



INVITATION FOR BID

Bid No. 2025-21-079B

Modular Building Temporary Housing at Jefferson Middle School.

Bid Response due May 15th by 10:00AM

MANDATORY SITE WALK:

**Tuesday May 6, 2025, at 10:00am Jefferson
Middle School.**

823 Acacia Ave, Oceanside, CA, 92058

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1. NOTICE TO BIDDERS

1. Notice is hereby given that the Board of Education of the Oceanside Unified School District (“District”), of the County of San Diego, State of California, will receive sealed bids for Bid No. 2025-21-79B – Modular Building Temporary Housing (“Project”) up to, but not later than, **02:00 P.M, May 15th, 2025**, and will thereafter publicly open and read aloud. All bids shall be received at the District Office, Bond Construction Management Office located at 2111 Mission Ave. Oceanside, CA 92058.
2. Each bid shall be completed on the Bid Proposal Form included in the Contract Documents, and must conform and be fully responsive to this invitation, the plans and specifications and all other Contract Documents are available on the district website (<https://www.oside.us/departments/fiscal-services/purchasing/bids>), on the CCM/MAAS website (<https://oceansideusdbond.maasco.com/procurement-bids/>) or by contacting Chidi Ugwueze at Chidi.Ugwueze@maasco.com
3. Each bid shall be accompanied by cash, a cashier’s or certified check, or a bidder’s bond executed by a surety licensed to do business in the State of California as a surety, made payable to the District, in an amount not less than ten percent (10%) of the maximum amount of the bid. The check or bid bond shall be given as a guarantee that the bidder to whom the contract is awarded will execute the Contract Documents and will provide the required payment and performance bonds and insurance certificates within ten (10) days after the notification of the award of the contract.
4. This is a public works project and the successful bidder shall comply with the provisions of the Labor Code pertaining to payment of the generally prevailing rate of wages and apprenticeships or other training programs. The Department of Industrial Relations has made available the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available to any interested party upon request and are online at <http://www.dir.ca.gov/DLSR>. The Contractor and all subcontractors shall pay not less than the specified rates to all workers employed by them in the execution of the Contract. It is the Contractor’s responsibility to determine any rate change.
5. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work shall be at least time and one half.
6. The substitution of appropriate securities in lieu of retention amounts from progress payments in accordance with Public Contract Code § 22300 is permitted.
7. Pursuant to Public Contract Code § 4104, each bid shall include the name, license number, and location of the place of business of each subcontractor who shall perform work or service or fabricate or install work for the contractor in excess of one-half of one percent (0.5%) of the bid price. The bid shall describe the type of the work to be performed by each listed subcontractor.
8. No bid may be withdrawn for a period of sixty (60) days after the date set for the opening for bids except as provided by Public Contract Code § 5100 et seq. The District reserves the right to reject any and all bids and to waive any informalities or irregularities in the bidding.
9. Minority, female, and disabled veteran contractors are encouraged to submit bids.
10. The project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. In accordance with Labor Code § 1771.1, all bidders, contractors and subcontractors working at the site shall be registered with the Department of Industrial Relations at

time of bid opening and at all relevant times. Proof of registration shall be provided as to all such contractors prior to the commencement of any work.

11. Each bidder must possess at the time the bid is awarded the following classifications of California State Contractor's license: B – General Building

The Contractor's California State License number shall be clearly stated on the bidder's proposal.

12. The Board of Education has not found that the Project is substantially complex and therefore requires a standard retention amount of only five percent (5%).
13. The mandatory site walk will be held at Jefferson Middle School, 823 Acacia Ave. Oceanside CA, 92058 on Tuesday May 6, 2025, at 10:00 A.M for the purpose of acquainting all prospective bidders with the Project site.
15. A payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000). Separate payment and performance bonds, each in an amount equal to 100% of the total Contract amount, are required, and shall be provided to the District prior to execution of the Contract and shall be in the form set forth in the Contract Documents. All bonds (Bid, Performance, and Payment) must be issued by a California admitted surety as defined in California Code of Civil Procedure section 995.120.

By: Oceanside Unified School District,
Bond Construction Management Office
2111 Mission Ave. Oceanside, CA 92058
Attn: Chidi Ugwueze **Email:** Chidi.Ugwueze@maasco.com

DATED THIS DAY: April 24, 2025

Publication Date: April 29, 2025, and May 6, 2025

Notice sent to the following contractor trade journals in compliance with Public Contract Code §§ 22036, 22037: Daily Journal

2. INSTRUCTIONS TO BIDDERS

Each bid submitted to the Oceanside Unified School District (“District”) for Bid No. 2025-21-079B – Modular Building Temporary Housing (“Project”) shall be in accordance with the following instructions and requirements, which form part of the Contract Documents for this Project.

1. Deadline For Receipt of Bids. Each bid shall be sealed and submitted to the Bond Construction Management Office no later than Friday May 15th, 2025, at 02:00 P.M. The District suggests that bids be hand delivered in order to ensure their timely receipt. Any bids received after the time stated, regardless of the reason, shall be returned, unopened, to the bidder or disposed of unopened by the District.

2. Schedule of Events.

Event	Dates
Publish Bid Documents	April 29, 2025
First Ad to Publication	April 29, 2025
Mandatory Site Visit at Jefferson Middle School. 823 Acacia Ave, Oceanside, CA, 92058	May 6, 2025 @ 10:00 AM <u>Sharp</u>
Requests for Clarifications to the Bid Documents Due	May 8, 2025 @ 2:00 PM
Responses to Requests for Clarifications Sent	May 12, 2025 @ 2:00 PM
Responses to the Bid Documents Due	May 15, 2025 @ 2:00 PM
Bid Opening	May 15, 2025
Post Bid Interview	May 16, 2025
District Sends Out Notice of Intent to Award	May 19, 2025
Bid Protest Period (5 Calendar Days following issuance of Notice of Intent to Award	May 19, 2025 – May 24, 2025, 2:00pm
District Ratifies Project Award at June Board Meeting	June 10, 2025
Notice of Award	June 11, 2025
Notice to Proceed	June 21, 2025

3. Bidders’ Site Walk. A mandatory bidder’s site walk will be held on May 6, 2025, at Jefferson Middle School, 823 Acacia Ave, Oceanside CA, 92058 at 10:00 AM for the purpose of acquainting all prospective bidders with the Project site.

4. Requests for Information. A bidder's failure to request clarification or interpretation of an apparent error, inconsistency or ambiguity in the Contract or Bid Documents waives that bidder's right to thereafter claim entitlement to additional compensation based upon an ambiguity, inconsistency, or error, which should have been discovered by a reasonably prudent Contractor, subject only to the limitations of Public Contract Code § 1104. To the fullest extent permitted by law District expressly disclaims responsibility for assumptions a bidder may draw from the presence or absence of information in the bid documents. Any questions relative to the bid shall be in writing and directed to the Purchasing Department at the address specified for receipt of bid proposals. These requests shall be submitted to the District at least seven (7) working days prior to the date the bid is due.
5. Bid Proposal Forms. All bid proposals shall be made on the form provided by the District. All items on the form shall be filled out in ink. Numbers should be stated in figures, and the signatures of all individuals must be in long hand. The completed form should be without interlineations, alterations, or erasures.
6. Execution of Forms. Each bid shall give the full business address of the bidder and must be signed by the bidder or bidder's authorized representative with his or her usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters. Bids by corporations must be signed with the legal name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation in this matter. The name of each person signing shall also be typed or printed below the signature. When requested by the District, satisfactory evidence of the authority of the officer signing on behalf of the corporation or partnership shall be furnished. A bidder's failure to properly sign required forms may result in rejection of the bid. All bids must include the bidder's contractor license number(s) and expiration date(s).
7. Bid Security. Bid proposals shall be accompanied by a certified cashier's check or bid bond for an amount not less than ten percent (10%) of the bid amount, payable to the District and bid bond shall be secured from an admitted surety company, licensed in the State of California, and satisfactory to the District. The bid security shall be given as a guarantee that the bidder will enter into the Contract if awarded the work, and in the case of refusal or failure to enter into the Contract within ten (10) calendar days after notification of the award of the Contract or failure to provide the payment and performance bonds and proof of insurance as required by the Contract Documents, the District shall have the right to award the Contract to another bidder and declare the bid security forfeited. The District reserves the right to pursue all other remedies in law or equity relating to such a breach including, but not limited to, seeking recovery of damages for breach of contract. Failure to provide bid security, or bid security in the proper amount, may result in rejection of the bid.
8. Withdrawal of Bid Proposals. Bid proposals may be withdrawn by the bidders prior to the time fixed for the opening of bids but may not be withdrawn for a period of sixty (60) days after the opening of bids, except as permitted pursuant to Public Contract Code § 5103.

