



TORRANCE UNIFIED SCHOOL DISTRICT
GENERAL TERMS AND CONDITIONS
FOR PROJECTS UNDER \$1 MILLION

ARTICLE 1 DEFINITIONS

1.1 BASIC DEFINITIONS

NOTE: The following shall not be construed as a comprehensive list of all definitions in the Contract Documents and there may be other definitions set forth in the Contract Documents. Additionally, any references to any DSA forms, documents or requirements shall be construed to incorporate any updates, supplements, or additions. The Contractor shall be required to meet the latest DSA requirements applicable to the Project.

1.1.1 [Reserved].

1.1.2 Approval means written authorization through action of the Governing Board. In no case shall the Assistant Superintendent have authority to approve total change orders or modifications to the Project exceeding 10% of the Contract sum.

1.1.3 Architect means the architect, engineer, or other design professional engaged by the Owner to design and perform general observation of the work of construction and interpret the Drawings and Specifications for the Project. Also see Article 4.

1.1.4 As-Builts are a set of Plans and Specifications maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Close-Out. See Article 3.17

1.1.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy is fit for occupancy and its intended use. Basic requirements are the building is safe, at or near Substantial Completion, and all life-safety systems are operational.

1.1.6 Claims. A “Claim” means a separate demand, supported by back-up documentation, by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract or (3) an amount the payment of which is disputed by the Owner, that is submitted during the Project or immediately following the Project made prior to the Retention Payment Application.

1.1.7 Change Order (CO). A CO is a written instrument prepared by the Architect and signed by the Owner (as authorized by the Owner’s Governing Board), the Contractor, and the Architect, stating

their agreement upon (1) A description of a change in the Work, (2) The amount of the adjustment in the Contract Sum, if any; and (3) The extent of the adjustment in the Contract Time, if any. See Article 7.2.

1.1.8 Change Order Request (COR). A COR is a written request supported by backup documentation prepared by the Contractor requesting that the Owner and the Architect issue a CO based

1.1.9 Close-Out means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is Complete (See DSA Certification Guide). See Article 9.9.

1.1.10 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Plans and Specifications.

1.1.11 Complete means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, the Project has been Closed Out, and all Work has ceased on the Project. Beneficial Occupancy does not mean the Work is Complete.

1.1.12 Completion Date is the date when all Work for the Project shall be Substantially Complete and is the date assigned at the end of the Contract Time for the Project. See Article 1.1.46.

1.1.13 [Reserved]

1.1.14 Contract or Agreement when the terms are used in these General Conditions shall be references to the Contract Documents as defined herein.

1.1.15 Contract Documents (sometimes referred to as Construction Documents) consist of the Agreement between Owner and Contractor, all documents incorporated therein as part of the Contract Documents (hereinafter the Agreement or Contract), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to bid, instructions to bidders, notice to bidders, and the requirements contained in the Bid Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract.

1.1.16 Contract Time is the time period specified in the Contract Documents in which the Project shall be completed. This is sometimes referred to a Contract Duration.

1.1.17 [Reserved]

1.1.18 Cure is the act of remedying a material failure to perform under the terms of the Contract Documents during the time provided to correct Contractor's Default.

1.1.19 Days means calendar days unless otherwise specifically stated.

1.1.20 Default is a material breach of Contract.

1.1.21 Dispute. A dispute is a disagreement on terms or conditions of the Project where the Contractor's opinion of the Project, Payment, Change Order or Request for Proposal differs from that of the Owner or Architect.

1.1.22 District/Owner Representative is the person designated by the Owner to represent the Owner during the Construction for the Project. This Owner representative shall have the delegated

authority. This Owner representative may be an employee of the Owner, and may also include Construction Managers who shall have the authorities as set forth in Article 1.1.13.

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

1.1.24 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved Plans, Specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the Owner pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.

1.1.25 [Reserved]

1.1.26 [Reserved]

1.1.27 Immediate Change Directive. (ICD) A written order prepared by the Architect and signed by the Owner and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 7.3

1.1.28 Inspector of Record (IOR) or Project Inspector (PI) is the individual retained by the Owner in accordance with Title 24 of the California Code of Regulations and who will be assigned to the Project

1.1.29 Notice of Non-Compliance (DSA Form 154) is a document issued by the Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 7.1.2.

1.1.30 Payment Application, Pay Application or Certificate of Payment is the Contractor's certified representation of the actual level of Work performed on the Project. Payment Applications are sometimes also called "Certificate of Payment", "Request for Payment", or similar terms, and shall follow the Schedule of Values that are approved by the Architect, Inspector and Owner. See Article 9.3.

1.1.31 The Project is the complete construction of the Work performed in accordance with the Contract Documents.

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

1.1.33 Provide shall include "provide complete in place," that is "furnish and install complete."

1.1.34 Punch List/ Punch Item/ Incomplete Punch Item is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Inspector and Architect of Work required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Closed Out. Issuance of the Retention Payment is dependent of the proper completion of the Punch List. See Article 9.9.

1.1.34.1 *Contractor's List of Punch Items* is a list of minor repair items the Contractor submits when the Contractor considers the Work Substantially Complete. Submission of

this List of Incomplete Punch Items is the Contractor's representation that the Project is Substantially Complete. See Article 9.9.1

1.1.35 A Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the Drawings or Specifications, or to address problems which have arisen under field conditions. See Article 7.4.

1.1.36 A Request for Proposal (RFP) is a written request prepared by the Architect (and/or CM) requesting the Contractor to submit to an estimate of the effect of a proposed change on the Contract Price and (if applicable) the Contract Time. See Article 7.5.

1.1.37 Safety Orders are those issued by any city, county, state or federal agency having jurisdiction over the Project.

1.1.38 Schedule is the Contractor's view of the practical way in which the Work will be accomplished. See Article 8 of the General Conditions.

1.1.39 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the Owner. This Schedule of Values shall adequately detail the price for the Work so Progress Payments Applications can be meaningfully reviewed by the Inspector, Architect of Record, Engineer of Record, and Owner. (See Article 9.2)

1.1.40 Separate Contracts are Contracts that the Owner may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor's Schedule. See Article 6.

1.1.41 Site refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

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

1.1.43 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. Federal, state and local regulations are incorporated into the Contract Documents by reference.

1.1.44 Stop Work Order, or an Order to Comply, is issued 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.

1.1.45 Subcontractor, as used herein, includes those having direct or indirect contracts with Contractor and ones who furnished labor, material or services for a special design according to Plans, Drawings, and Specifications of this Work.

1.1.46 Substantial Completion is not reached unless and until each of the following three (3) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 9.9.1.1); (2) All Fire/Life Safety Systems have been

installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; and (3) the Project is fit for occupancy and its intended use. For the purposes of this Contract, any references to Completion Date means Substantial Completion Date.

1.1.47 Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor.

1.1.48 Supplementary Conditions/ Supplementary General Conditions or Special Conditions are terms that are sometimes used interchangeably and refer to any additional requirements or changes to the General Conditions as noted.

1.1.49 Surety is a person, firm, or corporation that acts as a bid bond, payment bond or performance bond guarantor on the Contractor's Bid, Contractor's Performance on the Contract and Payment of the Contractor's Subcontractors, material suppliers, vendors and labor on the Project. The Surety is bound to the same extent as the Contractor is bound once a Default occurs.

1.1.50 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor who performs any portion of the Work, to visit the Site of the proposed Work (a continuing obligation after the commencement of the Work), to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents.

1.1.51 Workers include laborers, workers, and mechanics.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 Correlation and Intent

1.2.1.1 *Documents Complementary and Inclusive.* The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. All Contract Documents form the Contractor's Contract with the Owner. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. The Contractor is bound to provide the Work complete.

1.2.1.2 [Reserved]

1.2.1.3 *Coverage of the Drawings and Specifications.* The Drawings and Specifications generally describe the Work to be performed by Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor.

1.2.1.4 *Conflicts.* In the event there is a discrepancy between the various Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

1.2.1.5 *Conformance with Laws.* Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, even if through mistake or otherwise any such provision is not inserted, or is not correctly inserted.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public and municipal utilities affecting the construction. (See Title 24 Section 4-343)

The Contractor shall bear all expenses of correcting Work done contrary to said laws, ordinances, rules, and regulations 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.

1.2.1.6 *Ambiguity and Inconsistency.* Prior to commencing any portion of the Work, Contractor shall notify Architect and District in writing of any perceived or alleged error, inconsistency, conflict, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein.

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

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

1.2.2 Addenda and Deferred Approvals

1.2.2.1 *Addenda* are the changes in Specifications, Drawings, Contract Documents, and Plans which have been authorized in writing by the Owner or Architect, and which alter, explain, or clarify the Contract Documents. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda unless otherwise specified in the addenda.

1.2.2.2 *Deferred Approvals.* Deferred Approvals are Submittals that are reviewed by the Architect (or Engineer of Record) and submitted to DSA for approval based on thorough detailing of manufacturer and Project specific design. See Article 3.9.1 and 3.9.3. Contractor is responsible for all Deferred Approval requirements set forth in the Contract Documents. Contractor is responsible to comply with all laws, building codes, Title 24 and regulations necessary to obtain all necessary approvals, including those required from the Division of the State Architect ("DSA") and the State Fire Marshall. Contractor shall not be granted an extension of time for failure to plan, schedule for and obtain necessary approvals. Contractor shall Schedule all deferred approval items in the Baseline Schedule and Schedule Updates under Article 3.9.6

1.2.3 Rules of Document Interpretation

1.2.3.1 If Contractor observes that Drawings and Specifications are in conflict, Contractor shall, prior to commencing work, notify the Architect in writing for the purposes of obtaining an interpretation of the Contact Documents.

