shall include "provide complete in place", that is, "furnish & install".
9. Safety Orders are those issued by the Division of Industrial Safety an OSHA Safety and Health Standards for construction.
10. Standards, Rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.
11. Subcontractor, as used herein, includes those having direct contract with Contractor and one who furnishes material worked to a special design according to plans, drawings, and specifications for this work, but does not include one who merely furnishes material not so worked.
12. Surety is the person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.
13. Work of the Contractor or subcontractor includes labor or materials (including, without installation, equipment and appliances) or both, incorporated in, or to be incorporated in the construction covered by the complete Contract.
14. Workers include laborer, worker or mechanic.

ARTICLE 2 LAWS CONCERNING THE DISTRICT A PART HEREOF

Contract is subject to all provision of the Constitution of Laws of California governing, controlling or effecting District, or the property, funds operations, or powers of District, and such provisions are by his reference made a part hereof and of Contract.

ARTICLE 3 SITE INVESTIGATION

Before bidding on this work, Contractor shall make a careful investigation of the site and thoroughly familiarize himself with the requirement of the Contract. By the act of submitting a bid for the work included in this Contract, Contractor shall be deemed to have made such study and investigation and that Contractor is familiar with and accepts the conditions of the site.

ARTICLE 4 STATUS OF CONTRACTOR

A. Contractor is and shall at all times be deemed to be an independent Contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the activities to determine compliance with the terms of this Contract. Contractor and subcontractors are required by law to be licensed and regulated by the Contractors State License Board.

B. Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its Subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the work by the Contractor and all of its Subcontractors of any tier. The failure of the Contractor and all Subcontractors of any tier to be properly registered with DIR at all times during performance of the work is a material breach of the Contract and subject to termination for cause.

C. An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all Subcontractors of any tier are at all times during performance of the work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow any Subcontractor of any tier to perform any work without the Contractor's verification that all Subcontractors are in full and strict compliance with the DIR registration requirements. Any Subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its Subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

ARTICLE 5 CONTRACTOR'S SUPERVISION

A. During progress of the work, Contractor shall keep on the premises (including both the site and the plant) a superintendent satisfactory to District and, if applicable, Architect. Before commencing the work herein, Contractor shall give written notice to District and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District in writing. Superintendent shall represent Contractor and all directions given to Superintendent shall be as binding as if given to Contractor.

B. The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect at once. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

C. Omissions from the drawings or specifications, or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

D. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically give the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.

E. For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13-01 for further discussion.

ARTICLE 6 SUBCONTRACTORS

A. Contractor agrees to bind every subcontractor by terms of Contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any subcontractor and of persons either directly or indirectly employed by any subcontractor, as it is for acts and omissions of persons directly employed by Contractor. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and District, nor shall this Contract be construed to be for the benefit of any subcontractor. The Contractor shall be responsible for the coordination of the trades, subcontractors and materialmen engaged upon his work.

B. All subcontractors (of any tier) performing any portion of the work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project. No portion of the work is permitted to be performed by a subcontractor of any tier unless the subcontractor is properly registered with DIR. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1.

ARTICLE 7 DISTRICT'S INSPECTOR

One or more Project Inspectors employed by the District and approved by the Division of the State Architect will be assigned to the work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8. No work shall be carried on except with the knowledge and under the inspection of said Inspector(s). He shall have free access to any or all parts of work at any time. The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall reimburse District for inspection and testing outside the normal eight-hour day or for any retests caused by the Contractor.

ARTICLE 8 ARCHITECT'S STATUS

A. The Architect shall be the District's representative during construction period and shall observe the progress and quality of the work on behalf of the District. Architect shall have the authority to act on behalf of District only to the extent expressly provided in the contract documents. Architect shall have authority to stop work whenever such stoppage may be necessary in Architect's reasonable opinion to insure the proper execution of Contract.

B. The Architect shall be, in the first instance, the judge of the performance of this Contract. Architect shall side neither with District nor with Contractor, but shall exercise authority under Contract to enforce its faithful performance by both. Nothing herein authorizes Architect to act as arbitrator for the parties.

C. The Architect shall have all authority and responsibility established by law, including Title 24 of the California Code of Regulations.

D. The Architect shall be the final authority in determining the amount of work satisfactorily completed and the amount of money due during the progress of construction.

ARTICLE 9 ASSIGNMENT OF ANTITRUST ACTIONS

A. Pursuant to Government Code section 4551, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with Section 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

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

ARTICLE 10 OTHER CONTRACTS

A. District reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its work with theirs.

B. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at the Project site. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on Project. If simultaneous execution of any Contract for Project is likely to cause interference with performance of some other contract or contracts, District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

ARTICLE 11 OCCUPANCY

District reserves the right to occupy portions of the Project at any time before completion, and such occupancy shall constitute final acceptance of that portion only to the extent that the Contractor will not be subject to performing work or repairs caused by the District's use of the occupied areas. Such occupancy shall not extend the date specified for completion of the work. The Contractor will be required to complete punch list items documented by District, Architect, Inspector and Contractor prior to final payment. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the work by the District shall not constitute acceptance of work not complying with the requirements of the Contract Documents.

ARTICLE 12 DISTRICT'S RIGHT TO DO WORK

Should the Contractor, at any time during the process of construction, fail or refuse to furnish enough materials or workmen to properly execute the work, unless prohibited from so doing through the action of District, Architect, or other authorized official agencies, District, after giving ten (10) days written notice to Contractor may, without prejudice to any other rights he may have, proceed to furnish the materials and/or workmen necessary to proceed with or complete the work, and may deduct the cost thereof, together with reasonable expenses arising from such procedure, from any amounts then due or which may thereafter become due to Contractor.

ARTICLE 13 DISTRICT'S RIGHT TO TERMINATE CONTRACT

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

(1) Issuance of an order of a court or other public authority having jurisdiction; or
(2) An act of government, such as a declaration of national emergency.

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

ARTICLE 14 TERMINATION BY THE DISTRICT FOR CAUSE

A. **Grounds for Termination.** The District may terminate the Contractor and/or this Contract for the following reasons:

(1) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
(2) Persistently or repeatedly is absent, without excuse, from the job site;
(3) Fails to make payment to subcontractors, suppliers, materialmen, etc;
(4) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
(5) Fails to provide a schedule or fails or refuses to update schedules required under the Contract;
(6) Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors;
(7) If the Contractor has been debarred from performing work; or
(8) Otherwise is in substantial breach of a provision of the Contract Documents.

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

(1) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
(2) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept; and
(3) Complete the work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors.

C. **Payments Withheld.** If the District terminates the Contract for one of the reasons stated in Article 14.A, the Contractor shall not be entitled to receive further payment until the work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

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

E. **Remedies Other Than Termination.** If a default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to Article 14, do any of the following:

(1) Permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the District may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand;

(2) If the workmanship performed by the Contractor is faulty or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with work or materials that conform to the Contract Documents, in which event the Contractor, at its sole costs and expense, shall proceed in accordance with the District's order and complete the same within the time period given by the District in its notice to the Contractor; or

(3) Initiate procedures to declare the Contractor a non-responsible bidder for a period of two to five years thereafter.