9. Addenda or Bulletins. The District reserves the right to issue addenda or bulletins prior to the opening of the bids subject to the limitations of Public Contract Code § 4104.5. Any addenda or bulletins issued prior to bid time shall be considered a part of the Contract Documents.
10. Bonds. The successful bidder shall be required to submit payment and performance bonds as specified in and using the bond forms included with the Contract Documents. All required bonds shall be based on the maximum total contract price as awarded, including additive alternates, if applicable.
11. Rejection of Bids and Award of Contract. The District reserves the right to waive any irregularities in the bid and reserves the right to reject any and all bids. The Contract will be awarded, if at all, within sixty (60) calendar days after the opening of bids to the lowest responsible and responsive bidder, subject to Board of Education approval. The time for awarding the Contract may be extended by the District with the consent of the lowest responsible, responsive bidder.
12. Execution of Contract. The successful bidder shall, within ten (10) calendar days of the Notice of Award of the Contract, sign and deliver to the District the executed contract along with the bonds and certificates of insurance required by the Contract Documents. In the event the successful bidder fails or refuses to execute the Contract or fails to provide the bonds and certificates as required, the District may declare the bidder's bid deposit or bond forfeited as liquidated damages and may award the work to the next lowest responsible, responsive bidder, or may reject all bids and, in its sole discretion, call for new bids. In all cases, the District reserves the right, without any liability, to cancel the award of Contract at any time prior to the full execution of the Contract.
13. Drawings and Specifications. All drawings, specifications and other documents used or prepared during the project shall be the exclusive property of the District.
14. Evidence of Responsibility. Upon the request of the District, a bidder shall submit promptly to the District satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by the District, the bidder's availability to perform the Contract and any other required evidence of the bidder's qualifications and responsibility to perform the Contract. The District may consider such evidence before making its decision to award the Contract. Failure to submit requested evidence may result in rejection of the bid.
15. Taxes. Applicable taxes shall be included in the bid prices.
16. Bid Exceptions. Bid exceptions are not allowed. If the Bidder has a comment regarding the bid documents or the scope of work, the Bidder shall submit those comments to the District for evaluation at least five working days prior to the opening of the bids. No oral or telephonic modification of any bid submitted will be considered and a sealed written

modification may be considered only if received prior to the opening of bids. Emailed or faxed bids or modifications will not be accepted.

17. Discounts. Any discounts which the bidder desires to provide the District must be stated clearly on the bid form itself so that the District can calculate the net cost of the bid proposal. Offers of discounts or additional services not delineated on the bid form will not be considered by the District in the determination of the lowest responsible responsive bidder.
18. Quantities. The quantities shown on the plans and specifications are approximate. The District reserves the right to increase or decrease quantities as desired.
19. Prices. Bidders must quote prices F.O.B. unless otherwise noted. Prices should be stated in the units specified and bidders should quote each item separately.
20. Samples. On request, samples of any products being bid shall be furnished to the District.
21. Substitutions. In describing any item, the use of a manufacturer or brand does not restrict bidding to that manufacturer or brand but is intended only to indicate quality and type of item desired, except as provided in Public Contract Code § 3400. Substitute products may be considered either prior to or after the award of the Contract in accordance with § 3400 and as set forth in either the Special Conditions or the Specifications. All data substantiating the proposed substitute as an “equal” item shall be submitted with the written request for substitution. The District reserves the right to make all final decisions on product and vendor selection.
22. Container Costs and Delivery. All costs for containers shall be borne by the bidder. All products shall conform to the provisions set forth in the federal, county, state and city laws for their production, handling, processing, and labeling. Packages shall be so constructed to ensure safe transportation to the point of delivery.
23. Bid Negotiations. A bid response to any specific item of the bid using terms such as “negotiable,” “will negotiate,” or similar phrases, will be considered non-responsive.
24. Prevailing Law. In the event of any conflict or ambiguity between these instructions and state or federal law or regulations, the latter shall prevail. All equipment to be supplied or services to be performed under the bid proposal shall conform to all applicable requirements of local, state, and federal law, including, but not limited to, Labor Code §§ 1771, 1778 and 1779.
25. Allowances. An “allowance” means an amount included in the bid proposal for work that may or may not be included in the Project, depending on conditions that will become known only after the Project is underway.

26. Subcontractors. Pursuant to the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§ 4100 et seq., every bidder shall, on the enclosed Subcontractor List Form, set forth:
- a. The name, license number, and location of the place of business of each Subcontractor who will perform work or labor or render service to the bidder in or about the work or fabricate and install work in an amount in excess of one-half of the one percent (0.5%) of the bidder's total bid.
 - b. If the bidder fails to specify a Subcontractor for any portion of the work to be performed under the Contract in excess of one-half of one percent (0.5%) of the bidder's total bid, bidder agrees that bidder is fully qualified to and shall perform that portion of the work. The successful bidder shall not, without the written consent of the District or compliance with Public Contract Code §§ 4100 et seq., either:
 - 1) Substitute any person as Subcontractor in place of the Subcontractor designated in the original bid.
 - 2) Permit any subcontract to be voluntarily assigned or transferred or allow the work to be performed by anyone other than the original Subcontractor listed in the bid; or
 - 3) Sublet or subcontract any portion of the work in excess of one-half of one percent (0.5%) of the total bid as to which the bidder's original bid did not designate a Subcontractor.
27. Examination of Contract Documents and Work Site. Before submitting a bid proposal, all bidders shall carefully examine the Contract Documents, including the plans and specifications, shall visit the site of the proposed work, and shall fully inform themselves of all conditions in and about the work site, as well as applicable federal, state and local laws and regulations that may affect the work. No bidder shall visit the site without prior authorization of the District. Bidders shall contact Purchasing Department designee for coordination of site visits.
28. Form and Approval of Contract. The Contract Documents must be approved by the Board of Education of the District and its legal counsel. The bidder selected by the District shall execute the contract provided by the District.
29. Licenses and Permits. Each bidder shall at all times possess all appropriate and required licenses or other permits to perform the work as identified in the Contract Documents. Upon request, each bidder shall furnish the District with evidence demonstrating possession of the required licenses or permits.
30. Denial of Right to Bid. Contractors or Subcontractors who have violated state law governing public works shall be denied the right to bid on this public works contract pursuant to Labor Code § 1777.7.