1.2.3.2 In the case of conflict or inconsistencies, the order of precedence shall be as follows:

- a. General Conditions take precedence over Drawings and Specifications.
- b. Supplemental Conditions and Special Conditions take precedence over General Conditions.
- c. The Agreement Form shall take precedence over the Supplemental Conditions and Special Conditions.
- d. In the case of disagreement or conflict between or within Specifications, and Drawings, the more stringent, higher quality, and greater quantity of Work shall apply.
- e. Addenda shall take precedence over Drawings and Specifications.
- f. General Conditions shall take precedence over Addenda.
- g. Drawings and Specifications take precedence over the Soils Report.

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

The Drawings, Specifications, and other Contract Documents for the Project are the property of the Owner and/or Architect pursuant Contract requirements between the Owner and Architect. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a Copyright in the Drawings, Specifications, and other documents prepared by the Architect and/or Owner.

**ARTICLE 2
OWNER**

2.1 INFORMATION AND SERVICES REQUIRED OF THE DISTRICT

2.1.1 Site Survey

If needed for this Project, the District will furnish, at its expense, a legal description of the Site and a land survey showing the boundaries of the Site. Contractor shall be responsible for all surveys regarding location of construction, grading and site work.

2.1.2 Utilities

2.1.2.1 *Location of Point of Connection.* The locations shown for the point of connection are approximate. It shall be the responsibility of the Contractor to determine the exact location of all service connections.

2.1.2.2 *Regional Notification Center.* Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) business days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. See Government Code Section 4216.3. No excavation shall be commenced and carried out by Contractor unless such an inquiry identification number has been assigned to Contractor or any Subcontractor of Contractor and the District has been given the identification number by Contractor.

2.1.2.3 *Utilities - Removal and Restoration.* No excavations were made to verify the locations shown for underground utilities. Other than the main or trunk line, which the District has endeavored to locate on the Plans, service connections or laterals to these utilities may not be shown on the Plans. It shall be the responsibility of Contractor to determine the exact location of all service connections. Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. Contractor shall immediately notify the District's representative as to any utility main or trunk line discovered by Contractor in a different position than provided by the Regional Notification Center. With respect to main or trunk lines, Contractor is to immediately notify District if the location is substantially different than as shown in the Contract Documents.

Contractor shall coordinate its Work with all utilities, including, but not limited to electricity, water, gas and telephone and meet with said utilities prior to the start of any work. Contractor shall show timing of all utility coordination activities under the Scheduling requirements of Article 7.

2.1.3 Easements

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

2.2 OWNER'S RIGHT TO CARRY OUT THE WORK DUE TO PARTIAL DEFAULT IN A SPECIFIC SEGREGATED AREA OF WORK (TWO (2) BUSINESS DAY NOTICE TO CURE AND CORRECT)

If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the Owner may provide, by email, a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay as defined in Article 2.2.1) Contractor's Partial Default in a specific segregated area of work. The Owner's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to, any breach of contract by the Contractor and any failure of Contractor to comply with the requirements of the Contract Documents and all codes, standards, laws, or regulations incorporated therein.

If during the two (2) business day period, the Contractor fails to Cure and correct the deficiency noted in the notice of Partial Default with diligence and promptness, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have, including a Termination for Cause as set forth in Article 14. If there are inadequate funds remaining the Project balance or in the Retention Escrow to address at least 150% of the costs of the default set forth in the Article 2.2 notice, the Owner may copy the Surety on the written notice of Partial Default. If a notice to the Surety is provided, except in the cases of Emergency or Critical Path Delay, the Surety has the option to take over and complete the Work described in the written notice if Surety personally delivers notice to Owner that it intends to perform such work. In the case where written notice has been provided, the Owner shall allow Surety seven (7) days to perform the Work.

The Owner shall have the right to determine the reasonable value of the Article 2.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Order.

ARTICLE 3 THE CONTRACTOR

3.1 SUPERVISION AND CONSTRUCTION PROCEDURES

3.1.1 Contractor

The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall not perform the Work without utilizing the Contract Documents or, where required, approved Submittals, Shop Drawings, or samples for any such portion of the Work. Contractor shall be responsible for the cooperating with any other contractors on the jobsite to coordinate and sequence work so as to avoid any impact on the Project Schedule. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations.

3.1.2 All Work Under the Direction of Inspector

Pursuant to Title 24 requirements, Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally) All notifications to the Inspector shall also be copied to the CM.

3.1.3 Contractor to Establish Timing and Protocol with Inspector

Contractor shall work together and with CM to 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 gives the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.

3.1.4 Verified Reports

The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Close-Out of the Project, Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.

Contractor shall fully comply with any and all reporting requirements of Education Code Sections 17315, et seq., in the manner prescribed by Title 24, as applicable.

3.1.5 Obligations not Changed by Architect's Actions

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

3.2 SUPERVISION

3.2.1 Full Time Supervision

Contractor shall keep on the jobsite at all times Work is being performed a competent, English speaking construction Superintendent satisfactory to the District. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent Contractor and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District Representative (including CM in the cases where the District has a CM representative). All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on Contractor.

3.2.2 Staff

Notwithstanding other requirements of the Contract Documents, the Contractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

3.2.3 Right to Remove

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

3.3 LABOR AND MATERIALS

3.3.1 Materials Provided by Contractor

Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other school construction. Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by Contractor at no additional cost or extension of time to the District.

3.3.2 Discipline

Contractor shall enforce strict discipline and good order among Contractor's and Contractor's Subcontractor's employees, and other persons carrying out the Contract. Contractor shall not permit employment of those persons District reasonably considers unfit or unskilled in tasks assigned to them or who fails to conduct those tasks safely.

3.3.3 Fingerprinting (Applicable at the time Project is Occupied and on all Projects where Workers will come in Contact with Pupils, such as Modernization Projects)

If applicable, Contractor shall comply with the provisions of Education Code Sections 45125.1 and 45125.2 in a method as determined by the District and must provide the District with a list of all employees providing services pursuant to this Agreement. Pursuant to Education Code Section 45125.1, Contractor shall either conduct criminal background checks of all employees of Contractor assigned to the Project site, 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 Regarding Background Checks and the corresponding Attachment "A" as found in the Contract Documents or shall be separated by a physical barrier from students.

3.3.4 Noise, Drugs, Tobacco, and Alcohol

Contractor shall take all steps necessary to insure that employees, Subcontractors and vendor's employees do not use, consume, or work under the influence of any alcohol, tobacco 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 prevent its employees or Subcontractor's employees from bringing any animal onto the Project. Contractors shall not violate any written school policies.

3.3.5 Delivery of Material

Contractor shall place orders for materials or equipment so that the Work may be completed in accordance with the Project Baseline Schedule for the Work. Under no circumstances shall materials be delivered to the Project site that are meant for another Project.

3.3.6 Liens and Other Security Interests of Subcontractors and Material Suppliers

No material, supplies, or equipment for the Work 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, security interests, liens, or charges. Contractor agrees to indemnify, defend and hold the District harmless from any liens, stop notices, or assertion of security interests, including judgments and levies. If after written notice Contractor fails to address the lien, stop notice, or other security interest, the District may proceed to address the lien, stop notice or claim and seek reimbursement from Contractor.

3.3.6.1 *Stop Payment Notice Releases.* All stop payment notice releases shall be notarized and either executed by the same person who filed the stop notice or from an officer of the Contractor or manager of Contractor authorized to release stop notices.

3.3.7 Noise Control

Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or

faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance.

3.4 WARRANTY

Contractor warrants to the District and Architect that material and equipment furnished under the Contract will be of the highest quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty to District includes, but is not limited to, in addition to any other warranties provided elsewhere, Contractor shall, and hereby does, warrant all Work after the date of Notice of Completion of Work by District and shall repair or replace any or all such Work, together with any other Work, which may be displaced in so doing that may prove defective in workmanship or materials within a one (1) year period from date of Final Completion without expense whatsoever to District.

This Article does not in any way limit the guarantee on any items for which a longer warranty is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee or warranty certificates upon the Final Completion of the Project.

3.5 TAXES

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

3.6 PERMITS, FEES AND NOTICES

3.6.1 Payment

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are necessary after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). District shall be responsible for all testing and inspection as required by the DSA on-site or within the distance limitations set forth in Article 3.14.1, unless a different mileage range is specified in the Supplemental Conditions.

3.6.2 Compliance

The Contractor shall comply with and give all notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work. Specifically, the Division of State Architect provides State oversight of the Project and enforcement of Title 24 rules and regulations. Contractor is directed to the DSA website. Contractor represents understanding and specialized knowledge of the rules governing school districts and construction of school facilities, and Contractor shall comply with the applicable rules and will file all documents required in order to ensure compliance with State, local, and other rules that apply to the Project.

3.6.3 Responsibility

Contractor shall perform all Work in conformance with every law, statute, ordinance, Building Code, rule or regulation. The Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or Project delay.

Pursuant to Title 24 Section 4-343(b),

“Contractor shall carefully study the approved Plans and Specifications and shall plan a schedule of operations well ahead of time.... All inconsistencies or items which appear to be in error in the Plans and Specifications shall be promptly called to the attention of the architect or registered engineer, through the Inspector, for interpretation or correction.”

3.7 SUBMITTALS REQUIRED AT THE COMMENCEMENT OF THE PROJECT

3.7.1 Requirements Within Ten (10) Calendar Days

Within ten (10) calendar days after Notice to Proceed, Contractor shall submit the following:

3.7.1.1 Detailed Schedule of Values

3.7.1.2 Submittal Listing and Schedule for Submittals

3.7.1.3 Critical Path Schedule

3.7.1.4 All Submittals for the Project except those specifically agreed upon by District and Architect, in writing, and shall be specifically incorporated into the Submittal section of the Schedule so as to not delay the Work. The agreement to allow a later Submittal does not mean that Article 3.3.7 is waived. Contractor shall order materials and ensure prices are honored and secured for the Project.