All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the District at the maximum legal rate. The District may retain or withhold any such amounts from the Contract Price. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to Paragraph (b) above, the Contractor shall replace the same with new work or materials approved by the Architect and the District, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect and the District shall direct, all work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable work or materials. In no event shall anything in this Paragraph be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Paragraph are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

ARTICLE 15 TERMINATION OF CONTRACT BY DISTRICT (CONTRACTOR NOT AT FAULT)

A. **Termination for Convenience.** District may terminate the Contract upon fifteen (15) calendar days of written notice to the Contractor and use any reasonable method the District deems expedient to complete the Project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or Contractor make it impossible or against the District's interest to complete the Project. In such a case, the Contractor shall have no Claims against the District except for: (1) the actual cost for approved labor, materials, and services performed in accordance with the Contract Documents which have not otherwise been previously paid for and which are supported and documented through timesheets, invoices, receipts, or otherwise; and (2) profit and overhead of ten percent (10%) of the approved costs in item (1); and (3) termination cost of five percent (5%) of the approved costs in item (1). Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept.

B. **Non-Appropriation of Funds/ Insufficient Funds.** In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the District exercises this option, the District shall pay for any and all work and materials completed or delivered onto the site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials not otherwise already paid for by the District up to the time of termination under this Paragraph shall include a factor of fifteen percent (15%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the District. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

ARTICLE 16 CONTRACT SECURITY - BONDS

Contractor shall furnish a surety bond in an amount equal to one hundred percent (100 %) of Contract price as security for faithful performance of this Contract and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Aforementioned bonds shall be in the form set forth in these contract documents.

ARTICLE 17 SUBSTITUTION OF SECURITIES

Pursuant to the requirements of Public Contract Code section 22300, upon Contractor's request, District will make payment to Contractor of any funds withheld from payments under this Contract if Contractor deposits with the District or in escrow with a California or federally chartered bank acceptable to District, securities eligible for the investment of State Funds under Government Code section 16430 or bank or savings and loan certificates of deposit interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the public agency.

ARTICLE 18 INSURANCE REQUIREMENTS

A. Before the commencement of the work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California with a financial rating of at least an A-VIII status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's work under the Contract and for which the Contractor may be legally liable, whether such work are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any required insurance shall not contain any exclusion that applies to the type of work performed by the Contractor under the Contract Documents:

(1) Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;

(2) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;

(3) Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;

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

(5) Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors;

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

(7) Claims involving sudden or accidental discharge of contaminants or pollutants.

B. **Specific Insurance Requirements.** Contractor shall take out and maintain and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain:

(1) Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than $2,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:

(a)	Per occurrence (combined single limit)	$1,000,000.00
(b)	Project Specific Aggregate (for this project only)	$1,000,000.00
(c)	Products and Completed Operations (aggregate)	$1,000,000.00
(d)	Personal and Advertising Injury Limit	$1,000,000.00

(2) Insurance Covering Special Hazards

The following special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

(a)	Automotive and truck where operated in amounts	$1,000,000.00
(b)	Material Hoist where used in amounts	$1,000,000.00
(c)	Explosion, Collapse and Underground (XCU) coverage	$1,000,000.00
(d)	Hazardous materials	$1,000,000.00

(3) In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars ($2,000,000.00).

C. **Subcontractor Insurance Requirements.** The Contractor shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under Article 18.A in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of Article 18.A without prior written approval of the District.

D. **Additional Insured Endorsement Requirements.** The Contractor shall name, on any policy of insurance required under Article 18.A, the District, Construction Manager (if any), Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to Article 18.A must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

E. **Workers' Compensation Insurance.** During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in work under this Contract on or at the Site of the Project and, in case any of the Contractor's work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance as required under Article 18.J and in compliance with Labor Code section 3700. Workers' compensation limits as required by the Labor Code, but not less than $1,000,000 and employers' liability limits of $1,000,000 per accident for bodily injury or disease.

F. **Builder's Risk/ "All Risk" Insurance.** The Contractor, during the progress of the work and until final acceptance of the work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the work and Project which is the subject of the Contract Documents, including completed work and work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the work, is that of the Contractor and the Surety, and no Claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

G. **Fire Insurance.** Before the commencement of the work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the work is accepted by the District. This requirement may be waived upon confirmation by the District that such coverage is provided under the Builder's Risk Insurance being provided.

H. **Automobile Liability**. The District, Architect and Construction Manager (if any), Inspectors, their directors, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Such insurance coverage shall be primary and non-contributory insurance as respects the District, Architect, Construction Manager (if any), Project Inspector, their directors, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, Architect, Construction Manager (if any), Project Inspector, their directors, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it. The insurer shall agree to waive all rights of subrogation against the District, Architect, Construction Manager (if any), Project Inspector, their directors, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy that arise from work performed by the Contractor. Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto) is required. Comprehensive Automobile Liability insurance is to include all autos, owned, non-owned, and hired, with limits of $1,000,000 per accident for bodily injury and property damage.

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

J. **Proof of Insurance.** The Contractor shall not commence work nor shall it allow any Subcontractor to commence work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:

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

> "This policy and any coverage shall not be suspended, voided, non-renewed, canceled, or reduced in required limits of liability or amounts of insurance or coverage until notice has been mailed via certified mail to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."

(2) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

(3) Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.

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

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

L. **Waiver of Subrogation.** Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this Section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

ARTICLE 19 PERFORMANCE AND PAYMENT BONDS

A. **Bond Requirements.** Prior to commencing any portion of the work, the Contractor shall furnish separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

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

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

C. **Alternate Surety Qualifications.** If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with section 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.

ARTICLE 20 DRAWINGS AND SPECIFICATIONS

A. Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.

B. Materials or work described in words which so applied has a well known technical or trade meaning shall be deemed to refer to such recognized standards.

C. It is not the intention of the Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under the "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the work so named with all its appurtenances according to the best practices of the trade.

D. The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidentals and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

E. Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installations procedures. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, Contractor shall promptly notify the District in writing, and any necessary changes shall be adjusted as provided in Article 46 entitled "Changes and Extra Work." The specification calling for the higher quality material or workmanship shall prevail.

F. Specifications and accompanying drawings are intended to delineate and describe the Project and its component parts to such a degree as to enable skilled and competent contractors to intelligently bid upon the work, and to carry said work to a successful conclusion.

G. Drawings and specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the contract documents, said laws, ordinances, rules, and regulations shall be considered as a part of said Contract within the limits specified. The Contractor shall bear all expenses of correcting work done contrary to said laws, ordinances, rules, and regulations if the Contractor knew or should have known that the work as performed is contrary to said laws, ordinances, rules, and regulations and if the Contractor performed same (1) without first consulting the Architect for further instructions regarding said work or (2) disregarded the Architect's instructions regarding said work.

H. Questions regarding interpretation of drawings and specifications shall be clarified by the Architect. Should the Contractor commence work or any part thereof without seeking clarification, Contractor waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information.

I. Contractor will be furnished, free of charge, bid sets of permitted documents and specifications. Contractor is to provide reproducible drawings and all additional copies which he requires for his operations at his own expense. He shall maintain an accurate record of all copies made and shall return or otherwise account for all copies at the end of the Project.