31. Contractor's State License Board. Contractors and Subcontractors are required by law to be licensed and regulated by the California Contractors' License Board.
32. Fingerprinting. By law it is the District's responsibility to determine whether a contractor must provide fingerprint certification. Pursuant to Education Code § 45125.2, the District considers the totality of the circumstances in order to determine if fingerprinting of employees of a contractor working on a school site is required. Factors to be considered include the length of time the contractor's employees are on school grounds, whether students are in proximity to the location where the contractor's employees are working, and whether the contractor's employees are working alone or with others.
33. Labor Compliance Monitoring. The Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. In accordance with Labor Code § 1771.1, all bidders, contractors and subcontractors working at the site shall be duly registered with the Department of Industrial Relations at time of bid opening and at all relevant times. Proof of registration shall be provided to all such contractors prior to the commencement of any work.
34. Additive and Deductive Items: Method of Determining Lowest Bid. Pursuant to Public Contract Code § 20103.8, if the bid solicitation includes additive and/or deductive items, the checked [X] method shall be used to determine the lowest bid:

☒ (a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

☐ (b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation or Bid Proposal Form as being used for the purpose of determining the lowest bid price.

☐ (c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items that, when in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the District before the first bid is opened.

☐ (d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or the proposed Subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

If no method is checked, sub-paragraph (a) shall be used to determine the lowest bid.

Notwithstanding the method used by the District to determine the lowest responsible bidder, the District retains the right to add to or deduct from the Contract any of the items included in the bid solicitation.

35. Public Records Act. Responses to the Bid Documents will become the property of the District and subject to the California Public Records Act, Government Code sections 6250, et seq. Those elements in each response that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as “TRADE SECRET,” “CONFIDENTIAL,” or “PROPRIETARY” may not be subject to disclosure. The District shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. Any responses that indiscriminately identify all or most of its response as exempt from disclosure without justification may be deemed non-responsive. In the event the District is required to defend an action on a Public Records Act request for any of the contents of a response marked “Confidential,” “Proprietary,” or “Trade Secret,” each respondents agrees, by submission of its response for the District’s consideration, to defend and indemnify the District from all costs and expenses, including attorneys’ fees, in any action or liability arising under the Public Records Act.
36. Quality. All equipment and materials used in the installation should be new. Used, refurbished or repurposed equipment or material will not be acceptable.
37. Bid Protest. Any bid protest must be in writing and received by the District Office before 2:00 P.M. no later than five (5) calendar days following the issuance of a Notice of Intent to Award the bid, and shall comply with the following requirements:
- a. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation.
 - b. The party filing the protest must have actually submitted a bid for the Project. A Subcontractor of a bidder submitting a bid for the Project may not submit a bid protest. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.
 - c. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based.
 - d. The protest must include the name, address and telephone number of the person representing the protesting bidder.
 - e. The bidder filing the protest must concurrently transmit a copy of the bid protest and all supporting documentation to all other bidders with a direct financial interest which may be affected by the outcome of the protest, including all other bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
 - f. The bidder whose bid has been protested may submit a written response to the bid protest. Such response shall be submitted to the District before 5 p.m. no later than two (2) working days after the deadline for submission of the bid protest or receipt of the bid protest, whichever is sooner, and shall include all supporting

documentation. Such response shall also be transmitted by the responding party concurrently to the protesting bidder and to all other bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

- g. The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. By submitting a bid each bidder agrees that failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code claim or legal proceedings.
- h. If the District determines that a protest is frivolous, the protesting bidder may be determined to be non-responsible, and that bidder may be determined to be ineligible for future contract awards by the District.
- i. A "working day" for purposes of this section means a weekday during which the District's office is open and conducting business, regardless of whether or not school is in session.

3. BID FORMS

Board of Education of the Oceanside Unified School District

Dear Members of the Board of Education:

The undersigned, doing business under the name of _____, having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Notice to Bidders, the General Conditions, the Instructions to Bidders, the Plans and Specifications, and all other Contract Documents for the proposed installation services associated with the New District Services Office ("Project"), and having accurately completed the Bidder's Questionnaire, proposes to perform all work and activities in accordance with the Contract Documents, including all of its component parts, and to furnish all required labor, materials, equipment, transportation and services required for the construction of the Project in strict conformity with the Contract Documents, including the Plans and Specifications, as follows:

BASE BID:

Lump Sum Amount (Words):	
Lump Sum Amount (Dollars):	
District Controlled Allowance:	\$20,000.00
Total Bid:	

Although included in the Bid Proposal Price, Allowances belong solely to the District and shall be expended only upon written direction by the District, to be granted or denied in its sole discretion. Any Allowance amount not fully consumed shall belong solely to the District and shall be refunded to the District by a deductive change order. By submitting this Bid Proposal, the Bidder confirms that the Bid Price proposed is inclusive of all Allowances.

The undersigned has checked carefully all the above figures and understands that the District is not responsible for any errors or omissions on the part of the undersigned in making this bid.

Enclosed find certified or cashier's check no. _____ of the _____ Bank for _____ Dollars (\$ _____) or Bidder's Bond of the _____ surety company in an amount of not less than ten percent (10%) of the entire bid. The undersigned further agrees on the acceptance of this proposal, to execute the Contract and provide the required bonds and insurance and that in case of default in executing these documents within the time fixed by the Contract Documents, the proceeds of the check or bond accompanying this bid shall be forfeited and shall become the property of the District.

Contractor shall be prepared to discuss any identified Value Engineering opportunities at the post-bid interview, detailing ways to perform more economically. In addition, contractor shall share any resulting savings to the project and submit to the District, methods for performing more efficiently. Contractor agrees to commence the work within the time specified in the Notice to Proceed. It is

understood that this bid is based upon completing the work within the number of calendar days specified in the Contract Documents.

ADDENDA:

Receipt of the following addenda is hereby acknowledged:

Addendum # _____	Dated: _____	Addendum # _____	Dated: _____
Addendum # _____	Dated: _____	Addendum # _____	Dated: _____
Addendum # _____	Dated: _____	Addendum # _____	Dated: _____

Respectfully submitted,

Company: _____

Address: _____

By: _____
(Please Print Or Type)

Signature: _____

Title: _____

Date: _____

Telephone: _____

Contractor's License No: _____ Expiration Date _____

Required Attachments: Subcontractor List Form

Workers' Compensation Certificate

Non-Collusion Declaration

Bid Bond (or Cashier's or Certified Check)

SUBCONTRACTOR LIST FORM

Each bidder shall list below the name, license number, and location of place of business for each Subcontractor who will perform a portion of the Contract work in an amount in excess of one half of one percent (0.5%) of the total contract price. The nature of the work to be subcontracted shall also be described.

[illegible]

WORKERS' COMPENSATION CERTIFICATE

Labor Code § 3700 in relevant part provides:

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

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

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

Contractor

By: _____

In accordance with Labor Code § 1860, the above certificate must be signed and filed with the awarding body prior to performing any work under this Contract.

NON-COLLUSION DECLARATION

To be executed by the bidder and submitted with the bid.

_____, declares that he or she is _____ of _____, the party making the foregoing bid, and affirms that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true and correct; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

Date: _____

Signature

SPECIAL INSTRUCTIONS – CARB COMPLIANCE

This form to be submitted with bid proposal at due date and time established in bid paperwork.

CALIFORNIA AIR RESOURCES BOARD (CARB)

<https://ww2.arb.ca.gov/>

For any project awarded after January 1, 2024, under the newly added requirements, Public Works Awarding Bodies will now be required to obtain valid **Certificates of Reported Compliance (“CRC”)** from all contractors and listed subcontractors before awarding the project. The Public Works Awarding Body will be required to retain CRCs for three years after the project is complete, and the CRCs are subject to CARB review upon five calendar days' notice.

The Regulations apply to all “Public Works Awarding Bodies,” which is broadly defined as “any public agency (state, county, city, school board, water district, etc.), or official thereof, in the state of California, that awards or enters into a contract for the erection, construction, alteration, repair, removal, or improvement of any public structure, building, road, or other public lands, property, or improvement of any kind.”

Certificates of Reported Compliance (“CRC”) are required at time of bid submittal and must be included with bid proposal by stated due date / time.