3.8 DOCUMENTS AND COMPUTER AT THE SITE

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

Contractor shall have an operational computer with internet access so Contractor can review and post documents as required for the Project, including but not limited to the filing and posting of DSA required documents for the Project. Contractor shall be prepared to review documents posted to the DSA Project website.

3.9 SUBMITTALS INCLUDING SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.9.1 Definitions

3.9.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded.

3.9.1.2 *Shop Drawings.* The term “Shop Drawings” as used herein means drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.

3.9.1.3 *Manufactured* applies to standard units usually mass-produced, and “Fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements.

3.9.1.4 *Submittals* is a term that includes Shop Drawings, Product Data, and samples and all Subcontractor submissions that are tracked in a Submittal Log and may include any of the noted items. Product Data that can be included in a Submittals includes a manufacturer’s product information, description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.

3.9.2 Shop Drawings.

3.9.2.1 *When Shop Drawings Are Required.* Shop Drawings are required for pre-Fabricated components and for installation and coordination of these pre-Fabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various Subcontractors and provides an opportunity for Contractor to coordinate and address conflicts between the subcontracting trades.

3.9.2.2 *Shop Drawing Requirements.* Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all Product Data from equipment manufacturers. “Product Data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a material, product, or system for some portion of the Work.

3.9.2.3 *Not a Reproduction of Architectural or Engineering Drawings.* The Shop Drawings are not a reproduction of the architectural or engineering Drawings. Instead, they must show more detail than the Construction Documents and details the fabrication and/or installation of the items to the manufacturer’s production crew or Contractor’s installation crews.

3.9.2.4 *Shop Drawings Engineering Requirements:* Some Shop Drawings require an engineer stamp to be affixed on the Drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer.

3.9.2.5 *DSA Approvals Required Prior to Work.* No work on a Shop Drawing that requires DSA approval may proceed until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for corrections in Contractor’s Schedule as required pursuant to Article 7.

3.9.2.6 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as “clouding” all qualifications, departures, or deviations from the Contract Documents. Shop Drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through Contractor. Each drawing shall have a clear space for the stamps of CM, Architect and Contractor.

3.9.3 Deferred Approvals

Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for Deferred Approvals at Division 1 of the Specifications. All Deferred Approvals shall be prepared by Contractor or Contractor’s agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 has specific requirements for Deferred Approval as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect’s consultants shall be Contractor’s.

3.9.3.1 *DSA Approvals Required Prior to Work.* No work on a Deferred Approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor’s Schedule.

3.9.4 Submittals and Samples

3.9.4.1 *Information Required with Submittals:* Manufacturer, trade name, model or type number, quantities, size, physical characteristics, finishes, options, and other information must be provided by the Contract in sufficient detail to allow Architect and Engineer to compare the submitted items with the specified products, acceptable products listed in the Specifications and addenda and to choose any options available. Information should be furnished describing the normal use and expected performance of the product.

3.9.4.2 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by Contractor as part of Contractor’s responsibilities for the Project and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.

3.9.4.3 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the District is utilizing items Standardized or pre-selected by District, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor in duplicate to indicate the full range of characteristics which will be present in the finished products. All samples shall be marked, tagged, or otherwise properly identified with the name of the manufacturer’s labels, application instructions, submitting party, the name of the Project, the purpose for which the samples are submitted and the date and accompanied by a letter of transmittal containing sample information together with the Specification section number. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.9.4.4 *Architect’s Review.* The Architect and CM will review and, if appropriate, approve submissions and will return them to Contractor with the Architect’s stamp and signature applied

thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures. CM may, in some cases, reject samples that are not in conformance with Contract requirements without sending the Submittal on to the Architect.

3.9.4.5 *Copies Required.* Each Submittal shall include one (1) legible, reproducible (if electronic is available, electronic copies shall also be provided) and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the District or Architect.

3.9.4.6 *Corrections.* Contractor shall make all corrections required by the Design Team and shall promptly resubmit corrected Submittals until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of Shop Drawings, Product Data, or samples are subject to charge to the Contractor pursuant to Article 4.5.

3.9.4.7 *Approval Prior to Commencement of Work.* No portion of the Work requiring a Shop Drawing or sample submission or other Submittal shall be commenced until the submission has been reviewed by Contractor and CM and approved by Architect unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Submittals.

3.9.4.8 *District's Property.* All Submittals, Shop Drawings, computer disks, BIM modeling information, Clash Checks, schedules, annotated Specifications, samples and other Submittals shall become the District's property upon receipt by the District or Architect.

3.9.5 Schedule Requirements for Submittals

Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, samples, etc.) so that the Project may be completed in accordance with the current Project Schedule, but in no event later than thirty-five (35) days after the Notice to Proceed is issued except as approved in writing by the District's representative. No extensions of time will be granted to Contractor because of its failure to have Submittals submitted in accordance with the requirements of this Article and the Project Baseline Schedule or Updated Schedule. Subcontractors for Contractor shall submit Submittals for the review of the District, the Contractor, and the Architect through the Contractor.

3.9.6 General Submittal Requirements

3.9.6.1 *Contractor Coordination.* Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Shop Drawings:

"The [Contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the Shop Drawings and Submittals that does not conform to the Contract Documents. This Shop Drawing or Submittal has been coordinated with Shop Drawings and Submittals that may

affect my Work and this duty of coordination has not been delegated to subcontractors, material suppliers, the Architect, or the Engineers on this Project.

Signature of Contractor and date

3.9.6.2 *No Deviation from Contract Documents.* The submission of the Shop Drawings, Product Data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Article 3.10.4. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Shop Drawings. However, Shop Drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 3.10.4, "Substitutions."

3.9.6.3 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by District and Architect shall not relieve the Contractor from its responsibility in preparing and submitting proper Submittals and Shop Drawings in accordance with the Contract Documents.

3.9.6.4 *Incomplete Submittals.* Any submission, which in CM or Architect's opinion is incomplete, contains errors, or has been checked superficially, will be returned not reviewed by the Architect for resubmission by Contractor. The Contractor shall be responsible for any related delays and shall not be the basis for any Claim.

3.9.6.5 *Shop Drawings and Submittals Shall Not Be Used as a Method to Make a Substitution.* Shop Drawings and Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents.

3.9.6.6 Extent of Review. In reviewing Shop Drawings, the Design Team and engineers for the Project will not verify dimensions and field conditions. Review of field dimensions is Contractor's responsibility. The Architect will review and approve Shop Drawings, Product Data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents only and shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents.

3.10 SUBSTITUTIONS

3.10.1 Definition

A Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by Contractor. For this Project, a Substitution is subject to the filing of a Construction Substitution Request Form at the time of bid and meeting the requirements of this Article.

3.10.2 One Product Specified

Unless the Specifications state that no substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of 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

description of the material, process, or article desired and shall be deemed to be followed by the words “or equal.” Subject to the requirements of properly submitting a Substitution Request for as Addressed in Article 3.10.4, Contractor 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 Documents.

After the District’s receipt of such evidence by the bidder, the 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 at the sole discretion of the District. Any request for substitution that is granted by the District shall be documented and processed through a Change Order. Contractor must submit a complete Submittal of the requested substitution and a Shop Drawing showing configuration, dimensions, and other critical information associated with the substitution that meets the requirements of Article 3.9. The Design Team may condition its approval of any substitution upon delivery to the District of an extended warranty or other assurances of adequate performance of the substitution. Any and all risks of delay due to approval by the DSA or any other governmental agency having jurisdiction shall be on the bidder.

If the Design Team, as a whole, accepts a proposed substitution, Contractor agrees to pay for all DSA review costs, engineering and design services, including, without limitation, compensation to the Architect and affected engineers for their required time to process such substitution through the DSA, if required, and to make all changes and adjustments in materials or the work of all trades directly or indirectly affected by the substituted item or items at no cost to the District.

3.10.3 Substitution Requests After Bid

The District, in its sole discretion, may accept a request for substitution by the Contractor or may request Contractor substitute a specified item. Any substitutions requested after bids are opened shall be subject to the same conditions and requirements set forth in Article 3.10.4 above. If any substitutions, that in the District or Design Team’s determination, results in a credit to the District, the credit amount shall be agreed upon in writing, otherwise, the request for substitution shall be deemed denied.

3.11 INTEGRATION OF WORK

3.11.1 Scope

Contractor shall be responsible for cutting, fitting, or patching to complete the Work and to make all parts fit together properly. When modifying existing work or installing new Work adjacent to existing work, Contractor shall match, as closely as conditions of Site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work at no additional cost to District. All cost caused by defective or ill-timed work shall be borne by Contractor. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines. New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at Contractor’s risk and subject to replacement at its own expense without reimbursement under the Contract. Schedule delays resulting from Agency approvals for unauthorized work shall be Contractor’s responsibility. Permission to patch any areas or items of the Work shall not constitute a waiver of the Design Team’s right to require complete removal and replacement of the areas of items of the Work if the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

3.12 ALLOWANCES

3.12.1 Allowances are to be included in the base bid and listed separately in the Schedule of Values and Application for Payment. Contractor shall submit a request for allowance disbursement with all substantiating and required data. Allowances shall be disbursed without Contractor overhead and any other mark-ups. The Use of allowances are only as specifically authorized by the CM and District and only for the specific area of Work noted and must be approved before allowances are disbursed.

3.13 CLEANING UP

3.13.1 Contractor's Responsibility to Clean Up

Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment and shall remove all such waste on a daily basis. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the Architect within five (5) days of request. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.

3.13.2 General Final Clean-Up

Upon completion of Work, Contractor shall employ experience workers or professional cleaners for final cleaning. Clean each surface to the condition that would be considered move-in condition as expected in a normal, commercial, building cleaning and maintenance program, including but not limited to removal of all errant stains, temporary labels and films, polish all finished surfaces, vacuum carpeted surfaces. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.