ARTICLE 21 OWNERSHIP OF DRAWINGS

Pursuant to Education Code section 17316, all plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other contract documents and copies thereof furnished by District are its property. They are not to be used in other work and, with the exception of signed sets of the Contract, are to be returned to the District on request at completion of work.

ARTICLE 22 DETAIL DRAWINGS AND INSTRUCTIONS

A. In case of ambiguity, conflict, or lack of information, Architect shall furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for proper execution of work. All such drawings and instructions shall be consistent with contract documents, true developments thereof, and reasonably inferable therefrom.

B. Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.

C. The Architect will furnish necessary details to more fully explain the work, which details shall be considered as part of the contract documents.

D. Should any details require work and costs beyond those which reasonably should have been included in the contract, Contractor shall give written notice thereof to the District within ten (10) working days of the receipt of same. In case no notice is given to the District within ten (10) working days, it will be assumed the details are reasonable development of the scale drawings. In case notice is given, then the claim will be considered and, if found justified, the District or Architect will either modify the drawings or shall recommend to District a Change Order/ Construction Change Document for the extra work involved.

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

F. If it is found at any time, before or after completion of the work, that the Contractor has varied from the drawings and/or specifications, in materials, quality, form, or finish, or in the amount or value of the materials and labor used, the District shall issue an order to Contractor: (1) that all such improper work should be removed, remade, and replaced, and all work disturbed by these changes be made good at the Contractor's expense; or (2) that the District deduct from any amount due Contractor, the sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications. District shall in its sole discretion determine such difference in value. The District, at its option, may pursue either course.

ARTICLE 23 TESTS AND INSPECTIONS

A. Tests and inspections will comply with California Code of Regulations Title 21, Chapter 4 and Section 42, and Title 24, Chapter 4, Part I. All work shall be under the observation of the Inspector. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Inspector shall have free access to any or all parts of the work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the Drawings or Specifications nor shall the Inspector's approval of the work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

B. Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website. Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Inspector shall work with Contractor to present incremental approval proposals to DSA.

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

D. The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the work. If the Contractor is behind schedule, it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor.

E. It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website.

F. If Contractor has a Subcontractor or supplier that requires in plant or special inspections, inspections or tests that are out of the country, out of the state or a distance of more than 200 miles from the Project Site, the District shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the Inspector/Testing Agreement with District, or other expenses necessary to ensure proper inspection, special inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Tester) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the work.

G. DSA may issue a Stop Work Order, or an Order to Comply, when either (1) the work proceeds without DSA approval; (2) the work proceeds without a DSA Inspector of Record, or (3) where DSA determines that the work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b), the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the District is the basis for the issuance of the Stop Work Order.
Examples of Stop Work Orders that may be issued by DSA include DSA Bulletin 07-04 and Policy 10-01, the installation of automatic fire sprinkler systems without approved Plans, covering work that has not been approved by Inspector on DSA Project Inspection Card (Form 152).

H. Contractor deviation or changes from approved Plans and Specifications may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Plans and Specifications, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document ("CCD") to correct the Notice of Non-Compliance. In some cases, the lack of a DSA approved CCD AND verification from the Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of work on the Project. Specifically, a deviation from approved Plans and Specifications may prevent approval of the category of work listed in the DSA 152 Project Inspection Card. Any delays that are caused by the Contractor's deviation from approved Plans and Specifications shall be the Contractor's responsibility.

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

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

K. Work shall not be covered without the Inspector's review and the Architect's knowledge that the work conforms to the requirements of the approved Plans and Specifications. Inspector must be timely notified of inspections and of new areas so work can be inspected at least 48 hours before opening

a new area (For example, see DSA Form 156 for Commencement/Completion of Work Notification which requires "at least 48 hour" advance notification of a new area). An Inspector must comply with DSA protocols for signing each category or phase of work under DSA Form 152 (in compliance with the Form 152 Manual) or a Notice of Deviation (DSA Form 154) will be issued requiring the work that was not inspected be uncovered for inspection. Thus, if a portion of the work is covered without inspection or Architect approval, is subject to a Notice of Non-Compliance for being undertaken without inspection, or otherwise not in compliance with the Contract Documents, after issuance of a Written Notice of Non-Compliance (Form 154) or a written notice to uncover work, Contractor shall promptly uncover all work (which includes furnishing all necessary facilities, labor, and material) for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Sum or Time.

L. If a portion of the work has been covered is believed to be Non-Conforming to the Plans and Specifications, even if the Form 152 for the category of work has been signed by the Inspector, the Inspector or the Architect may request to see such work, and it shall be promptly uncovered by the Contractor. If such work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order/ Construction Change Document and shall, be charged to the District. If such work is not in accordance with Contract Documents, the Contractor shall be responsible for all costs to uncover the work, delays incurred to uncover the work, and Contractor shall pay all costs to correct the incorrectly construction condition unless the condition was caused by the District or a separate contractor, in which event the District shall be responsible for payment of such costs to the Contractor.

M. The District will pay costs for all tests and inspections and shall be reimbursed by the Contractor for such costs under the following conditions:

(1) When such costs are stipulated in the provisions of the Contract documents to be borne by the Contractor;
(2) When a material is tested or inspected and fails to meet the requirements of the specifications and/or drawings;
(3) When the source of the material is changed after the original test or inspection has been made and approved.

N. If, in the opinion of the District, subsequent delivery of a tested material seems inferior to, or differs from, the original, said material shall be retested upon written order from the District and, should the material fail to meet the requirements of the specifications and/or drawings, the Contractor shall pay all costs of such tests, but where the material does pass the requirements, the District will pay the cost.

O. All tests and inspections specified for each material shall be made in accordance with the detailed specifications for tests or inspections of the material as specified.

P. If a material is not required to be tested, the District may require the Contractor to furnish a certificate bearing the official and legal signature of the supplier, with each delivery of such material, stating that the material complies with the specifications.

ARTICLE 24 STATE AUDIT

Pursuant to and in accordance with the provisions of Government section 10532, or any amendments thereto, all books, records, and files of District, Contractor, or any subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of ten thousand dollars ($10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records and files for the audit period.

ARTICLE 25 PREFERENCE FOR MATERIALS AND SUBSTITUTIONS

A. **One Product Specified.** Unless the plans and specifications state that no substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, construction or any specific name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired shall be deemed to be followed by the words Aor equal.@

B. **Request for Substitution.** Bidder may, unless otherwise stated, offer any material, process, article, etc., which shall be materially equal or better in every respect to that so indicated or specified ("Specified Item") and will completely accomplish the purpose of the Contract Document. If bidder desires to offer a substitution for a Specified Item, such bidder must make a request in writing on District's Substitution Request form ("Request Form") and submit the completed Request Form with their bid. The Request Form must be accompanied by evidence as to whether the proposed substitution:

(1) Is equal in quality service ability to the Specified Item;
(2) Will entail no changes in detail, construction and scheduling of related work;
(3) Will be acceptable in consideration of the required design and artistic effect;
(4) Will provide no cost disadvantage to District;
(5) Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
(6) Will require no change of the construction schedule.