Proof of bidder and subcontractor certification is to be attached to this page at the time of bid submittal.

The CARB Diesel Off-road Online Reporting System (DOORS) reporting system is where they are able to obtain their Certificates of Reported Compliance: [DOORS \(ca.gov\)](https://ww2.arb.ca.gov/doors). There is also an additional website that provides them with more information on the regulation along with FAQs and user guides.

Questions, please call the DOORS Hotline at 877-593-6677 or email doors@arb.ca.gov

[Fact Sheet: Contracting Requirements | California Air Resources Board](https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements)

<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements>

[Fact Sheet: Renewable Diesel Fuel Requirements | California Air Resources Board](https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-renewable-diesel-fuel-requirements)

<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-renewable-diesel-fuel-requirements>

[Fact Sheet: Added Vehicle Restrictions and Tier Phase-Out Requirements | California Air Resources Board](https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements)

<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements>

Bidder Acknowledges CARB Compliance _____

Name of Bidder: _____

BID BOND

We, the Contractor, _____ as principal ("Principal"), and _____, as surety ("Surety"), are firmly bound unto the Oceanside Unified School District ("District") in the penal sum of ten percent (10%) of the total amount of the bid of the Principal submitted to the District for the work described below for the payment of which sum in lawful money of the United States, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by this agreement.

Whereas, the Principal has submitted the accompanying bid ("Bid") dated _____, for the following project ("Project"): _____ Project

Now, therefore, if the Principal does not withdraw its Bid within the period specified, and if the Principal is awarded the Contract and within the period specified fails to enter into a written contract with District, in accordance with the Bid as accepted, or fails to provide the proof of required insurance, the performance bond and/or the payment bond by an admitted surety within the time required, or in the event of unauthorized withdrawal of the Bid, if the Principal pays the District the difference between the amount specified in the Bid and the amount for which District may otherwise procure the required work and/or supplies, if the latter amount is in excess of the former, together with all related costs incurred by District, then the above obligation shall be void and of no effect. Otherwise, the Principal and Surety shall pay to the District the penal sum described above as liquidated damages.

Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the term of the Contract or the call for bids, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof the above-bound parties have executed this instrument under their several seals this _____ day of _____, 2024, the name and corporate seal of each corporate Party being hereunder affixed and these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

(Corporate Seal)

Principal/Contractor

By _____

Title: _____

(Corporate Seal)

Surety

Attach Attorney-In-Fact Certificate

By _____

Title

To be signed by Principal and Surety and Acknowledgment and Notary Seal to be attached

OCEANSIDE UNIFIED SCHOOL DISTRICT

PUBLIC WORKS CONTRACT FOR SERVICES

CONTRACT

This Contract ("Contract") is made by and between the **Oceanside Unified School District** ("District"), and between **{Contract Company}** ("Contractor").

District and Contractor hereby agree as follows:

1. Description of Work

The Contractor agrees to furnish all labor, materials, equipment, tools, supervision, appurtenances, and services, including transportation and utilities, required to perform and satisfactorily complete the following services per:

BID # {Contract #}
{Title}

Scope of Work: Provide materials and services, including installation, as outlined in the attached proposal as Exhibit A

CONTRACT {Contract #}
DIR Project ID/PWC-100 _____
DIR Registration _____
CLSB _____

2. Contract Documents

The Contract Documents consist of the executed Contract and all Addenda, the completed Bid Forms, the required Bonds and the Insurance forms, the Notice to Bidders, the Instructions to Bidders, the Notice of Award, the Notice to Proceed, the General Conditions and any Special Conditions, and the Specifications.

3. Compensation

As full compensation for the Contractor's complete and satisfactory performance of the work and activities described in the Contract Documents, the District agrees to pay Contractor, and Contractor agrees to accept the not to exceed total amount of

(_____), which shall be paid to the Contractor according to the Contract Documents.

Site/Location	Amount
	\$
	\$
	\$
	\$
Total Base Bid (not to exceed)	\$

4. Prevailing Wages

This Project is a public works project subject to prevailing wage requirements and Contractor and its Subcontractors are required to pay all workers employed for the performance of this Contract no less than the applicable prevailing wage rate for each such worker. Contractor acknowledges that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations in accordance with Labor Code § 1770 et seq.

5. Time for Completion

The starting date of the Contract shall be the day listed by the District in the Notice to Proceed, estimated to be approximately {Contract Time} and the Contractor shall fully complete all the work before {Expiration Date} Time is of the essence in the performance of this Contract.

6. Liquidated Damages

Liquidated damages for the Contractor's failure to complete the Contract within the time fixed for completion are established in the amount of _____ dollars (\$ {Liquidated Damages}) per calendar day.

7. Audit.

The District and Contractor are subject to the examination and audit of the California State Auditor for a period of three (3) years after the final payment under this Contract, in compliance with Government Code §8546.7.

8. Mark-Up On Direct Costs of Changes.

In the event of Changes to the Work, pursuant to Article 9 of the General Conditions, the markup for all overhead, including but not limited to home-office overhead, safety, mailing or clean-up, field office overhead, all other general conditions costs, bond premium, and profit ("Change Order Mark-Up") for Changes completed by the Contractor shall be **Fifteen percent (15%)** of the direct actual costs for performance of the Change as determined in accordance with the provisions of Article 9 of the Construction General Conditions. For the portion of a Change completed by a Subcontractor, the Subcontractor Change Order Mark-Up shall be **ten percent (10%)** of the Subcontractor's direct actual costs and the Contractor may mark-up of **five percent (5%)** to the Subcontractor's direct actual costs for the Contractor's management, supervision and coordination of the Subcontractor's completion of such Change.

IN WITNESS WHEREOF, the parties agree to the terms of this Contract on the day and year written below.

CONTRACTOR

OCEANSIDE UNIFIED SCHOOL DISTRICT

Andrea Norman, Ed.D.

Contractor Name

Name

Contractor Signature

Signature

Title

Associate Superintendent of Business Services

Title

Date

Date

Corporation or Partnership (if corporation, seal below)

PERFORMANCE BOND (NOTE: Bonds are on file within Purchasing)

WHEREAS, the Board of Education of the Oceanside Unified School District ("District"), at its meeting on {Letter Of Intent Date} has awarded to {Contract Company} ("Principal"), the Contract for performance of the following project ("Project"):

**BID # {Contract #}
{Title}**

WHEREAS the Principal is required under the terms of the Contract to furnish a bond to the District as obligee ensuring its full and faithful performance of the Contract Documents, which are fully incorporated herein by this reference,

NOW, THEREFORE, we, the Principal and _____, as Surety, hereby guarantee the Principal's full, faithful and complete performance of the Contract Document requirements in the penal sum of _____ dollars (\$_____) for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly, severally, and firmly by this agreement to perform or have performed all of the work and activities required to complete the Project pursuant to the Contract Documents and to pay to the District all damages the District incurs as a result of the Principal's failure to fully perform in accordance with the Contract Documents.

The condition of the obligation is such that if the Principal, its heirs, executors, administrators, successors or assigns shall in all things abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any amendment thereof made as therein provided, on its or their parts to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall insure and indemnify and save harmless the District, its officers and agents, as therein stipulated, then this obligation shall become null and void. Otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract Documents shall in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition.

In the event of the District's termination of the Contract due to the Principal's breach or default of the Contract Documents, within sixty (60) days after written notice from the District to the Surety of the Principal's breach or default of the Contract Documents and District's termination of the Contract, the Surety shall notify District in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the District, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall

not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to District within the time specified herein, the District may take all such action or actions necessary to cure or remedy the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the District for all damages and costs sustained by the District as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the District upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes of any Work which increases the Contract Price.