If the Contractor fails to clean as provided in the Contract Documents, the District may do so and the cost thereof shall be the responsibility of the Contractor and District shall issue a Deductive Change Order.

3.14 ACCESS TO WORK

Contractor shall provide the CM, District, the Architect, Engineers and the Inspector of Record, access to the Work in preparation and progress wherever located. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

3.14.1 Special Inspections, Inspections or Tests Out of State, Out of Country or Remote from Project

If Contractor has a Subcontractor or supplier that requires in plant or special inspections or 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 Special Inspector or Inspector shall be provided access so the special inspection or inspection may occur in the remote location. In some cases, the DSA Inspector may also require access in addition to Special Inspectors and individuals performing tests. Inspections/tests shall occur during normal work hours.

3.15 ROYALTIES AND PATENTS

3.15.1 Payment and Indemnity for Infringement

Contractor shall hold and save the District and its officers, agents, and employees, the CM, the Architect, and the Architect's consultants harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the District, unless otherwise specifically provided in the Contract Documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of the District, the Architect, or the Architect's consultants.

3.16 INDEMNIFICATION

3.16.1 Contractor

See Agreement Form. Contractor shall ensure that its contract with each of its Subcontractors contains provisions requiring the Subcontractors to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the indemnity and hold harmless language in the Agreement Form.

Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the District, Architect, CM, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act ("ADA").

3.16.2 Special Notice Re Indemnification of Americans with Disabilities Act Claims

Some of the requirements in the Plans and Specifications are meant to comply with the Americans with Disabilities Act ("ADA"). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights violation and subjects the District to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney's fees required to enforce the ADA violation. ADA claims arising from failure to comply with Plans and Specifications shall be indemnified, held harmless and defended by Contractor and withholdings related to ADA violations or potential violations shall include redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project.

3.17 SUBMISSION OF DAILY REPORTS

3.17.1 General

By 10:00 a.m. on the following business day, Contractor shall submit a Daily Report to the Inspector and copy the Architect for the previous day's Work. The original Daily Report is to be provided to the CM and copies sent to the Architect and the Inspector. Daily Reports shall be prepared on forms approved by the District, together with applicable delivery tickets, listing all labor (including names of workers, classifications, hours worked, and hourly rates), materials (including quantities and unit prices), and equipment involved for that day. Other services and expenditures shall be described in the Daily Report in detail as the District requires. The District reserves the right to note inconsistencies or inaccuracies in

the Daily Reports. In such cases, pertinent notes shall be entered by each party to explain points which cannot be resolved that day. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

If Contractor does not submit its Daily Report by 10 am the next business day, the Inspector of Record shall prepare a Daily Report addressing each of the above items. The cost for the Inspector's services to prepare the Daily Report shall be addressed through a Deductive Change Order.

3.18 AS-BUILT DRAWINGS AND ANNOTATED SPECIFICATIONS

Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to Specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. Contractor shall update As-Built Drawings with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered. The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold Progress Payments. Contractor shall obtain and pay for reproducible Plans upon Beneficial Occupancy. Contractor shall deliver Plans to CM. Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.

3.18.1 As-Built at Completion of Work

Upon completion of the Work and prior to and as a condition precedent to Application for Retention Payment, Contractor will provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the District. Contractor shall certify the As-Built as a complete and accurate reflection of the actual construction conditions of the Work by affixing a stamp indicating the Drawings are As-Built and certifying accuracy on the final set of As-Built. Failure to deliver a complete As-Built Drawings and Annotated Specifications may result in significant withholdings to ensure Work is properly documented.

3.19 EQUIPMENT MANUALS

Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work.

3.20 DIR REGISTRATION

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.

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 4
ADMINISTRATION OF THE CONTRACT AND CLAIMS

4.1 ARCHITECT

4.1.1 Replacement of Architect

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

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 Status

Pursuant to Titles 24 of the California Code of Regulations and as required pursuant to the Field Act, Education Code 17280 et seq., the Architect will provide administration of the Contract Documents and the Work, and will be the District's representative during construction, as well as during the one (1) year period following the commencement of any warranties. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents. The Architect will visit the Site at intervals necessary in the judgment of the Architect to become generally familiar with the progress and quality of the Work and to determine in general if the Work is being performed in accordance with the Contract Documents and as otherwise required by DSA. The Design Team shall not be responsible for Contractor's, Contractor's Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The Design Team shall not have control over or charge of acts or omissions of Contractor, Contractor's Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Team in the Design Team's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than Contractor.

4.2.2 Communications Facilitating Contract Administration

All communication shall be through the CM (unless otherwise directed) with copies to the District, Architect and Inspector. Where direct communication is necessary between the District and Contractor, the District's communication shall be through the District's Representative and/or the CM. Contractor shall not rely upon any communications from the District that is not from the District's Representative. Communications by and with the Architect's consultants shall be through the CM and through Architect. Communications by and with Contractor's Subcontractors and material or equipment suppliers shall be through Contractor. The CM shall be the main point of contact for communication of information. Copies should be sent to the Architect, District Representative and Inspector.

4.2.3 Payment Applications

The Architect will review and make recommendations to the District regarding the amounts due Contractor on the Certificates for Payment pursuant to Article 8.3.1 and subject to the Inspector's and CM's review, and Architect's observation. This review of Payment Applications is sometimes called a

“Pencil Draft.” Return of a Pencil Draft shall constitute the District’s dispute of the Payment Application that has been submitted. Contractor shall promptly respond to Pencil Drafts or Contractor’s Payment Applications may be delayed. Contractor’s failure to promptly respond to a Pencil Draft shall qualify as a delay in the Prompt Payment of a Request for Payment or Request for Retention.

4.2.4 Rejection of Work

In addition to the rights, duties, and obligations of the Inspector under this Article, the Design Team may reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect (and/or CM) may recommend to the District that the District require additional inspection or testing of the Work in accordance with Article 12.4, whether or not such Work is Fabricated, installed, or completed. District may have Non-Conforming Work removed and replaced pursuant to Article 8.7. However, neither this authority of the Architect (or CM) nor a decision made in good faith either to exercise or not to exercise such authority shall create a duty or responsibility of the Architect (or CM) to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

Contractor shall, without charge, replace or correct Work found by the District to not be in conformance to Contract requirements. Contractor shall promptly segregate and remove rejected materials from the Project site.

This section is in addition to and separate from the legal duties associated with a Notice of Non-Compliance and the remedies associated with a Notice of Non-Compliance.

4.2.5 Interpretation

The Architect will interpret and decide matters concerning performance and requirements of the Contract Documents. Architect shall make clarifications as necessary to interpret the Contract Documents.

4.3 PROJECT INSPECTOR

4.3.1 General

One or more Project Inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.

4.3.2 Inspector’s Duties and DSA Noted Timelines for Inspection

All Work shall be under the observation of the Inspector. Contractor, with the assistance of the CM, 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. 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 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 Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is 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 at Article 1.17. Inspector shall work with Contractor to present incremental approval proposals to DSA.

4.3.3 Inspector's Authority to Reject or Stop Work

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. Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 [Reserved]

4.3.5 Testing Times

The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by Contractor outside of the normal eight (8) hour day shall constitute an authorization from Contractor to the District to provide inspection and testing as required at Contractor's cost outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. It is 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).

4.3.6 Special Inspections, Inspections or Tests Out of State, Out of Country or Remote from Project

If Contractor has a Subcontractor or supplier that requires in plant or special inspections or 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, 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.

4.4 STOP WORK ORDER

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) and Education Code Section 81133.5, 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).

4.5 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES

If at any time prior to the completion of the requirements under the Contract Documents, the District is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the District may unilaterally issue a Deductive Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. A Deductive Change Order shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

4.6 DISPUTES AND CLAIMS

4.6.1 Decision of Architect

Disputes 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 4.6.2 within ten (10) days after Contractor's Article 6 request for Change is denied. 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 4.6.5, shall be required as a condition precedent to proceeding with remedies set forth in Article 4.6.9 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 Final Completion.

The condition precedent of an Architect decision shall be waived if: (1) the position of Architect is vacant; (2) the Architect has not received evidence or has failed to render a decision within agreed time limit; (3) the Architect has failed to take action required under Article 4.6.5 within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the

Architect; or (4) the Claim relates to a stop notice claim not arising from any extra Change Order or Immediate Change Directive for which approval has not been provided.

4.6.2 Architect's Review

The Architect (and CM) will review Disputes and take one or more of the following preliminary actions upon receipt of a Dispute: (1) request additional supporting data or documentation from the Contractor; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) recommend rejection of the Claim in whole or in part, stating reasons for rejection; (4) recommend approval of the claim; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the Surety, if any, of the nature and amount of the claim. The Architect's (and CM's) review shall be impartial and meant to resolve Disputes. 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 between the District and Contractor.

If Architect requests additional supporting data, Contractor agrees to provide such data promptly, and in no event later than 30 days after the Architect's request. Failure to provide such data within 30 days of the Architect's written request shall: a) create a presumption that any additional supporting data or documentation either does not exist or would be unfavorable to Contractor's claim; and b) preclude Contractor from introducing any such data or documentation in any dispute resolution proceeding, including arbitration or litigation.

4.6.2.1 Architect's Written Decision.

The Architect shall issue a written decision as soon as reasonably practical based on the information submitted by the Contractor. The Architect's decision may: (1) Recommend rejection of the claim in whole or in part, stating reasons for rejection; (2) recommend approval of the claim; or (3) suggest a compromise. The parties may agree to abide by the Architect's decision, in which case the Dispute shall be considered resolved and the Architect (and/or CM) will prepare a Change Order or obtain appropriate documentation to document the terms for Board approval.

4.6.3 Unresolved Disputes

After the Architect's written decision, if the District and Contractor do not agree on a resolution, the Contractor shall, within ten (10) days after the Architect's written decision, assemble all the documents involved in the Dispute including copies of all back-up documentation of costs and the basis for the Dispute and notify the District through the CM to the Claim is still in Dispute and to what extent.