In completing the Request Form, bidder must state with respect to each requested substitution whether bidder will agree to provide the Specified Item in the event that District denies bidder's request for substitution of a Specified Item. In the event that bidder does not agree in the Request Form to provide the Specified Item and the District denies the requested substitution, the bidder's bid shall be considered non-responsive and the District may award the contract to the next lowest bidder or in its sole discretion release all bidders. In the event that bidder has agreed in the Request Form to provide the Specified Item and the District denies bidder's requested substitution for a Specified Item, bidder shall execute the Agreement and provide the Specified Item without any additional cost or charges to the District, and if bidder fails to execute the Agreement with the Specified Item(s), bidder's bid bond will be a forfeited.

After the bids are opened, the apparent lowest bidder shall provide within five days of opening such bids, any and all drawings, specification, samples, performance data, calculations, and other information as may be required to assist the Architect and the District in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the bidder.

After the District's receipt of such evidence by bidder, District will make its final decision as to whether the bidder's request for substitution for any Specified Items will be granted. The decision as to whether a proposed request for substitution is equal to a Specified Item shall be the sole discretion of District. Any request for substitution which is granted by the District shall be documented and processed through a Change Order/ Construction Change Document. The District may condition its approval of any substitution upon delivery to District of an extended warranty or other assurances of adequate performance of the substitution. Any and all risks of delay due to DSA, or any other governmental agency having jurisdiction shall be on the bidder.

ARTICLE 26 SAMPLES

A. Contractor shall furnish for approval, within thirty-five (35) days following award of Contract, all samples as required in specifications together with catalogs and supporting data required by District. This provision shall not authorize any extension of time for performance of this Contract. District shall review such samples, as to conformance with design concept of work and for compliance with information given in contract documents and approve or disapprove same within ten (10) working days from receipt of same.

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

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

ARTICLE 27 PROGRESS SCHEDULE

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

B. Baseline Schedule Requirements.

(1) Timing. Within ten (10) calendar days after Notice to Proceed, Contractor shall submit a practical schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the salient categories of the work. This first schedule which outlines the Contractor's view of the practical way in which the work will be accomplished is the Baseline Schedule. If the Contractor fails to submit the Baseline Schedule with the ten (10) days noted then the District may withhold processing and approval of progress payments.

(2) Schedule Must Be Within the Given Contract Time. The Baseline Schedule shall not exceed time limits set forth in the Contract Documents and shall comply with all of the scheduling requirements as set forth in the Specifications.

(3) Submittals Must Be Incorporated. Contractor shall include submittals as line items in the Baseline Schedule. Submittals shall not delay the work, milestones, or the completion date. Failure to include submittals in the Baseline Schedule shall be deemed a material breach by the Contractor.

(4) No Early Completion. Contractor shall not submit a schedule showing early completion without indicating float time through the date set for Project completion by the District. Contractor's Baseline Schedule shall account for all days past early completion as float which belongs to the Project. Usage of float shall not entitle Contractor to any delay claim or damages due to delay.

(5) Use of Schedule Provided in Bid Documents. In some cases, the Bid will include a preliminary schedule indicating milestones and construction sequences for the Project along with general timing for the Project. The preliminary schedule is not intended to serve as the Baseline Schedule utilized for construction. It is up to the Contractor to study and develop a Baseline Schedule to address the actual durations and sequences of work that is anticipated while maintaining the milestones provided by the District. Contract shall obtain information from Contractor's subcontractors and vendors on the planning, progress, delivery of equipment, coordination, and timing of availability of subcontractors so a practical plan of work is fully developed and represented in the Baseline Schedule.

(6) Incorrect Logic, Durations, Sequences, or Critical Path. The District may reject or indicate durations, sequences, critical path or logic are not acceptable and request changes. The electronic copy of the Baseline Schedule shall have adequate information so logic ties, duration, sequences and critical path may be reviewed electronically. Contractor is to diligently rebuild and resubmit the Baseline Schedule to represent the Contractor's plan to complete the work and maintain milestones at the next Progress meeting, or before the next progress meeting. If Contractor is not able to build a schedule that is acceptable to the District or Architect, the District reserves the right to utilize the unapproved originally submitted Baseline Schedule (See Article 27.B (9)) and the comments submitted to hold Contractor accountable for timely delivery of work and maintenance of milestones. Furthermore, Contractor's representations in the Baseline Schedule, if unacceptable, may also be used as a basis for termination of the Contract if Contractor fails to adequately maintain the schedule and falls significantly behind without undertaking the efforts to either submit and follow a recovery schedule or fail to submit a recovery schedule and make no effort toward recovery on the Project.

(7) Contractor Responsibility Even if Schedule Issues Are Not Discovered. Failure on the part of the District to discover errors or omissions in schedules submitted shall not be construed to be an approval of the error or omission and a flawed schedule is not grounds for a time extension.

(8) Failure to Meet Requirements. Failure of the Contractor to provide proper schedules as required by this Article is a material breach of the Contract and grounds for termination. The District, at its sole discretion, may choose, instead, to withhold, in whole or in part, any progress payments or retention amounts otherwise payable to the Contractor.

(9) Use of an Unapproved Baseline Schedule. If Baseline Schedule submitted is unacceptable to the District (i.e. failing to meet the requirements of Article 27.B) and Contractor does not incorporate or address the written comments to the schedule and a Baseline Schedule is

not approved, but due to extreme necessity, the District moves forward without an approved Baseline Schedule, Contractor shall diligently revise and meet schedule update requirements of this Article and incorporate all Article 27.B comments in all updates). However, for purposes of termination pursuant to Article 15, the schedule initially submitted shall be treated as a Baseline Schedule with durations shortened to accommodate all float and other mandatory schedule requirements under Article 27.B as well as incorporating all revisions from District or Architect that are noted.

C. Update Schedules.

(1) Updates Shall Be Based on Approved Baseline Schedule. Except in the case where there has not been agreement as to a Baseline Schedule, after there has been agreement as to the Baseline Schedule, the Baseline Schedule shall be used to build future schedule updates. Schedule updates shall be a CPM based schedule consistent with the Baseline Schedule requirements of Article 27.B. In the case of utilization of Article 27.B(9) and no Baseline Schedule has been approved, schedule updates shall be provided monthly and each update shall incorporate all comments and revisions noted as not complying with the requirements of Article 27.B. Contractor shall be held to the Article 27.B(9) unapproved Baseline Schedule, inclusive of all milestones, adjusted for comments and all required Baseline Schedule inclusions under Article 27.B.

(2) Schedule Updates. Contractor shall update the schedule each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the work in progress, estimated start dates for work scheduled to start at future times and changes in duration of work items.

(3) Recovery Schedule. In addition to providing a schedule update every thirty (30) days, the Contractor, if requested by the Architect or District, shall take the steps necessary to improve Contractor's progress and demonstrate to the District and Architect that the Contractor has seriously considered how the lost time, the Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall immediately provide a recovery schedule showing how the Completion Date will be met. In no case, shall a recovery schedule be provided later than ten (10) days following the request for a recovery schedule from the Architect or District.

ARTICLE 28 MATERIALS AND WORK

A. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

B. Unless otherwise specified, all materials shall be new and shall be of the respective kinds and grades as noted or specified.

C. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damages or loss by weather or other causes to materials or work under this Contract.

D. Contractor shall, after award of Contract by District, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the work. Contractor shall, upon demand from the District, furnish to the District documentary evidence showing that orders have been placed.

E. No material, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to District free from any claims, liens, or charges. Contractor further 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 place a lien upon the premises or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to its owner.

F. For all material and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems. Incidental items not indicated on the Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

ARTICLE 29 OBTAINING OF PERMITS, LICENSES AND EASEMENTS

Permits, licenses, and certificates necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified. All such permits, licenses, and certificates shall be delivered to Architect before demand is made for the certificates of final payment. Contractor shall, and shall require subcontractors to, maintain Contractor's licenses in effect as required by law.

ARTICLE 30 ACCESS TO WORK

District and its representatives shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

ARTICLE 31 SANITARY FACILITIES

If applicable, Contractor shall provide sanitary temporary facilities in no fewer numbers than required by law.

ARTICLE 32 CLEANING UP

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by the work. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises. Upon completion of work, Contractor shall clean interior

and exterior of building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from site. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor.

ARTICLE 33 GUARANTEE

A. In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee all work furnished on the job against all defects for a period of one year after date of acceptance of work by District and shall repair or replace any and all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship and/or materials within one year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects to Contractor and Surety with reasonable promptness. Contractor shall notify District upon completion of such repairs or replacement.

B. Contractor Warrants that the WORK (which includes any equipment furnished by Contractor as a part of the materials) shall: (a) Be free from defects in workmanship and material; (b) Be free from defects in any design performed by Contractor; (c) Be new, and conform and perform to the requirements stated in the Specifications, and where detail requirements are not so stated, shall conform to applicable industry standards; and (d) Be suitable for the use stated in the Specifications.

C. The warranty period for discovery of DEFECTIVE WORK shall commence on the date stamped on the Notice of Completion verifying County registration and continue for the period set forth in the Specifications or for one year if not so specified. If, during the warranty period, the WORK is not available for use due to DEFECTIVE WORK, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected DEFECTIVE WORK shall continue for a duration equivalent to the original warranty period.

ARTICLE 34 DUTY TO PROVIDE FIT WORKERS

A. Contractor and Subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on any person not skilled in the work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article.

B. Any person in the employ of the Contractor or subcontractors whom District may deem unfit shall be excluded from the work site and shall not again be employed on it except with written consent of District. As used in this Article, "unfit" means any person who the District concludes is either not, or improperly, skilled for the task assigned to that person, who fails to comply with the requirements of this Article, or who creates safety hazards which jeopardize other persons and/or property.

C. Contractor shall take all reasonable steps necessary to insure that any employees of Contractor or any of its subcontractors employees do not use, consume, or work under the influence of any alcohol or illegal drugs while on the Project. Contractor shall further prevent any of its employees or its subcontractor employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Likewise, Contractor shall preclude any of its employees or subcontractor's employees from bringing any animal onto the Project.

ARTICLE 35 FINGERPRINTING

If applicable, Contractor shall comply with all provisions of either Education Code section 45125.1 or 45125.2. Pursuant to Education Code section 45125.1, Contractor shall conduct criminal background checks of all employees of Contractor assigned to the District, and shall certify that no employees who have been convicted of serious or violent felonies, as specified in Education Code section 45125.1, will have contact with pupils, by utilizing the certification set forth in the bid documents. As part of such certification, Contractor must provide the District with a list of all employees providing services pursuant to this Agreement, and designate which sites such employees will be assigned. In performing the services set forth in this Agreement, Contractor shall not utilize any employees who are not included on the above-referenced list. At District's sole discretion, District may make a finding, as authorized under Education Code section 45125.1, that Contractor's employees will have only "limited contact" with pupils. Contractor's failure to comply with this law shall be considered a material breach of this Agreement upon where this Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor.

Pursuant to Section 45125.2 Contractor shall ensure the safety of pupils by the installation of a physical barrier at the worksite and by continual supervision and monitoring of all these employees by an employee of Contractor whom the Department of Justice has ascertained has not been convicted of a serious or violent felony, as defined in Education Code section 45125.2 (c).

ARTICLE 36 WAGE RATES, TRAVEL AND SUBSISTENCE

A. **Wage Rates.** Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

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

B. **Holiday and Overtime Pay.** Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

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

D. **Per Diem Wages.** The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project per diem wages including employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

E. **Forfeiture and Payments.** Pursuant to Labor Code §1775, the Contractor shall forfeit to the District, not more than Two Hundred Dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

F. **Monitoring and Enforcement by Labor Commissioner**. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). The Contractor and all Subcontractors shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. The Contractor and all Subcontractors must sign up for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The District will have direct and immediate access to all CPRs for the Project that are submitted through the Labor Commissioner's system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

The Labor Commissioner and DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may 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 Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE 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/DLSE.

Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

Prior to commencing any work on the Project, the Contractor shall post the required notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and

Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

ARTICLE 37 PAYROLL RECORDS

A. Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

B. All payroll records as specified in Labor Code §1776 of the Contractor and all Subcontractors of any tier shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(3) on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code §1776 shall be certified and submitted to the District with each application for payment. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

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

D. The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 days after receipt of a written request.

E. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29

of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

F. The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

G. The Contractor or Subcontractor(s) shall have 10 days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty due to the failure of a Subcontractor to comply with this section.

The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 38 WITHHOLDING OF CONTRACT PAYMENTS & PENALTIES

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

(1) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or

(2) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or

(3) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or

(4) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or

(5) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing labor on public works projects.

ARTICLE 39 APPRENTICES

A. **Apprentice Wages and Definitions.** All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with

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

B. **Employment of Apprentices.** Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, in performing any of the work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5 and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor. The Contractor or Subcontractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.

C. **Submission of Contract Information.** Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contact, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

D. **Apprentice Fund.** The Contractor or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

E. **Prime Contractor Compliance.** The responsibility of compliance with this Article and §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.

ARTICLE 40 PROTECTION OF PERSONS AND PROPERTY

A. The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk, with the exception of damage to the work caused by "acts of God" as defined in Government Code section 4151(b). Contractor's liability for any injury or damage proximately caused by any "act of God" shall be limited to five percent (5%) of the Contract price pursuant to Government Code section 4150.

B. Contractor shall take, and require subcontractor to take, all necessary precautions for safety of workers on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or Architect or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

C. In an emergency affecting safety of life, of work, or of adjoining property, Contractor, without special instruction or authorization from Architect or District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by Architect or District. District will not hold Contractor liable for damages proximately caused by Contractor's actions if such actions were reasonably necessary to prevent loss of life or injury to person or damage to work or adjoining property. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

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

E. Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.

F. Contractor shall (unless waived by the District in writing):

(1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and perform work which may interfere with school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities. The Contractor shall comply with specifications and directives of the District regarding the timing of certain construction activities in order to avoid unnecessary interference with school functioning.

(2) Provide substantial barricades around any shrubs or trees indicated to be preserved.

(3) Deliver materials to building area over route designated by Architect of District.

(4) Take preventive measures to eliminate objectionable dust.

(5) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or directions of Architect; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on construction site.