Principal and Surety further agree to pay all costs incurred by the District in connection with enforcement of this bond, including, but not limited to the District's reasonable attorney's fees and costs incurred, with or without suit, in addition to any other sum required by this bond. Surety further agrees that death, dissolution, or bankruptcy of the Principal shall not relieve the Surety of its obligations hereunder.

In witness whereof, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety on the _____ day of _____, 20__.

PRINCIPAL: _____

*To be signed by
Principal and
Surety and
acknowledgement
and notarial seal
to be attached.*

By: _____

TITLE: _____

SURETY: _____

By: _____

TITLE: _____

The above bond is accepted and approved this _____ day of _____, 20__.

By: _____

Authorized District Signature

PAYMENT BOND (NOTE: Bonds are on file within Purchasing)

WHEREAS, the Oceanside Unified School District ("District") and the Contractor, {**Contract Company**} ("Principal") have entered into a contract ("Contract") for the furnishing of all materials, labor, services, equipment, tools, supervision and transportation necessary, convenient and proper for the installation services associated with the {Title} ("Project") which Contract dated {Contract Date} and all of the Contract Documents made part thereof are fully incorporated herein by this reference; and

WHEREAS Contractor/Principal is required by California Civil Code Section 9550 et seq. to furnish a bond in connection with the contract;

NOW, THEREFORE, we, the Contractor/Principal and _____ as Surety, are held firmly bound unto District in the penal sum of \$ _____ Dollars (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor/Principal, his/her or its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100 or fail to pay for any materials or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department any amounts required to be deducted, withheld, and paid over by Section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, then said Surety will pay for the same, in or to an amount not exceeding the amount set forth above, and in case suit is brought upon this bond Surety will also pay such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et seq.

This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 so as to give a right of action to such person or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration, or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant

seeking to recover on the bond, and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the District and original contractor or on the part of any obligee named in such bond, unless permitted pursuant to law.

In witness whereof, this instrument has been duly executed by the Principal and Surety this _____ day of _____, 20__.

PRINCIPAL: _____

*To be signed by
Principal and
Surety and
acknowledgement
and notarial seal
to be attached.*

By: _____

TITLE: _____

SURETY: _____

By: _____

TITLE: _____

The above bond is accepted and approved this _____ day of _____, 20__.

By: _____
Authorized District Signature

GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS

- 1.1. District. “District” refers to OCEANSIDE UNIFIED SCHOOL DISTRICT and unless otherwise stated, includes the District’s authorized representatives, including the Bond Program Manager, Construction Manager, if a Construction Manager is designated, the District’s Board of Trustees and the District’s officers, employees, agents and representatives.
- 1.2. Contractor. The Contractor is the person or entity identified as such in the Agreement; references to “Contractor” include the Contractor’s authorized representative. The term “Contractor” refers to each contractor awarded a contract by the District for construction of a portion of the Project. As required by the context of usage, the term “Contractor” shall include Subcontractors and Sub-Subcontractors.
- 1.3. Architect. The Architect is the person or entity identified as such in the Agreement; references to the “Architect” include, as required by context of usage, the Architect’s employees and authorized representative(s) and the Architect’s Consultants and their employees and authorized representative(s).
- 1.4. The Work. The Work is the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.
- 1.5. The Project. The Project is the total construction of which the Work performed by the Contractor under the Contract Documents may be the whole or a part of the Project and which may include construction by the District or by separate contractors.
- 1.6. Surety. The Surety is the person or entity that executes, as surety, the Contractor’s Labor and Material Payment Bond and/or Performance Bond.
- 1.7. Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. “Subcontractor” does not include a separate contractor to the District or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. References to “Subcontractor” shall include Sub-Subcontractors.

- 1.8. Material Supplier. A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.
- 1.9. Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent contractors to bid upon the Work and prosecute the same to completion. Large scale Drawings shall take precedence over smaller scale Drawings as to shape and details of construction. Figured dimensions on Drawings shall govern, but Work which is not dimensioned shall be as directed or required by field conditions. Specifications shall govern as to materials, workmanship and installation procedures.
- 1.10. Special Conditions; Supplemental Conditions. Special Conditions and/or Supplemental Conditions, if any, are special or supplemental provisions, not otherwise provided for in the Agreement or the General Conditions.
- 1.11. Contract Documents. The Contract Documents consist of the Agreement between the District and the Contractor, Conditions of the Contract (whether General, Special, Supplemental or otherwise), Drawings, Specifications, including addenda thereto issued prior to execution of the Agreement and any other documents listed in the Agreement. The Contract Documents shall include modifications issued after execution of the Agreement. The Contract Documents form the Contract for Construction.
- 1.12. Intent and Correlation of Contract Documents.
- 1.12.1. Work of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. Organization of the Specifications into divisions, sections or articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control.

1.12.2. Technical Terms. Unless otherwise stated in the Contract Documents, words or terms which have well-known technical, or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.12.3. Conflict in Contract Documents. Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect in accordance with Article 3.1.10 of the General Conditions; where conflicts or inconsistencies arise between the Drawings and the Specifications, in resolving such conflicts or inconsistencies, the Architect will be governed generally by the following standards: the Drawings are intended to describe matters relating to placement, type, quantity and the like; the Specifications are intended to describe matters relating to quality, materials, compositions, manufacturers and the like. If conflicts exist between portions of the Contract Documents regarding the quality of any item, product, equipment or materials, unless otherwise directed or authorized by the District, the Contractor shall provide the item, product, equipment or material of the highest or more stringent quality.

1.13. Shop Drawings; Samples; Product Data (“Submittals”). Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Material Supplier, or others to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor, Subcontractors or Material Suppliers are collectively referred to as “Submittals”.

1.14. Division of State Architect (“DSA”). DSA is the California Division of the State Architect including without limitation the DSA’s Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.

1.15. Project Inspector. The Project Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

1.16. Contract Document Terms. The term “provide” means “provide complete in place” or to “furnish and install” such item. Unless otherwise provided in the Contract Documents, the terms “approved;” “directed;” “satisfactory;” “accepted;” “acceptable;” “proper;” “required;” “necessary” and “equal” shall mean as approved, directed,

satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect. The term “typical” as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as “typical” in all other areas similarly marked as “typical”; Work in such other areas shall conform to that shown as “typical” or as reasonably inferable therefrom.

- 1.17. Contractor’s Superintendent. The Contractor’s Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work; the Contractor’s Superintendent shall not perform routine construction labor.
- 1.18. Record Drawings. The Record Drawings are a set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.
- 1.19. Construction Manager. The Construction Manager, if any, is the individual or entity designated as such in the Special Conditions. The Construction Manager is an independent contractor retained by the District and shall be authorized and empowered to act on behalf of the District. In the event that a Construction Manager is not designated in the Special Conditions, the District reserves the right to designate a Construction Manager at any time during Contractor’s performance of the Work. The District reserves the right to remove or replace the Construction Manager during Contractor’s performance of the Work. The designation of a Construction Manager, if one has not been designated in the Special Conditions, or the removal or replacement of the designated Construction Manager shall not result in adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor’s obligations hereunder.
- 1.20. Construction Equipment. Construction Equipment is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 1.21. Site. The Site is the physical area designated in the Contract Documents for Contractor’s performance, construction and installation of the Work.
- 1.22. Field Clarifications. A written or graphic document consisting of supplementary details, instructions or information issued on behalf of the District which clarifies or supplements the Contract Documents, and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued under the Contract Documents.
- 1.23. Defective or Non-Conforming Work. Defective or Non-Conforming Work is any Work which is unsatisfactory, faulty or deficient by: (i) not conforming to the requirements of the Contract Documents; (ii) not conforming to the standards of

workmanship of the applicable trade or industry; (iii) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (iv) damage occurring prior to Final Completion of all of the Work.