Thereafter, Contractor must comply with the dispute resolution requirements of Public Contract Code sections 20104 et seq., and Public Contract Code section 9204, which are incorporated herein by reference to the extent required by law. Contractor shall also be required to comply with the Government Claims Act, Government Code sections 900 et seq. Contractor acknowledges that nothing in this Agreement is intended to be a claims provision established by agreement made pursuant to Government Code sections 930 or 930.2 and that Contractor must comply with the claims presentation requirements Government Code sections 910 et seq.

4.6.4 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 Dispute or 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.

4.6.5 Issues and Disputes Involving Hazardous Substances, Excavation, and Trenching

When any excavation or trenching extends greater than four feet below the surface or if any condition involving hazardous substances are encountered:

- a. Immediately upon discovery, Contractor shall promptly, and before the following conditions are disturbed, notify the District, by telephone and in writing, of the condition except:
 1. If such condition is a hazardous waste condition and Contractor's bid includes removal or disposal of hazardous substances. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law. In such case, the notice bulletin procedures of Article 6 apply.
 2. Subsurface or latent physical conditions at the Site differing from those indicated in the Drawings, Specifications, Soils Report, and from Contractor's own investigation under Article 2.1.
 3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.
- b. The District shall investigate the conditions, and if District finds that the conditions do materially so differ, do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work shall issue a Change Order or Construction Change Document under the procedures described in the Contract.
- c. In the event that a dispute arises between the public entity or District and Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled Completion Date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.6.6 Dispute Concerning 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 7. Upon completion of the procedures set forth under Article 7 Contractor must then comply with the requirements in this Article.

4.6.7 Claims Procedures

4.6.7.1 Contractor must comply with the dispute resolution requirements of Public Contract Code sections 20104 et seq. and Public Contract Code section 9204, which are incorporated herein by reference to the extent required by law. Contractor shall also be required to comply with the Government Claims Act, Government Code sections 900 et seq. Contractor acknowledges that nothing in this Agreement is intended to be a claims provision established by agreement made pursuant to Government Code sections 930 or 930.2 and that Contractor must comply with the claims presentation requirements Government Code sections 910 et seq.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 Subcontractual Relations Bound to Same Contract Terms at Contractor

By appropriate agreement, written where legally required for validity, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the same obligations and responsibilities, assumed by Contractor pursuant to the Contract Documents. Each subcontract agreement shall preserve and protect the rights of the District and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

5.1.2 Subcontractor Licenses and DIR Registration

All Subcontractors shall be properly licensed by the California State Licensing Board. 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.

5.1.3 Substitution of Subcontractor

Substitution of Subcontractors shall be permitted only as authorized under Public Contract Code §§ 4107 et seq. Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the completion of the Project.

5.1.4 Contingent Assignment of Subcontracts and Other Contracts

Each subcontract, purchase order, vendor contract or agreement for any portion of the Work is hereby assigned by Contractor to the District provided that:

- a. Such assignment is effective only after Termination of this Contract with Contractor by the District as provided under Article 13 and only for those subcontracts and other contracts and agreements that the District accepts by notifying the Subcontractor or Materialman (as may be applicable) in writing; and
- b. Such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.
- c. Contractor shall include adequate provisions for this contingent assignment of subcontracts and other contracts and agreements in each such document.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 Separate Contracts.

6.1.1.1 Owner reserves the right to let other contracts in connection with this Work. Contractor shall afford other contractors reasonable opportunity for (1) introduction and storage of their materials; (2) access to the Work; and (3) execution of their work. Contractor shall properly connect and coordinate its work with that of other Contractors.

6.1.1.2 Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Owner in prosecution of the Project and the potential impact of such Work on the Baseline Schedule or Schedule updates.

6.1.1.3 Nothing herein contained shall be interpreted as granting to Contractor the exclusive occupancy at the site of Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project Site. If execution of any contract by the Owner is likely to cause interference with Contractor's performance of this Contract, once Contractor provides Owner timely written notice and identifies the Schedule Conflict, Owner 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.

6.1.1.4 Owner shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts at the Project necessary for the performance of the Project (examples include Electrical Utility Contractor, separate offsite contractor, a separate grading contractor, furniture installation etc.).

6.2 [Reserved]

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.12, the Owner may clean up and allocate the cost among those it deems responsible.

GENERAL CONDITIONS

**ARTICLE 7
CHANGES IN THE WORK**

7.1 CHANGES IN WORK

7.1.1 The District, without invalidating the contract and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the contract sum being adjusted accordingly. All such work shall be executed under conditions of the original contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. Contractor shall increase the amounts of his payment and performance bonds in proportion to any increase in the contract price. In giving instructions, Architect shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the 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 the District, and no claim for addition to contract sum shall be valid unless so ordered.

Value of any such extra work, change, or deduction shall be determined at the discretion of the District in one or more of the following ways:

- (a) By acceptance lump-sum proposal from Contractor;
- (b) By unit prices contained in Contractor’s original bid and incorporated in contract documents or fixed by subsequent agreement between the District and Contractor;
- (c) By cost of material and labor and percentage for overhead and profit. The following form shall be followed as applicable for additions and deduction to the contract:

	<u>EXTRA</u>	<u>CREDIT</u>
(1) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(2) Actual Labor Costs, including FICA, Medicare, FUTA, ETT and SUI, and Workers’ Compensation (attach itemized hours and rates and proof of costs)	_____	_____
(3) Equipment (attach invoices)	_____	_____
(4) Subtotal	_____	_____
(5) Total Overhead and Profit (inclusive of Liability and Property Damage Insurance): Not to exceed fifteen percent (15%) of Item (d) .	_____	_____
(5) Subtotal	_____	_____
(7) Bond not to exceed one percent (1%) of Item (f)	_____	_____
(8) TOTAL	_____	_____

GENERAL CONDITIONS

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

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 completion of the contract, Contractor shall notify the District in writing, of such claim within ten (10) days from the date he has actual or constructive notice of the factual basis supporting the claim. The contractor's failure to notify the District within such ten (10) day period shall be deemed a waiver and relinquishment of the 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. If the Contractor is delayed in completing the work by reason of any change made pursuant to this Article, the time for completion of the work shall be extended by Change Order for a period commensurate with such delay. The Contractor shall not be subject to any claim for liquidated damages for this period of time, but the Contractor shall have no claim for any other compensation for any delay.

Changes in plans or specifications shall be made by addenda or change orders approved by the Office of the State Architecture as provided in Section 4-338 of Title 24 of the California Code of Regulations.

Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

7.1.1.1 *Adjustment for Time and Compensable Delay.* A CO shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in Article 7 of the General Contract. A schedule fragment showing the time delay must be submitted with the CO. Any changes in time will be granted only if there is an impact to the critical path. If Contractor fails to request a time extension in a CO, then Contractor is thereafter precluded from requesting or claiming a delay.

7.1.2 Notice Required

If Contractor desires to initiate a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, Contractor shall notify the applicable party responsible for addressing the Dispute or Claim pursuant to Article 4.6. No Claim or Dispute shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such Claim shall be authorized by a CO.

7.1.3 Applicability to Subcontractors

Any requirements under this Article 7 shall be equally applicable to CO's, COR's or ICD's issued to Subcontractors by Contractor to the same extent required by the Contractor.

GENERAL CONDITIONS

ARTICLE 8 TIME AND SCHEDULE

8.1 PROGRESS SCHEDULE

8.1.1 Progress Schedule

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. The District may give a Notice to Proceed within ninety (90) days of the award of the bid by the District. Within 10 days of the District's issuing the Notice to Proceed, Contractor shall submit to the District's Representative an estimated progress schedule ("Progress Schedule") for the District's approval. The Progress Schedule shall indicate graphically the beginning date of the Project, the Contract Time, the critical path, and the duration and completion dates for all phases of construction. The Progress Schedule shall include a reasonable estimate of the time required for weather delays, governmental delays, and the requisite time to complete Punch List. If the Contractor Fails to submit its Baseline Schedule within the ten (10) days noted, then District may withhold processing and approval of progress payments.

8.1.1.1 *No Early Completion.* Contractor shall not submit a schedule showing early completion without indicating float time through the date set for Project completion by Owner. Contractor's 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.

8.1.1.2 *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

8.2 HOURS OF WORK

8.2.1 Sufficient Forces to Perform Work During Working Hours

Contractor shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Project Schedule. Work shall be performed during regular working hours as permitted by the appropriate governmental agencies. In the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

If work will be required outside of normal hours, the Project Manager will specify either a single shift of eight (8) consecutive hours or forty (40) hours that will constitute a work week, both with applicable prevailing wage rate(s).

Project manager must verify that working hours comply with local codes and secure permits as necessary. **SEE SPECIAL CONDITIONS FOR ADDITIONAL INFORMATION.**

8.2.2 Costs for After Hours Inspections

If the Work done after hours is required by the Contract Documents, a Contractor Recovery Schedule, or as a result of the Contractor's failure to plan, and inspection must be conducted outside the Inspector's regular working hours, the costs of any after hour inspections, shall be borne by the Contractor.

GENERAL CONDITIONS

If the District allows Contractor to do Work outside regular working hours for the Contractor's convenience, the costs of any inspections required outside regular working hours shall be addressed through a Deductive Change Order shall be issued from the next Progress Payment.

8.3 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.3.1 Delay

Except and only to the extent provided under this Agreement, by signing the Agreement, Contractor agrees to bear the risk of delays to completion of the Work; and that Contractor's bid for the Contract was made with full knowledge of this risk. In agreeing to bear the risk of delays to complete the Work, the occurrence of events that delay the Work shall not excuse Contractor from its obligation to achieve Completion of the Project within the Contract Time, and shall not entitle the Contractor to an adjustment to the Contract time.