(6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the District. All filing and plan check fees shall be paid by Contractor.

ARTICLE 41 NON-DISCRIMINATION

In the performance of the terms of this Contract, Contractor agrees that it will not engage in nor permit such subcontractor as it may employ to engage in unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

ARTICLE 42 COST BREAKDOWN AND PERIODICAL ESTIMATES

A. If applicable, Contractor shall furnish on forms approved by District:

(1) Within ten (10) days of award of Contract a detailed estimate giving complete breakdown of Contract price for each Project or site; and (2) A periodical itemized estimate of work done for purpose of making partial payments thereon. (3) Within ten (10) days of request of District, a schedule of estimated monthly payments which shall be due Contractor under Contract.

B. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from Contract price.

C. Contractor shall include in any breakdown or estimate the cost of final Project record documents, guarantees, warranties, O & M Manuals, photographs, etc.

ARTICLE 43 CONTRACTOR CLAIMS & DISPUTES

A. **Decision of Architect.** "Disputes" or "Claims" as defined in Article 44 between District and Contractor involving money or time, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action as provided in Article 43.B within ten (10) days after Contractor's Article 46 request for change or extra work is denied. If there is a construction manager (CM), the CM shall receive the Dispute and may review and also assemble opinions and documents to assist the Architect. A decision by the Architect, as provided in Article 43.B, shall be required as a condition precedent to proceeding with remedies set forth in Article 44 as to all such matters arising prior to the date Retention Payment Application is due, regardless of whether such matters relate to execution and progress of the work, or the extent to which the work has reached Completion. The condition precedent of an Architect decision shall be waived if: (1) the position of Architect is vacant; (2) the Architect has failed to take action required under Article 43.E within the time periods required therein; or (3) the Dispute or Claim relates to a stop notice claim not arising from any extra Change Order/ Construction Change Document or directive for which approval has not been provided.

B. **Architect's Review.** The Architect (and CM) will review the Dispute and take one or more of the following preliminary actions upon receipt of a Dispute: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the Dispute in whole or in part, stating reasons for rejection; (4) recommend approval of the Dispute; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety of the nature and amount of the Dispute. Architect review of Disputes and Claims shall be impartial and meant to resolve Disputes and Claims. Pursuant to the case, Huber, Hunt & Nichols, Inc. v. Moore (1977) 67 Cal.App.3d 278, the Architect is provided a quasi-judicial immunity for interpreting and deciding Disputes and Claims between the District and Contractor

C. **Documentation if Resolved.** If a Dispute has been resolved, the Architect (and/or CM) will prepare a Change Order or obtain appropriate documentation to document the terms for Board approval.

D. **Actions if Not Resolved.** If a Dispute has not been resolved pursuant to Article 43.B, the Contractor shall, within ten (10) days after the Architect's initial response, assemble all the documents involved in the Dispute including copies of all back-up documentation of costs and the basis for the Dispute and take one or more of the following actions: (1) modify the initial Dispute; (2) notify the Architect that the initial Dispute stands; or (3) supplement with additional supporting data and re-submit to the Architect under Article 43.B.

E. **Architect's Written Decision.** If a Dispute has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect (or Architect through CM) shall provide a written decision twenty (20) days after compliance with Article 43.D. Upon expiration of such time period, the Architect (or Architect through CM) will render to the parties its written decision relative to the Dispute, including any change in the Contract Sum or Contract Time or both. The Architect may also request reasonable additional time to complete Architect's written decision. If the resolution of the Dispute by the Architect is not satisfactory to the Contractor and copies of all back-up documentation of costs and the basis for the Dispute is fully articulated in a package of material that is complete, the Contractor may then submit a Claim to the District under Article 44.

F. **Continuing Contract Performance.** Pending final resolution of a Dispute or Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract (less any withholdings or offsets). If the Claim is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the Project is located, after the Project has been completed, and not before.

G. **Claims for Extension of Time.** If Contractor and District cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Article 50. Upon completion of the procedures set forth under Article 50, Contractor must then comply with the requirements in this Article including those set forth under Article 44.

ARTICLE 44 CLAIMS PROCEDURES & REQUIREMENTS

Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees to comply with the Claims requirements of this Article to quickly and efficiently resolve Disputes and Claims. Further, to provide a level of accuracy to the records submitted, the District shall have the right to audit books and records based on the actual costs incurred and to reduce the uncertainty in resolving Disputes and Claims with limited information.

A. **Procedures and Requirements Applicable to all Claims.**

(1) Definition of Claim: A "Claim" is where a Dispute between the parties rises to the level where backup documentation is assembled and provided to the District as a separate demand by the Contractor for: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Contract; (b) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided for or to which the Contractor is not otherwise entitled to; or (3) an amount of payment disputed by the District.

(2) Filing Claim is Not Basis To Discontinue Work: The Contractor shall promptly comply with work under the Contract or work requested by the District even though a written Claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all Claims that may arise during the performance of the work covered by this Contract.

(3) Claim Notification: The Contractor shall within seven (7) calendar days after the written decision of the Architect, or if the time period for Architect's decision has passed under Article 43.E, submit a notification in writing sent by registered mail or certified mail with return receipt requested, with the District (and the District's CM) stating clearly the basis for the Claim and including all relevant and required documents. If the notification is not submitted within seven (7) days after the written decision of the Architect or the passage of time under Article 43.E, the Contractor shall be deemed to have waived all right to assert the Claim, and the Claim shall be denied. Claims

submitted after the Retention Payment date shall also be considered null and void by the District. All Claims shall be reviewed pursuant to Articles 43.A through 43.E.

The Formal Notification of Claim must be presented as follows:

a. The term "Claim" must be at the top of the page in no smaller than 20 point writing.
b. All documentation submitted pursuant to this Article to the Architect shall be submitted with the "Claim."
c. A stack of documents, copy of all Project documents, or the submission of random documents shall not constitute an adequate reference to supporting documentation.
d. Any additional or supporting documentation that Contractor believes is relevant should be submitted at this time.

(4) Reasonable Documents to Support Claim: The Contractor shall furnish reasonable documentation to support the Claim. The Contractor shall provide all written detailed documentation which supports the Claim, including but not limited to: arguments, justifications, cost, estimates, Schedule analysis and detailed documentation. The format of the required reasonable documentation to support the Claim shall include, without limitation:

a. Cover letter.
b. Summary of factual basis of Claim and amount of Claim.
c. Summary of the basis of the Claim, including the specific clause and section under the Contract under which the Claim is made.
d. Documents relating to the Claim, including:

(i) Specifications sections in question.
(ii) Relevant portions of the plans/drawings.
(iii) Applicable Clarifications (RFI's).
(iv) Other relevant information, including responses that were received.
(v) Contractor Analysis of Claim merit including Contractor's analysis of any Subcontractor Claims that are being passed through, any analysis performed by outside consultants, and any legal analysis that Contractor deems relevant.
(vi) Break down of all costs associated with the Claim. For Claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path in conformance with the requirements of Article 50 shall be included along with a chronology of events and related correspondence.
(vii) Applicable daily reports and logs. If the daily reports or logs are not available, lost or destroyed, there shall be a presumption that the lost documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
(viii) For Claims involving overhead, cost escalation, acceleration, disruption or increased costs, a full version of job costs reports

organized by category of work or Schedule of Values with budget information tracked against actual costs. Any and all supporting back-up data, including the original bid (and associated original unaltered metadata). The metadata and bid information shall be provided confidentially and subject to a protective order to prevent dissemination to other contractors or to the public. However, the bid documentation should remain intact and available for review and inspection in case of this type of increased cost Claim. This data on the bid shall be made available to any District attorneys or experts and shall also be utilized as evidence for any legal proceedings. If the bid documentation is not available, lost or destroyed, there shall be a presumption that the lost bid documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.