- 1.24. Delivery. Delivery used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition at the Site pending incorporation into the Work.
- 1.25. Notice to Proceed. The Notice to Proceed is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.
- 1.26. Progress Reports; Verified Reports. Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the District in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to the DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. A material obligation of the Contractor is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same. Copies of Verified Reports submitted by the Contractor to DSA relating to the Work shall be transmitted by the Contractor to the District, Architect, Project Inspector and Construction Manager concurrently with the Contractor's transmittal thereof to DSA.
- 1.27. Substantial Completion. "Substantial Completion" means the state in the progress of the Work, as determined by the Architect, when all of the Work is complete and in accordance with the Contract Documents except only for correction of minor items which do not impair the District's ability to occupy and fully utilize the Work for its intended purposes.
- 1.28. Final Completion. The term "Final Completion" means the Work has been fully completed in accordance with the requirements of the Contract Documents.
- 1.29. Days. Unless otherwise expressly stated, references to "days" in the Contract documents shall be deemed to be calendar days.
- 1.30. Laws. Laws refer to all laws, ordinances, codes, rules and/or regulations promulgated by any governmental or quasi-governmental agency with jurisdiction over any portion of the Work, including but not limited to District policies and procedures, and which apply to any portion of the Work, including those in effect as of the execution of the Agreement, amendments thereto and subsequently enacted Laws that take effect during the performance of the Work. No adjustment of the Contract Time or the Contract Price shall be allowed for the Contractor's compliance with the Laws.

- 1.31. Construction Change Directive. A Construction Change Directive is a written instrument issued by or on behalf of the District to the Contractor directing a Change to the Work prior to the Contractor and District reaching full agreement on an adjustment of the Contract Time and/or Contract Price on account of such Change. A material obligation of the Contractor is timely performance of Work noted in a Construction Change Directive.

ARTICLE 2: DISTRICT

2.1. Information Required of District.

- 2.1.1. Surveys; Site Information. Information, if any, concerning physical characteristics of the Site, including without limitation, surveys, soils reports, and utility locations, to be provided by the District are set forth in the Contract Documents. Information not provided by the District or necessary information in addition to that provided by the District concerning physical characteristics of the Site which is required shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.
- 2.1.2. Permits, Approvals. Except as otherwise provided in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities which relate to the Work. If permits, licenses, approvals or similar approvals relating to the Work, or the installation/construction thereof are designated as the responsibility of the Contractor under the Contract Documents, the Contractor shall obtain the same without adjustment of the Contract Price or the Contract Time.
- 2.1.3. Drawings and Specifications. Except as otherwise provided for in the Contract Documents, the District shall furnish the Contractor, free of charge, the number of copies of the Drawings and the Specifications as set forth in the Special Conditions. All of the Drawings and the Specifications provided by the District to the Contractor remain the property of the District; the Contractor shall not use the Drawings or the Specifications in connection with any other work of improvement other than the Work.
- 2.1.4. Furnishing of Information. Information or services to be provided by the District under the Contract Documents shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the District under the Contract Documents is obtained from sources believed to be reliable, but the District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District. If the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements or the Work involves any tie-in or other connection with existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist. The Contractor shall bear the risk of any variations between conditions or existing improvements depicted in the Contract Documents and those conditions or existing improvements actually encountered in the performance of the Work. The existence of any variations between conditions or existing improvements depicted in the Contract Documents

and those actually encountered in the performance of the Work shall not result in any District liability therefor, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

2.2. District's Right to Stop the Work. In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if the Contractor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of the Contractor or any other person or entity, nor shall the District's exercise of such right: (i) waive or limit the exercise of any other right or remedy of the District under the Contract Documents or the Laws; or (ii) result in adjustment of the Contract Time or Contract Price.

2.3. Partial Occupancy or Use.

2.3.1. District's Right to Partial Occupancy. The District may occupy or use any completed or partially completed portion of the Work, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for security, maintenance, utilities, damage to the Work, insurance, the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If the Contractor and the District are unable to agree upon the matters set forth in (ii) above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the Project Inspector, the Construction Manager, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by the Contractor so that the portion of the Work to be occupied or used by the District is in conformity with the requirements of the Contract Documents and the District's occupancy or use thereof is not impaired. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code § 7107.

2.3.2. The District's partial occupancy or use of the Work, or any portion thereof, shall not constitute the District's acceptance of the Work which is defective or non-conforming.

2.4. The Project Inspector.

2.4.1. Authority of Project Inspector. In addition to the authority and rights of the Project Inspector as provided for elsewhere in the Contract Documents and/or the Laws, all of the Work shall be performed under the observation of the Project Inspector. The foregoing notwithstanding, the Contractor shall not perform any Work deviating from the Contract Documents solely on the basis of direction by the Project Inspector; such deviations shall be deemed defective or non-conforming Work subject to correction or replacement at the sole cost of the Contractor and without adjustment of the Contract Time. The performance of the duties of the Project Inspector shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents.

2.4.2. Limitations on Project Inspector. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. The Project Inspector has no authority relative to the content or scope of the Contractor's safety plan/program. The Contractor shall not perform any Work deviating from the Contract Documents solely on the basis of direction by the Project Inspector; such deviations shall be deemed Defective or Non-Conforming Work subject to correction or replacement at the sole cost of the Contractor and without adjustment of the Contract Time.

2.4.3. Contractor Access for Project Inspector. The Contractor shall provide the Project Inspector with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. Contractor and District Responsibilities for Costs and Fees of Project Inspector. The District is responsible only for payment of the fees of the Project Inspector for standard eight (8) hour work day, Mondays through Fridays, excepting holiday days ("Project Inspector Standard Workdays"). All services provided by the Project Inspector exceeding an eight (8) hour workday Mondays through Fridays and/or the first eight (8) hours on Saturday shall be at 1½ times the Project Inspector's basic hourly rate. All hours of service provided by the Project Inspector in excess of eight (8) hours on Saturdays, and all hours of service provided by the Project Inspector on holiday days or on Sundays are at two (2) times the Project Inspector's basic hourly rate. Fees for services provided by the Project Inspector beyond the Project Inspector Standard Workdays set forth above are the sole responsibility of the Contractor; the District may deduct fees for the Project Inspector which exceeds the Project Inspector Standard Workdays from the Contract Price.

ARTICLE 3:ARCHITECT; PROJECT MANAGER

3.1. Architect's Administration of the Contract.

3.1.1. Role of the Architect and Construction Manager. The Architect and the Construction Manager will provide administration of the Contract as described in the Contract Documents and will be the District's representatives during construction until the time that Final Payment is due to the Contractor under the Contract Documents. The Architect and Construction Manager will advise and consult with the District and the Project Inspector with respect to the administration of the Contract and the Work. The Architect is authorized to act on behalf of the District to the extent provided for in the Contract Documents and shall have the responsibilities and powers established by the Laws, including Title 24 of the California Code of Regulations. The Construction Manager is authorized to stop the Work, direct/authorize takeover of the Contractor's Work or supplement the Contractor's labor, materials or equipment whenever deemed necessary in the sole discretion of the Architect or the Construction Manager to ensure that the Work is completed in accordance with the Contract Documents for the Contract Price and within the Contract Time. All fees, costs or expenses arising out of or associated in any manner with the take-over of the Work or to supplement the Contractor's labor, materials or equipment shall be at the sole cost and expense of the Contractor; the District may deduct such costs, fees or expenses from any portion of the Contract Price then or thereafter due the Contractor.

3.1.2. Periodic Site Inspections. The Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine, in general, if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. The Architect is not required to make exhaustive or continuous Site inspections to check quality or quantity of the Work. On the basis of Site observations as an architect, the Architect will keep the District informed of the progress of the Work and will endeavor to guard the District against defects and deficiencies in the Work.