8.3.2 Liquidated Damages

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. IF THE WORK IS NOT SUBSTANTIALLY COMPLETED IN THE TIME SET FORTH IN THE AGREEMENT, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGES. IT BEING IMPRACTICAL AND UNFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THE CONTRACTOR SHALL PAY TO THE DISTRICT THE AMOUNT LIQUIDATED DAMAGES SET FORTH IN THE AGREEMENT, FOR EACH CALENDAR DAY OF DELAY IN REACHING SUBSTANTIAL COMPLETION (SEE ART 1.1.33). ANY LIQUIDATED DAMAGES RECOVERED BY THE DISTRICT SHALL NOT, HOWEVER, LIMIT THE DISTRICT'S RIGHT TO SEPARATELY RECOVER ANY ACTUAL OUT-OF-POCKET DAMAGES IT SUFFERS DUE TO CONTRACTOR'S DELAY. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF PURSUANT TO GOVERNMENT CODE SECTION 53069.85.

8.3.3 Excusable Delay

Contractor shall not be charged with Liquidated Damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its Subcontractors, including acts of God, as defined in Public Contract Code Section 7105, acts of enemy, epidemics and quarantine restrictions on the condition that the Contractor comply with the notification procedures in the Agreement. Contractor shall within five (5) calendar days of beginning of any such delay notify District in writing of causes of delay with justification and supporting documentation; 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. 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. An extension of time may only be granted after demonstrating that any category of work that is delayed is on the critical path of the Project and results in a delay of the Contract Date.

8.3.3.1 *Excusable Delay Is Not Compensable.* No extended overhead, general conditions costs, impact costs, out-of-sequence costs or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project Schedule.

GENERAL CONDITIONS

8.3.4 Adjustment for Compensable Delays.

Adjustments in the Contract Price may be adjusted for a delay if, and only if, Contractor undertakes the following

- d. Contractor submits a timely COR or CO pursuant to the requirements of the Agreement.
- e. Contractor submits a fragnet showing the critical path delay caused by the COR, CO, Changed Condition, CCD, or ICD
- f. Contractor has addressed all required float days in the fragnet.
- g. Contractor submits a complete breakdown and supporting documentation of all costs Contractor seeks arising from the delay.

8.3.5 No Additional Compensation for Coordinating Governmental Submittals and the Resulting Work

CONTRACTOR HAS PLANNED ITS WORK AHEAD OF TIME AND IS AWARE THAT GOVERNMENTAL AGENCIES, SUCH AS THE GAS COMPANIES, ELECTRICAL UTILITY COMPANIES, WATER DISTRICTS AND OTHER AGENCIES MAY HAVE TO APPROVE CONTRACTOR PREPARED DRAWINGS OR APPROVE A PROPOSED INSTALLATION. CONTRACTOR HAS INCLUDED DELAYS AND DAMAGES WHICH MAY BE CAUSED BY SUCH AGENCIES IN CONTRACTOR'S BID AND HAS INCLUDED ADEQUATE TIME IN THE CONTRACTOR'S BASELINE SCHEDULE. FAILURE TO ADEQUATELY PLAN AND SCHEDULE IS NOT A BASIS TO USE GOVERNMENTAL DELAY FLOAT.

GENERAL CONDITIONS

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM/ CONTRACT PRICE

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

9.2 COST BREAKDOWN/SCHEDULE OF VALUES

Within 10 days after issuance of the Notice to Proceed, Contractor shall furnish, as submittals for the Project: 1) a detailed breakdown of the Contract Price (hereinafter "Schedule of Values") for each site, building, phase, category of Work, or other meaningful method to measure the level of Project Completion as determined by the District shall be submitted as a Submittal for the Project; 2) a schedule of estimated monthly payment requests that will become due to the Contractor as the Project progresses; and 3) the name, address, telephone number, telecopier number, California State Contractors License number, classification of all parties furnishing labor, material, or equipment for completion of the Project, and the monetary value thereof.

9.2.1.1 *Based on Contractor Bid Costs.* The Schedule of Values shall be based on the costs from Contractor's bid to the District and shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.

9.2.1.2 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the District.

9.2.1.3 *District Approval Required.* The District shall review all submissions received pursuant to this Article in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.

9.3 PROGRESS PAYMENTS

9.3.1 Payments to Contractor

On or before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the Architect an itemized Application for Progress Payment for operations completed in a form and to the level of detail as reasonably required by the District.

Unless there is a resolution indicating that the Work for the Project is substantially complex, 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 Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part. The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Project and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents.

GENERAL CONDITIONS

No payment requests will be processed or approved unless Contractor has submitted copies of the certified payroll records for the Work which correlates to the payment request and Contractor has submitted a proper CPM schedule. Further, the Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for Work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

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 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 Retention 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.

9.3.2 No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Contractor specifically understands Title 24 Section 4-343 which states:

“It is the duty of the contractor to complete the work covered by his or her contract in accordance with the approved Plans and Specifications therefore. The contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of such duties... In no case, however, shall the instruction of the Architect or registered Engineer be construed to cause work to be done with is not in conformity with the approved plans, specifications, and change orders...”

Notwithstanding any payment, the District may enforce each and every provision of this Contract which includes, but is not limited to, the Performance Bond and Payment Bond. The District may correct any error subsequent to any payment. In no event shall the Contractor or the Surety be released or exonerated from performance under this Contract when the District overpays the Contractor based upon any mistake, inaccuracy, error or falsification in any estimate that is included in any Request for Payment.

9.4 STOP PAYMENT NOTICE CLAIMS AND WARRANTY OF TITLE

Contractor warrants title to all Work. Contractor further warrants that all Work is free and clear of liens, claims, security interests, stop notices, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Failure to keep work free of liens, stop notices, claims, security interests or encumbrances is grounds to make a claim against Contractor's Payment and Performance Bond to immediately remedy and defend. If the Contractor fails to furnish to the District within ten (10) calendar days after written demand by the District, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

GENERAL CONDITIONS

9.5 WITHHOLDING PAYMENT

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District from any breach of the Agreement or Contractor's failure to comply with any law or regulation, including but not limited to: unremedied defective work, stop payment notices, incomplete work, damage to the District or other party, failure to timely provide submittals, deviations from the contract documents or requirements, any withholding required or authorized by applicable statute or regulation, failure to provide releases from material suppliers or Subcontractors when requested to do so or incomplete Punch List items. When the grounds for withholding payment are cured by Contractor, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

9.6 NONCONFORMING WORK

Contractor shall promptly remove from premises all Work identified by District as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract 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.

If Contractor does not remove such Work which has been identified by District as failing to conform to the Contract Documents 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.

9.7 COMPLETION OF THE WORK

9.7.1 Close-Out Procedures—Punch Lists

9.7.1.1 *Incomplete Punch Items.* When the Contractor considers the Work Substantially Complete (See Article 1.1.33 for definition of Substantially Complete), the Contractor shall prepare and submit to the District a comprehensive list of minor items to be completed or corrected (hereinafter "Incomplete Punch Items" or "Punch List"). If any of the conditions noted in Article 1.1.33 as defining Substantial Completion are not met, the Inspector, Architect or District may reject Contractor's Incomplete Punch Items as premature. If the Architect and Inspector commence review of Incomplete Punch Items, all rights are reserved until the Project actually meets the definition of Substantially Complete. The Contractor shall proceed promptly to complete and correct the Incomplete Punch Items and notify the District in writing when Contractor completes the Punch List.

9.7.1.2 *Owner's Punch List.* Once the Inspector and the Architect determine the Project is Substantially Complete, a Certificate of Substantial Completion shall be issued and the Inspector and Architect shall prepare a list of items ("Owner's Punch List") which is an inspection report of the Work, if any, required in order to complete the Project. They shall provide the Owner's Punch List to the Contractor. The Owner's Punch List shall include all items required to be completed or corrected in order to bring the Project into compliance with the Contract Documents and ensure compliance with the DSA Approved Plans so a final DSA Close-

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Out is approved. When all Work for the Project is Complete, including correction of the Incomplete Punch Items and the Owner's Punch List, and all Work complies with the approved Contract Documents and Change Orders, and DSA Close-Out is approved, the Project has reached Final Completion.

9.7.1.3 *Time for Completion of Punch List.* Contractor shall have thirty (30) days ("Punch List Time") to complete the Owner's Punch List on the Project. During the Punch List Time, the Contractor's Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Owner's Punch List is not completed at the end of the Punch List Time, then Contractor shall issue a valued Owner's Punch List within 5 days after the date the Punch List Time ends. If Contractor does not issue such a list, or the District determines the values in the Contractor's valued Owner's Punch List are not reasonable, the District or Architect may issue a valued Owner's Punch List to the Contractor and withhold up to 150% of the value of the Owner's Punch List Work.

9.7.2 Close-Out Requirements for Final Completion of the Project

- h. Utility Connections. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected

As-Builts Up to Date and Complete. The intent of this procedure is to obtain an exact "As-Built" record of the Work upon completion of the Project. The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts and shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built Drawings. In addition, any work that is not installed as originally indicated on the approved Drawings and other Contract Documents must be shown on the As-Builts.

1. Withholding for Failure to Deliver Proper As-Builts Upon completion of the Work and as a condition precedent to approval of Retention Payment, Contractor shall obtain the Inspector's approval of the "As-Built" information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the District. District may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As -Built Drawing.

All DSA Close-Out requirements (See DSA Certification Guide) Contractor is also specifically directed to Item 3.2 in the DSA Certification Guide and the applicable certificates for the DSA-311 form.

Submission of Form 6-C. Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the construction by Contractor and utilized to verify under penalty of perjury that the

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Work performed by Contractor complies with the DSA approved Contract Documents.

ADA Work that must be corrected to receive DSA certification.

Maintenance Manuals. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts list, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½” x 11” binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.

2. Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.