(6) Certification: The Contractor (and Subcontractors, if applicable) shall submit with the Claim a certification under penalty of perjury:

a. That the Contractor has reviewed the Claim and that such Claim is made in good faith;
b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
c. The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable; and
d. That the Contractor is familiar with Government Code section 12650 et seq. and Penal Code section 72, and that false claims can lead to substantial fines and/or imprisonment.

(7) Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(8) Upon receipt of a Claim and all supporting documents as required above, the District shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Contractor may, by mutual agreement, extend the time period provided in this paragraph.

(9) If the District needs approval from its governing Board to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing Board does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three days following the next duly publicly noticed meeting of the governing Board after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(10) 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. If the District fails to issue a written statement, paragraph o below shall apply.

(11) If the Contractor disputes the District's written response, or if the District fails to respond to a Claim issued pursuant to this Article within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing 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 Claim.

(12) 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, 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. 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. Any disputed portion of the Claim, as identified by the Contractor in writing, 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. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures in Article 44.D.

(13) For purposes of this Article, mediation includes 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. Any mediation utilized shall conform to the timeframes in this section.

(14) Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to this Article shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(15) This Claims process does not preclude the District from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this Article does not resolve the parties' Claim. This Claims process does not preclude the District from submitting individual Disputes or Claims to binding arbitration pursuant to Article 44.C below.

(16) Failure by the District to respond to a Claim from the Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Article, shall not constitute an adverse

finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

(17) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against a District because privity of contract does not exist, the Contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District 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 to the District and, if the Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

(18) 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.

(19) The Contractor's Claim shall be denied if it fails to follow the requirements of this Article

(20) Within thirty (30) days of receipt of the Claim and the information under this Article, the District may request in writing any additional documentation supporting the Claim or documentation relating to defenses to the Claim which the District may assert. If additional documents are required, the time in which the Claim is evaluated may be extended by a reasonable time so the Claim and additional documents may be reviewed.

B. **Claims Procedures in Addition to Government Code Claim.** Nothing in the Disputes and Claims procedures set forth in Articles 43 and 44 or other provisions in the General Conditions shall act to waive or relieve the Contractor from meeting the requirements set forth in Government Code section 900 et seq.

C. **Binding Arbitration of Individual Claim Issues.** At the District's sole option, the District may submit individual disputes, or claims, to binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized, such resolution is a full and final resolution of the particular claim or dispute. Under no circumstances may the Contractor stop work, rescind its contract or otherwise slow the progress of work during resolution of individual claims in binding Arbitration. This individual dispute arbitration process is not an arbitration clause and shall not be construed as an agreement to arbitrate. This individual disputes arbitration process is for the sole purpose of streamlining and resolving disputes or claims during construction and shall be requested on specific individual items by the District prior to Completion of the Project.

D. **Resolution of Disputes in Court of Competent Jurisdiction.** If Claims are not resolved under the procedure set forth and pursuant to Articles 43 and 44, such Claim or controversy shall be submitted to a court in the county of competent jurisdiction after the Project has been completed, and not before.

E. **Warranties, Guarantees and Obligations.** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto; and all of the rights and remedies available to District and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

ARTICLE 45 PAYMENTS TO CONTRACTOR

A. Unless otherwise specified, each month within thirty (30) days after approval of the Request for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the work performed (as certified by Architect and Inspector and verified by Contractor) up to the last day of the previous month, less the aggregate of previous payments. The value of the work completed shall be the Contractor's best estimate. Work completed as estimated shall be an approximation or estimate only and no mistake, inaccuracy, error or falsification in said any approved estimate shall operate to release the Contractor, or any surety upon any bond, from damages arising from such work, or from the District's enforcement of each and every provision of this Contract including but not limited to the Performance Bond and Payment Bond. The District shall have the right to subsequently to correct any mistake, inaccuracy, error or falsification made or otherwise set forth in any approved Request for Payment and such correction may occur in any future Payment Application or in the final payment to the Contractor. No Surety upon any bond shall be relieved, released or exonerated of its obligations under this Contract or any applicable bond when the District is unable to correct an overpayment to the Contractor due to any abandonment by the Contractor or termination by the District.

B. Before payment is made hereunder, the District will review the request for progress payment with District and Inspector for verification that the work for which payment is requested has been performed in accordance with the Terms of the Contract.

C. District and Inspector shall sign the request for payment as verification that the work has been performed. It is understood moreover, that signature of the Inspector and Architect shall not be conclusive upon District, but merely advisory.

D. Upon request by the District, Contractor shall provide lien releases or partial lien releases for payments previously made. Contractor shall not be entitled to any payment for WORK performed if Contractor has not complied with any lawful direction from the District or has failed to provide lien releases as requested.

E. Prior to final payment, Contractor and each Subcontractor shall certify that the Project does not contain any asbestos containing materials.

F. After completion of the WORK, Contractor shall make a demand for final payment. The demand for final payment shall identify all disputed and undisputed amounts due under the CONTACT and, all claims for compensation under or arising out of this CONTRACT. The Contractor's negotiation of the payment of the final amount shall constitute a waiver of all amounts due under the CONTRACT and all claims against District under or arising out of this CONTRACT except those identified by Contractor in writing, and unsettled before Contractor's negotiation of final payment. The final payment,

if unencumbered, shall be made thirty-five (35) calendar days after recordation of the Notice of Completion by the County Registrar. Acceptance will be made only by ACTION OF THE GOVERNING BOARD.

G. In accordance with Public Contract Code section 7100, payments by the District to the Contractor for any and all undisputed amounts is contingent upon the Contractor furnishing the District with a release of all claims against the District related to such undisputed amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. If, however, the Contractor specifically excludes any claims, the Contractor shall provide details such as a specific number of disputed days or costs of any such exclusion in accordance with Articles 44 and 46.

H. No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the WORK.

ARTICLE 46 CHANGES AND EXTRA WORK

A. District may, as provided by law and without affecting the validity of this Contract, order changes, modifications, deletions and extra work by issuance of written Change Orders/ Construction Change Documents from time to time during the progress of the Project, Contract sum being adjusted accordingly. All such work shall be executed under conditions of original Contract except that any claim for an extension of time caused thereby shall be adjusted at time of ordering such change.

B. In giving instructions, Architect shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with purposes of the building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from District, authorized by action of the Governing Board and no claim for addition to Contract sum shall be valid unless so ordered.