3.1.3. Contractor Responsibility for Construction Means, Methods and Sequences. Neither the District, Project Inspector, Architect nor the Construction Manager will have control over or charge of and be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely the Contractor's responsibility. Neither the District, Project Inspector, Architect nor Construction Manager will have control over or charge of and be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. The Contractor shall be solely responsible for: (i) construction

means, methods and sequences to perform and complete the Work; (ii) safety of persons and property at the Site; and (iii) the acts, omissions or other conduct of Subcontractors and the personnel of the Contractor and Subcontractors.

3.1.4. Review of Applications for Payment. Pursuant to Article 8 hereof, the Architect will review the Contractor's Payment Applications and for Application For Final Payment, evaluate the extent of Work performed and verify to the District the amount properly due the Contractor.

3.1.5. Rejection of Work. The Architect is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect is authorized to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither this authority of the Architect nor a decision made in good faith by the Architect to exercise or not to exercise such authority shall modify requirements of the Contract Documents or any obligation of the Contractor under the Contract Documents.

3.1.6. Submittals.

3.1.6.1. Processing of Submittals. Submittals required by the Contract Documents shall be prepared by or on behalf of the Contractor in accordance with the requirements of the Contract Documents. If the District retains a Construction Manager (CM) or Project Engineer (PE) for the Work, Submittals shall be transmitted by the Contractor, to the CM or PE for distribution by the CM or PE to the Architect and the District. Upon completion of the Architect's review of a Submittal, the CM or PE shall transmit the reviewed Submittal to the Contractor for the Contractor's distribution to its Subcontractor(s) and other affected parties. If the District does not retain a CM or PE for the Work, Submittals shall be submitted by the Contractor to the Architect or such other party designated in the Contract Documents or by the Architect for review and processing.

3.1.6.2. Architect's Review. The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect's review of

Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component with the Submittal(s) required and relating to such assembly have been reviewed by the Architect.

- 3.1.6.3. Time for Architect's Review. The Architect's review of Submittals will be conducted promptly so as not to delay or hinder the progress of the Work or the activities of the Contractor, the District or the District's separate contractors while allowing sufficient time, in the Architect's reasonable professional judgment, to permit adequate review of Submittals. The foregoing notwithstanding, the Architect's review and return of Submittals will conform with the time limits and other conditions, if any, set forth in the Specifications or the Submittal Schedule if the Submittal Schedule is required by other provisions of the Contract Documents, but shall, under no circumstance, be less than fourteen (14) working days.
- 3.1.7. Issuance of Construction Change Directive. The Architect is authorized to issue Construction Change Directives.
- 3.1.8. Changes to the Work; Change Orders. The Architect and Construction Manager will prepare Change Orders, and may authorize minor Changes in the Work which do not result in adjustment of the Contract Time or the Contract Price.
- 3.1.9. Completion. In conjunction with the District, Project Inspector, Construction Manager, if any, and the Contractor, the Architect will conduct observations of the Work to determine the date(s) of Substantial Completion and Final Completion. If the District does not designate a Construction Manager for the Work, the Architect shall: (i) be authorized to enforce the Contractor's close-out obligations; and (ii) receive from the Contractor and the records, written warranties and related close-out materials assembled by the Contractor in accordance with the Contract Documents. The Architect, Project Inspector and Construction Manager will verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.
- 3.1.10. Interpretation of Contract Documents. The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor. The Architect's response to such requests will be made with reasonable promptness and within the time limits agreed upon, if any. If no agreement is reached establishing the time for the Architect's review and response to requests under this Article 3.1.10, the Architect shall be afforded a ten (10) working days period after receipt of such request to review and respond thereto. Interpretations and decisions of the Architect will: (i) be consistent with the intent of and reasonably

inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions; (ii) endeavor to secure faithful performance by both the District and the Contractor; (iii) not show partiality to either the District or Contractor; and (iv) not result in liability for results of interpretations or decisions so rendered in good faith. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

- 3.1.11. Request for Information. If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively "the Conditions"), Contractor shall timely notify the Architect, in writing, of the Conditions encountered and to request information from the Architect necessary to address and resolve any such Conditions before proceeding with any portion of the Work affected or which may be affected by such Conditions. If the Contractor fails to timely notify the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the Architect to address and resolve any Conditions the Contractor shall act with promptness in submitting any such written request so as to allow the Architect a reasonable period of time to review, evaluate and respond to any such request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any such Conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the Architect. The Architect's responses to any such Contractor request for information shall conform to the standards and time frame set forth in Article 3.1.10 of these General Conditions. The foregoing provisions notwithstanding, if the Architect reasonably determines that any of Contractor's request(s) for information: (i) does not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; (ii) does not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with the processing, reviewing, evaluating and responding to any such request for information, including without limitation, fees of the Architect. In responding to any of Contractor's request(s) for information, the Architect shall, in the response, indicate if the Architect has made the determination pursuant to the preceding sentence and, if so, the costs to be borne by the Contractor for the processing, review, evaluation

and response to the request for information. Thereafter, the District is authorized to deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

- 3.2. Communications; Role of Construction Manager and Architect's Role. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; verbal communications shall be reduced to writing. Communications between the Contractor and the District or the Architect shall be through the Construction Manager. Communications between separate contractors, if any, shall be through the Construction Manager. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available to the District, the Construction Manager and the Architect for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the Contractor to permit the District, the Construction Manager or Architect to review, inspect or reproduce such written communications may be deemed a default of Contractor hereunder.
- 3.3. Termination of Architect or Construction Manager; Substitute Architect or Construction Manager. In case of termination of employment of the Architect or the Construction Manager, the District shall appoint a substitute architect or substitute Construction Manager whose status under the Contract Documents shall be that of the Architect or the Construction Manager, as applicable.
- 3.4. Construction Manager. If a Construction Manager is designated for the Work, the Construction Manager shall be a representative of the District until Final Completion is achieved and Final Payment is due to the Contractor. The Construction Manager is authorized to act on behalf of the District and in connection with the Work as set forth in the Contract Documents, including without limitation: (i) review of the Contractor's Construction Schedule and updates thereto; (ii) review of the Contractor's Applications for Payment and verification of the amount due the Contractor under an Application for Payment; (iii) conducting the Pre-Construction Meeting, Progress Meetings and/or Special Meetings and maintaining minutes thereof; and (iv) enforcement of the Contractor's obligations under the Contract Documents, including the Contractor's close- out obligations.

ARTICLE 4:THE CONTRACTOR

4.1. Contractor Review of Contract Documents.

- 4.1.1. Examination of Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the District pursuant to the Contract Documents and shall at once report to the Architect any errors, inconsistencies or omissions discovered. If the Contractor performs any Work knowing, or with reasonable diligence should have known that, it involves an error, inconsistency or omission in the Contract Documents without prior notice to the Architect of the same, the Contractor shall assume full responsibility for such performance and shall bear all costs for correction of the same without adjustment of the Contract Price.
- 4.1.2. Field Measurements. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be immediately reported to the Architect along with request for clarification or direction.
- 4.1.3. Dimensions; Layouts and Field Engineering. Unless otherwise expressly provided, dimensions indicated in the Drawings are intended for reference only. The Drawings are intended to be diagrammatic and schematic in nature; the Contractor is solely responsible for dimensioning and coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work.
- 4.1.4. Work in Accordance With Contract Documents. The Contractor shall perform all of the Work in strict conformity with the Contract Documents, the Laws and Architect accepted Submittals.

4.2. Site Investigation; Subsurface Conditions.

- 4.2.1. Contractor Investigation. The Contractor is responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor or utilities; access to the Site; and the physical conditions and the character of equipment,

materials, labor and services necessary to perform the Work. Any failure of the Contractor to do so will not relieve it from the responsibility for fully and completely performing all Work without adjustment to the Contract Price or the Contract Time. The District assumes no responsibility to the Contractor for any understandings or representations concerning conditions or characteristics of the Site, or the Work, made by any of its officers, employees or agents prior to the execution of the Agreement, unless such understandings or representations are expressly set forth in the Contract Documents.