Inspection Requirements. Before calling for final inspection, Contractor shall determine that all Work has been performed and that it has completed the Owner’s Punch List. In addition, the jobsite grounds shall have been cleared of Contractor’s equipment, raked clean of debris, and trash removed from Site.

9.7.3 Final Inspection (Owner’s Punch List Completion)

Contractor shall comply with Punch List procedures under Article 8.7.1 and thereafter immediately notify the District and Architect, who shall again inspect such Work. If the Architect and the District find the Work contained in Owner’s Punch List has been acceptably completed and corrected in compliance with the Contract Documents the Work shall have reached Final Completion. Architect shall notify Contractor, who shall then submit to the Architect its Application for Retention Payment. This Application for Retention Payment shall contain any deductions, back charges, and credits claimed by the District, regardless of whether Contractor disputes those deductions, back charges, and credits.

Upon receipt and approval of Application for Retention Payment, the Architect shall issue a Form 6 stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The District shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (which, absent unusual circumstances, will occur when the Owner’s Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from the District, pay the amounts due Subcontractors.

If the Architect and the District find that the Contractor has failed to adequately complete or correct the Work contained in the Owner’s Punch List, then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the District or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.

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9.7.4 Costs of Multiple Inspections

More than two (2) requests of the District to make inspections required under Article 8.7.3 shall be considered an additional service of Architect, Inspector, Engineer or other consultants shall be the Contractor's responsibility pursuant to Article 4.5 and all subsequent costs will be prepared as a Deductive Change Order.

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 District's Rights

The District may occupy or use any completed or partially completed portion of the Work at any stage. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. If District and Contractor cannot agree as to responsibilities such disagreement shall be resolved pursuant to Article 4.6. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the District. Immediately prior to such partial occupancy or use, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9 FINAL PAYMENTS AFTER COMPLETION

9.9.1 Final Progress Payment

The Final Progress Payment is the payment that will bring the total of all payments under the Agreement to 90 or 95 percent of the Contract Price, depending on the whether the Project's retention is 5 percent or 10 percent. The Final Payment Application is the payment application for the Final Progress Payment. The Contractor must achieve Substantial Completion before the District will accept the Final Payment Application. In addition, before the District is required to make the Final Progress Payment, the following items must be complete:

- i. Inspector sign-off of each item in the DSA 152 Project Inspection Card;
- Removal of temporary facilities and services;
- Testing, adjusting and balance records are complete;
- Removal of surplus materials, rubbish, and similar elements;
- Changeover of door locks;
- Completion and submission of all final Change Orders for the Project.

9.9.2 Final Retainage Payment (100% Billing for the Entire Project)

The retainage, less any amounts disputed by the District or which the District has the right to withhold pursuant to the Contract Documents (including but not limited to the estimated value of incomplete Owner's Punch List items), shall be paid after Contractor has achieved Final Completion and

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approval by the District of the Application for Retention Payment, after the satisfaction of the conditions set forth in Article 8, the Final Inspection, and after thirty-five (35) days after the acceptance of the Work and recording of the Notice of Completion by District. In addition, a full and final waiver or release of all stop payment notices in connection with the Work shall be submitted by Contractor, including a release of stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all stop notice rights. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any escrow agreement between the District and the Contractor.

9.9.3 Recording of a Notice of Completion After Punch List Period and Final Inspection.

When the Work, or designated portion thereof, is complete the District will file either a Notice of Completion or a Notice of Completion noting valued Punch List items. Valued Punch List items will be deducted from the Retention Payment. During the time when Work is being performed on the Punch List, the Project does not meet the definition of "Complete" under Public Contract Code Section 7107(c)(1) even if there is "beneficial occupancy" of the Project since that has been no "cessation of labor" on the Project. Completion of Punch List under this Article is not "testing, startup, or commissioning by the public entity or its agent." In other words, the continuing Punch List Work is Contractor labor on the Project until each and every item of Punch List Work is complete or the time periods under Article 8.7 have expired.

9.9.4 Warranties

Warranties required by the Contract Documents shall commence on the date of Completion of the entire Work. Warranty periods DO NOT commence at Substantial Completion or when a particular Subcontractor work is complete. No additional charges, extras, Change Orders, or Claims may be sought for warranties commencing from the Notice of Completion. District shall have the right to utilize equipment, test, and operate as necessary for acclimation, or testing without voiding or starting warranties. Taking beneficial occupancy shall not start warranties except in the case where the District agrees, in writing, that warranties shall commence running or where the District is taking phased occupancy of specific buildings or areas and completes separate Punch Lists as further addressed in Article 4.2.7.

9.9.5 Time for Submission of Application for Final Payment and Retention Payment (Unilateral Processing of Final and Retention Payment Application).

If Contractor submits a Final Payment Application which fails to include deductive items, the District or Architect shall note this defective request for Final Payment Application. The Contractor shall be notified that specific deductive items shall be included in the Final Payment Application. If Contractor either continues to submit the Final Payment Application without deductive items under Article or a period of 14 calendar days passes after Contractor is provided written notice of deductive items for inclusion in Final Payment Application, then District may either alter the Final Payment Application and recalculate the Final Payment Application to address the deductive items or process a unilateral Final Payment Application.

9.9.6 Unilateral Release of Retention

After the recordation of the Notice of Completion, or within sixty (60) days following the completion of the Punch List or the expiration of the time for completion of the Owner's Punch List, if Contractor does not make an Application for Release of Retention, the District may unilaterally release retention less any deducts under Article 8.6, withholds due to stop notice, or other defective work on the Project. District may also choose to unilaterally release Retention after deduction of 150% of any disputed

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items. If a deduction is made from Retention, a letter deducting specific valued items shall be considered a notice of Default under the terms of the Escrow Agreement.

9.10 SUBSTITUTION OF SECURITIES

9.10.1 The District will permit the substitution of securities in accordance with the provisions of Public Contract Code Section 22300 as set forth in the form contained in the Bid Documents.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor Responsibility

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. Contractor shall take all necessary measures and be responsible for the proper care, safety, and protection of all people on, about, or near the Project site, materials delivered to the Project site, and Work performed until final acceptance by the District and the Contractor demobilizes. 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 Public Contract Code Section 7105(b)(2).

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. The 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.

10.1.2 Material Safety Data Sheets and Compliance with Proposition 65

Contractor is required to have material safety data sheets available in a readily accessible place at the job site for any material requiring a material safety data sheet per the Federal "hazard communication" standard, or employees' "right-to-know law." Contractor is also required to properly label any substance brought into the job site, and require that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

Contractor is required to comply with the provisions of California Health and Safety Code Section 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. Contractor agrees to familiarize itself with the provisions of this Section, and to comply fully with its requirements.

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10.1.3 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, chrysotile, amosite, anthophyllite, tremolite, and antinolite. 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 under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency at no additional cost to the District. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall have sole discretion and final determination in this matter. The asbestos consultant shall be chosen and approved by the District, who shall have sole discretion and final determination in this matter. The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

Interface of Work under this Contract with Work containing asbestos shall be executed by Contractor at his risk and at his discretion, with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos-containing products. By execution of this Contract, the Contractor acknowledges the above and agrees to hold harmless District and its assigns for all asbestos liability which may be associated with this work and agrees to instruct his employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

10.1.4 Requirements for Existing Sites

Contractor shall, when performing 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. 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.

10.1.5 Shoring and Structural Loading

Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel Work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to the District.

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10.1.6 Site Access and Conformance within Established Limits

Contractor and Contractor's Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the District and CM, and shall not unreasonably encumber the premises with construction equipment or materials. Contractor and Contractor's Subcontractors shall use only those ingress and egress routes designated by the District. Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and ensuring compliance with this provision, as determined in the District's sole discretion.

10.2 EMERGENCIES

10.2.1 Emergency Action

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 6.

10.2.2 Accident Reports

Contractor shall promptly report in writing to the District all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses in conformance with Article 9.1

10.3 HAZARDOUS MATERIALS

10.3.1 Discovery of Hazardous Materials

In the event the Contractor encounters or suspects the presence on the job site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by § 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the District and the Architect in writing, whether or not such material was generated by the Contractor or the District. The Work in the affected area shall not thereafter be resumed, except by written agreement of the District and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the District and the Contractor.

10.3.2 Hazardous Material Work Limitations

In the event that the presence of hazardous materials is suspected or discovered on the Site (except in cases where asbestos and other hazardous material Work in the Contractor's responsibility), the District shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by District, as certified by an independent testing laboratory and approved by the appropriate government agency.

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10.3.3 Indemnification by Contractor for Hazardous Material Caused by Contractor

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

10.3.4 Terms of Hazardous Material Provision

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

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ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Insurance Requirements

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.

- j. Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
- k. 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;
- l. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- m. 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;
- n. 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; and
- o. Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
- p. Claims involving sudden or accidental discharge of contaminants or pollutants.

11.1.2 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:

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:

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(a)	Per occurrence (combined single limit)	\$2,000,000.00
(b)	Project Specific Aggregate (for this Project only)	\$2,000,000.00
(c)	Products and Completed Operations (aggregate)	\$2,000,000.00
(d)	Personal and Advertising Injury Limit	\$1,000,000.00

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

In addition, provide Excess Liability Insurance coverage in the amount of Four Million Dollars (\$4,000,000.00).

11.1.3 Subcontractor Insurance Requirements

The Contractor shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under Article 10.1 in like amounts. A “claims made” or modified “occurrence” policy shall not satisfy the requirements of Article 10.1 without prior written approval of the District.

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11.1.4 Additional Insured Endorsement Requirements

The Contractor shall name, on any policy of insurance required under Article 10.1, the District, CM, 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 11.1 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.

11.2 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Contractor shall provide workers' compensation and employer's liability insurance 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 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. The Contractor shall file with the District certificates of insurance as required under Article 10.6 and in compliance with Labor Code § 3700.