C. The following format shall be used as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract:

		EXTRA	CREDIT
(a)	Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b)	Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(c)	Equipment (attach invoices)	_____	_____
(d)	Subtotal		
(e)	If Subcontractor performed work, add Subcontractor's overhead and profit to portions performed by Sub-contractor, not to exceed fifteen percent (10%) of item (d).		
(f)	Subtotal	_____	_____

		EXTRA	CREDIT
(g)	Contractor's Overhead and Profit: Not to exceed 10% of Item (d) if Contractor performed the work. No more than 5% of Item (d) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed 10% of Item (d), and portions performed by Subcontractor shall not exceed 10% of Item (d)	_____	_____
(h)	Subtotal		
(i)	Bond not to exceed one percent (1%) of Item (h)	_____	_____
(j)	TOTAL	_____	_____
(k)	Time/ Days	_____	_____

D. If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates the District to pay additional compensation to the Contractor or to grant an extension of time for the compensation of the Contract, or constitutes a waiver of any provision in the Contract, Contractor shall notify the District, in writing, of such claim within ten (10) calendar days from the date Contractor has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the District within such ten (10) calendars day period shall be deemed a waiver and relinquishment of such a claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Article.

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

ARTICLE 47 COMPLETION

A. The Project will be considered complete when all required contract work is completed, all punch list items have been completed and a Notice of Completion has been recorded for the Project. The work may only be accepted as complete by action of the Governing Board.

ARTICLE 48 ADJUSTMENTS TO CONTRACT PRICE

A. If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision thereof, District may, after ten (10) days written notice to Contractor and without prejudice to any other remedy it may have, make good such deficiencies.

B. District shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct work injured or not done in accordance with Contract provisions, an equitable reduction in Contract price shall be made therefore.

ARTICLE 49 CORRECTION OF WORK

A. Should it be considered necessary or advisable by the District at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out the same, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any respect due to fault of the Contractor or his subcontractor, he shall defray all expenses of such examinations and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor.

B. Contractor shall promptly remove from premises all work identified by District as failing to conform to Contract, whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with entrant documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

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

ARTICLE 50 EXTENSION OF TIME - LIQUIDATED DAMAGES

A. The Contractor and District hereby agree that the exact amount of damages for failure to complete the work within the time specified is extremely difficult or impossible to determine. It is expressly understood that time is of the essence and that the Contractor must complete the Project within the Contract Time specified in the Agreement. Contractor shall be assessed the sum (set forth in the Agreement Form) per day as liquidated damages for each and every day the work required under this contract remains unfinished past the time for completion, as set forth in the Agreement, and any extensions of time granted by the District to the Contractor under the terms of the contract documents and pursuant to Section 53069.85 of the Government Code. For purposes of this Article, the work shall be considered "complete" in accordance with the provisions of Article 47, "COMPLETION", except that the work may be considered complete without formal acceptance by the Governing Board so long as the board, at its next regularly scheduled meeting, accepts the work.

B. Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work which are not the fault or negligence of Contractor, including but not restricted to: acts of God as defined in Public Contract Code section 7105, acts of public enemy, fires, floods, epidemics and quarantine restrictions. Contractor shall, within ten (10) calendar days of beginning of any such delay (unless District grants in writing a further period of time to file such notice prior to date of final settlement of the Contract), notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The District's finding of fact thereon

shall be final and conclusive on the parties hereto. Extensions of time shall apply only to that portion of work affected by delay, and shall not apply to other portions of work not so affected.

ARTICLE 51 PAYMENTS WITHHELD

A. In addition to amount which District may retain under Article 47 entitled "COMPLETION" and Article 45 entitled "PAYMENTS TO CONTRACTOR", District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

(1) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the Project under this Contract, including, without limitation, payments made pursuant to the Article 45 entitled "PAYMENTS BY CONTRACTOR";
(2) The cost of defective work which Contractor has not remedied;
(3) Liquidated damages assessed against Contractor;
(4) Penalties for violation of labor laws;
(5) The cost of materials ordered by the District pursuant to the Article 28 entitled "MATERIALS AND WORK";
(6) The cost of completion of this Contract if there is reasonable doubt that this Contract can be completed for the balance then unpaid to Contractor;
(7) Site clean-up as provided in Article 32 entitled "CLEANING UP";
(8) Amount necessary to satisfy any and all liens against District. Contractor shall provide release of all liens prior to final payment;
(9) Damages to another Contractor;
(10) Payments to indemnify, defend, or hold harmless the District;
(11) Any payments due to the District including but not limited to payments for failed tests, utilities or imperfections; or
(12) Inspector sign-off of each item in the DSA 152 Project Inspection Card.

B. If the Contractor, at its own expense, removes the reason for withholding, then payment shall be made for amount withheld.

C. District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

D. As an alternative to payment of such claims or obligations, District, in its sole discretion, may reduce the total Contract price as provided in Article 48 entitled "ADJUSTMENTS TO CONTRACT PRICE."

E. Payment by the District shall be without prejudice to any other action by the District to recover damages.

ARTICLE 52 EXCISE TAXES

If under Federal Excise Tax Law any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any bid price.

ARTICLE 53 TAXES

Bid price is to include any and all applicable sales taxes or other taxes that may be due in accordance with Section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax codes that may be applicable.

ARTICLE 54 NO ASSIGNMENT

Contractor shall not assign this Contract or any part thereof.

ARTICLE 55 NOTICE AND SERVICE THEREOF

A. Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

(1) If notice is given to District, by personal delivery thereof to District or by depositing same in United States mail, enclosed in a sealed envelope addressed to District, and sent by registered or certified mail with postage prepaid; (2) If notice is given to Contractor by personal delivery thereof to said Contractor or to Contractor's superintendent at site of Project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at its regular place of business or at such address as may have been established for the conduct of work under this Contract, and sent by registered or certified mail with postage prepaid;(3) If notice is given to surety or other person by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by surety or other person to party giving notice, and sent by registered or certified mail with postage prepaid.

ARTICLE 56 NO WAIVER

The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

ARTICLE 57 HAZARDOUS MATERIALS

In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District and Architect in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the District and Contractor, or in accordance with final determination by the Architect.

ARTICLE 58 DISTRICT'S RIGHT TO CARRY OUT THE WORK

If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision of this Contract, the District may, after ten (10) calendar days' written notice to Contractor and without prejudice to any other remedy he may have, made good such deficiencies. In such case an appropriate Change Order/ Construction Change Document shall be issued deducting from the payments then or thereafter due Contractor the cost of correcting such deficiencies, including the cost of the Architect's additional service made necessary by such default, neglect or failure. If the payments then or thereafter due Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to the District within ten (10) calendar days.

ARTICLE 59 INDEMNIFICATION

See Article 5 of the Agreement Form.

ARTICLE 60 NON-UTILIZATION OF ASBESTOS MATERIAL

NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (1%) asbestos shall be defined as asbestos-containing material. All work or materials found to contain asbestos or work or material installed with asbestos-containing equipment will be immediately rejected and this work will be removed at no additional cost to the District.

ARTICLE 61 LIEN RELEASES

Contractor shall, at its own cost, defend, indemnify and hold harmless the District, its officers, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses, or any of them, arising from or attributable to a lien or stop notice filed and/or served in connection with the work.

SUPPLEMENTARY GENERAL CONDITIONS