11.3 BUILDER'S RISK/ "ALL RISK" INSURANCE

11.3.1 Course-of-Construction Insurance Requirements

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.

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11.4 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.

11.5 AUTOMOBILE LIABILITY

11.5.1 The District, Architect and Construction Manager, 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, 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, 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, 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.

11.5.2 Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto) is required. Comprehensive Automobile Liability insurance to include all autos, owned, non-owned, and hired, with limits of \$1,000,000 per accident for bodily injury and property damage.

11.6 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:

a. 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.”

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

c. Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and

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that such insurance policy shall be primary to any insurance or self-insurance maintained by District.

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

11.7 COMPLIANCE

In the event of the failure of Contractor to furnish and maintain any insurance required by this Article 10, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.

11.8 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 Article 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.

11.9 PERFORMANCE AND PAYMENT BONDS

11.9.1 Bond Requirements

Unless otherwise specified in the Supplemental Conditions, 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 in the forms provided in the Contract Documents and provided by a corporate Surety authorized and admitted to transact business in California as sureties as defined in Code of Civil Procedure section 995.120.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 CONTRACTOR SHALL NOT COVER WORK BEFORE INSPECTIONS

Work shall not be covered without the Inspector's review and the Architect's knowledge that the Work conforms with the requirements of the approved Plans and Specifications. Contractor must timely notify Inspector of inspections and of new areas so Work can be inspected at least 48 hours before opening a new area. Contractor must cooperate with Inspector so that Inspector may 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. After issuance of a Written Notice of Non-Compliance (Form 154) or a written notice to uncover Work, Contractor shall promptly uncover all Work for the Inspector's or the Architect's observation and thereafter replace such Work at the Contractor's expense without change in the Contract Sum or Time.

12.2 COMPLIANCE WITH TITLE 24 REQUIREMENTS

Contractor agrees to comply with the requirements governing Contractor's Work under title 24 Section 4-343 which includes the requirement that, "It is the duty of the contractor to complete the work covered by his or her contract in accordance with the approved Plans and Specifications therefore. The contractor in no way is relieved of any responsibility by the activities of the architect, engineer, Inspector or DSA in the performance of such duties."

12.3 ISSUANCE OF NOTICES OF NON-COMPLIANCE

The Inspector may issue a Notice of Non-Compliance on the Project indicating deviation from Plans and Specifications, any other requirement of the Contract Documents, or applicable law or regulation. It is Contractor's responsibility to correct all such deviations unless the District has issued an Immediate Change Directive indicating some other course of action. In such case, the Contractor shall proceed with the Work with the understandings of the District as set forth in the ICD.

12.4 CORRECTION OF WORK

The Contractor shall promptly correct any Work rejected by the Inspector or the District upon recommendation of the Architect as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not Fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including cost for delays incurred by individual or entity, the cost for additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby (including costs for preparing a CCD, DSA CCD review fees, and additional inspection and special inspection costs). This obligation to correct shall continue through any warranty period, unless the District has previously given the Contractor a written notice identifying and accepting such condition. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation under survive acceptance of the Work under the Contract and Termination of the Contract. The District shall notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time, the District may correct the Work and seek a Deductive Change Order.

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ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

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

13.2 SUCCESSORS AND ASSIGNS

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

13.3 NO WAIVER

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

13.4 TESTS AND INSPECTIONS

13.4.1 Compliance

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Division 1, Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.4.2 Independent Testing Laboratory

The District will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the District's representative and not by the Contractor. See Articles 3.14.1 and 4.3.6 regarding costs or expenses of inspection or testing incurred outside of the Project Site.

13.4.3 Testing Off-Site

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

13.4.4 Additional Testing or Inspection

If the Inspector, the Architect, the District, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under Article 12.4, the Inspector will, upon written authorization from the District, make arrangements for such additional testing, inspection, or approval. The District shall bear such costs except to the extent that such

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testing is caused by the Contractor's breach of contract, negligence, or failure to comply with the Contract Documents in any manner.

13.5 TRENCH EXCAVATION

13.5.1 Trenches Greater Than Five Feet

Pursuant to Labor Code Section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the District or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District. Pursuant to Labor Code § 6705, nothing in this Article shall impose tort liability upon the District or any of its employees. The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

13.6 WAGE RATES, TRAVEL, AND SUBSISTENCE

13.6.1 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.

13.6.2 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.

13.6.3 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

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Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

13.6.4 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, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

13.6.5 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.

13.6.6 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/ 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

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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.

13.7 RECORDS OF WAGES PAID

13.7.1 Payroll Records

- q. Pursuant to §1776 of the Labor Code, the 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.

All payroll records as specified in Labor Code §1776 of the Contractor and all Subcontractors 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 or 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, according to law for the preparation by the Contractor, Subcontractor(s), 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.

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

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

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.

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

The Contractor or Subcontractor(s) shall have 10 calendar 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.

Responsibility for compliance with this Article shall rest upon the Contractor.

13.7.2 Withholding of Contract Payments & Penalties

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

- r. 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
- s. The Contractor or its Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- t. The Contractor or its Subcontractor(s) submit incomplete or inadequate payroll records; or

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- u. The Contractor or its Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- v. The Contractor or Its Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

13.8 APPRENTICES

13.8.1 Apprentice Wages and Definitions

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for 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 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.

13.8.2 Employment of Apprentices

Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any of Contractor's Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and its Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must 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 upon the Contractor's or Subcontractor's request. "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.

13.8.3 Submission of Contract Information

Prior to commencing Work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) 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 Contract, 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 Its 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.

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13.8.4 Apprentice Fund

The Contractor or any of its 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 its Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or its Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and its Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

13.8.5 Contractor Compliance

The responsibility of compliance with Article 12 and §1777.5 of the Labor Code for all apprenticeable occupations is with the 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.

13.9 ASSIGNMENT OF ANTITRUST CLAIMS

13.9.1 Application

Pursuant to Government Code § 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. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 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 Retention 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 § 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.

13.9.2 Assignment of Claim

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.

13.10 STATE AND DISTRICT CONDUCTED AUDITS

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the District, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of five

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(5) years after Retention Payment is made or a Notice of Completion is Recorded, whichever occurs first. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.

Pursuant to the remedies under Public Contract Code Section 9201 and Government Code Section 930.2, Contractor, through execution of this Agreement, also agrees the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note this refusal in the results of the Audit findings for further evaluation by the District and the District's Board. Failure to produce job cost data tied to job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce Daily Reports (prepared at or near the time of the Work actually took place (See Article 3.17) shall be presumed an intentional failure to produce key audited records.

If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original bid tabulation utilized in submitting Contractor's bid for the Project. This document shall be considered confidential and shall not be subject to disclosure through a Public Records Act and shall not be distributed to anyone other than the District and the District's counsel. This bid tabulation shall only be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial.

Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to the Audit findings and if either there is no Dispute of the Audit findings under Article 4.6 or if the result after utilizing the Disputes Clause confirms the Audit findings, the District may seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims and may also undertake debarment proceedings under Article 15 of these General Conditions.

13.11 OTHER CONTRACTORS/SEPARATE CONTRACTS

The 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 this work with theirs. District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts at the Project or jobsite necessary for the performance of the Project.

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

To ensure proper execution of Contractor's Work or subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between executed work and the Contract Documents. Contractor shall ascertain to its own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by the District in prosecution of the project to the end that Contractor may perform this Agreement in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on project. If

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simultaneous execution of any contract for the project is likely to cause interference with performance of some other contract or contracts, the District shall decide which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on the project, or caused by any decision or omission of the District respecting the order of precedence in performance of contracts.

13.12 STORM WATER POLLUTION PREVENTION

13.12.1 Application

This Section addresses the preparation, implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) for the purpose of preventing the discharge of pollutants from the construction site. This includes the elimination of pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas. The District will not issue a Notice to Proceed until Contractor has prepared by a qualified individual and obtained approval of the Permit Registration Documents (“PRDs”) that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents from all applicable Local Governing Agencies including the Regional Water Quality Control Board. The Contractor shall also secure a certification that the Project has met all of the conditions of the General Construction Activity Storm Water Permit (GCASP) and comply with all applicable local, state and federal regulations governing storm water pollution prevention.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE DISTRICT FOR CAUSE

The District may terminate this Contract if the Contractor: (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials or is absent without excuse from the jobsite; (b) Fails to make payment to Contractor's Subcontractors, suppliers, materialmen, etc.; (c) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; (d) Fails to provide a schedule or fails or refuses to update schedules required under the Contract; (e) Falls behind on the Project and refuses or fails to undertake a recovery schedule; (f) If the Contractor has been debarred from performing public works or has its contractors license suspended or terminated; (g) Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; or (h) Otherwise is in substantial breach of a provision of the Contract Documents.

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 written notice of seven (7) days, terminate the Contractor and/or this Contract and may take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and complete the Work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors. 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.

14.1.1 Takeover and Completion of Work after Termination for Cause

A Termination for Cause is an urgent matter which requires immediate remediation because Project Work is open and incomplete, the site is subject to vandalism and theft, the Project site is considered a public nuisance, and there is a possibility of injury and deterioration of the Project Work and materials. Thus, the District shall be entitled to enter a takeover contract to either remediate the unfinished condition or complete the Work for this Project.

14.1.2 Payments Withheld

If the District terminates the Contract for cause, 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.

14.1.3 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 and its Surety 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.

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14.2 TERMINATION OF CONTRACT BY DISTRICT (CONTRACTOR NOT AT FAULT)

14.2.1 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.

14.3 REMEDIES OTHER THAN TERMINATION

If a default occurs, the District may, without prejudice to any other right or remedy: (a) 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; (b) order the Contractor to remove any 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 (c) initiate procedures to declare the Contractor a non-responsible bidder for a period of two (2) to five (5) 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. In no event shall anything in this Article 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 Article are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.

END OF GENERAL CONDITIONS