4.2.2. Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. Subsurface data or other soils investigation report provided by the District hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades or below grade elevations are approximate only and are neither guaranteed or warranted by the District to be complete and accurate. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered. The District assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by District under the Contract Documents.

4.2.3. Subsurface Conditions. If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the Project Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code § 25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the District of the conditions described above and upon the District's investigation thereof, the District determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code § 7104, any

dispute arising between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to Article 15.2 hereof should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above.

4.3. Supervision and Construction Procedures.

4.3.1. Supervision of the Work. The Contractor shall supervise and direct performance of 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 and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

4.3.2. Responsibility for the Work. The Contractor is responsible to the District for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with the Contractor. The Contractor is not relieved from its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager, Project Inspector or the Architect, or by tests, inspections or approvals required or performed by persons other than the Contractor.

4.3.3. Surveys. The Contractor shall prepare or cause to be prepared all detailed surveys necessary for performance of the Work, including without limitation, slope stakes, points, lines and elevations. The Contractor is responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work without adjustment of the Contract Price. The Contractor is solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

4.3.4. Construction Utilities. The District will furnish and pay the costs of utility services for the Work as set forth in the Special Conditions; all other utilities necessary to complete the Work and the Contractor's obligations hereunder shall be obtained by the Contractor without adjustment of the Contract Price or the Contract Time. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation, relocations and removal of

temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.

4.3.5. Existing Utilities; Removal, Relocation and Protection.

4.3.5.1. Contractor Responsibility for Locating Utilities. The Contractor is responsible for locating all below grade drainage lines, storm drains, sewers, domestic water, gas, electrical, hot water and irrigation utility services, vaults, duct banks and other similar items or utilities services (collectively “Underground Facilities”) which are shown in the Drawings or other portions of the Contract Documents; or (ii) which are identified in information relating to Underground Facilities maintained by the regional notification center, “Underground Service Alert” (“USA”). Contractor shall locate and mark locations of the Underground Facilities shown in the Contract Documents and information relating to Underground Facilities maintained by USA before proceeding with Work that may: (i) damage, destroy or impair Underground Facilities; or (ii) limit, disrupt or interrupt utility services provided through Underground Facilities. Prior to commencing Work in the proximity of Underground Facilities or other underground structures that can be readily inferred from adjacent surface improvements, Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, such utilities or installations that are to remain and that are subject to damage, destruction or disruption.

4.3.5.2. Contractor Responsibility for Damage to Underground Facilities. Without adjustment of the Contract Time or the Contract Price, the Contractor shall repair or replace all damage to or destruction of Underground Facilities occurring during performance of the Work. All such repairs or replacements shall be with materials, equipment and other items consistent with those in place prior to commencement of the Work and when the repair or replacement is completed, the Underground Facilities shall be in the same functional and operational condition as prior to the damage or destruction.

4.3.5.3. Contractor Responsibility for Maintaining Utility Services. The Contractor shall maintain in service all utility services provided through the Underground Facilities unless the Contractor has notified the District and Construction Manager in writing of utility service disruptions at least three (3) working days in advance of the anticipated disruption of utility services. Notwithstanding the Contractor’s notice pursuant to the foregoing, the District may, in the sole discretion of the District, direct alternative times/days for the anticipated utility service disruption as necessary for conduct of on-going activities or operations of the District at and about the Site. The Contractor shall be liable for all costs, fees or charges incurred by the District to provide utility services if there is

disruption, interruption or limitation of any utility services for which the Contractor has not provided the advance written notice of utility disruption pursuant to the foregoing. The District may deduct such costs, fees or charges from the Contract Price then or thereafter due the Contractor.

4.3.5.4. Unmarked; Unknown Utilities. Additional Underground Facilities not shown in the Contract Documents or USA data may exist on or about the Site. The Contractor shall be alert to their existence; if they are encountered, Contractor shall immediately report such Underground Facilities to the Project Inspector, Construction Manager and District for disposition of the same prior to disturbing any existing condition. In accordance with California Government Code § 4215, the District is responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site which are not identified in the Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the District of the utility to provide for removal or relocation of such utility facilities. Nothing in this Article 4.3.5 shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

4.3.6. Conferences and Meetings. A material obligation of the Contractor under the Contract Documents is the attendance at meetings and conferences relating to the Work by the Contractor's supervisory personnel for the Work and the Contractor's management personnel as required by the Contract Documents or as requested by the District. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

4.3.6.1. Pre-Construction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by the District) shall attend a Pre-Construction Conference at such time and place as designated by the District.

The Pre-Construction Conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the Pre-Construction Conference will include as appropriate: administrative matters, including an overview of the respective responsibilities of the District, Architect, Construction Manager, Contractor, Subcontractors, Project Inspector and others performing any part of the Work or services relating to the Work; (ii) Submittals; (iii) Changes and Change Order processing; (iv) employment practices, including Certified Payroll preparation and submission, prevailing wage rate responsibilities of the Contractor and Subcontractors, compliance with apprenticeship standards and Division of Labor Standards Enforcement (“DLSE”) monitoring and enforcement of prevailing wage rate requirements; (v) Progress Schedule development and maintenance; (vi) development of Schedule of Values and payment procedures; (vii) communications procedures, including the handling of Requests for Interpretation; (viii) conduct of pre-installation meetings to plan and coordinate work of new contractors, separate contractors and to plan for utility outages; (ix) emergency and safety procedures; (x) Site visitor policies; (xi) conduct of Contractor/Subcontractor personnel at the Site; (xii) punch list/close-out procedures; and (xiii) Contractor and Subcontractor DIR Contractor Registration.

4.3.6.2. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor’s representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the Architect or the Construction Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include without limitation: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Construction Schedule and Submittals.

4.3.6.3. Pre-Installation Conference. The Contractor’s representatives (and representatives of Subcontractors as requested by the District or the Construction Manager) shall attend a Pre-Installation Conference prior to the initiation of a new phase of Work or in connection with the delivery and installation of major items of equipment incorporated into the Work. Pre- Installation Conferences will generally address the requirements of the new phase of Work and Contract Documents, and/or to coordinate delivery and installation of major equipment items.

- 4.3.6.4. Special Meetings. As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.
- 4.3.6.5. Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the Architect or the Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect or the Construction Manager in writing of objections or corrections to minutes prepared hereunder within two (2) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Construction Manager; such objections or corrections shall be submitted to the Architect and the Construction Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.
- 4.3.7. Temporary Sanitary Facilities. At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at or about the Site.
- 4.3.8. Noise and Dust Control.
- 4.3.8.1. Noise Control. The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment noise at the Site shall be limited and only as permitted by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, the Contractor shall schedule the performance of all such Work around normal college hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.
- 4.3.8.2. Dust Control. The Contractor shall be fully and solely responsible for maintaining and up keeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming

airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Such protection devices, systems or methods shall be in accordance with the Laws, including, without limitation, the EPA, OSHA and Cal-OSHA. Additionally, the Contractor shall be the sole party responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Contractor shall replace any damaged property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, the Contractor shall schedule the performance of all such Work around normal college hours and make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

- 4.3.8.3. Air Pollution. The Contractor shall comply with all applicable air pollution control rules, regulations, ordinances, or statutes. Neither the Contract Time nor the Contract Price shall be subject to adjustment for measures of the Contractor to comply with air pollution control requirements. The Contractor shall be solely responsible for implementing measures required by any governmental or quasi-governmental agency with jurisdiction and/or authority to enforce air pollution control measures without adjustment of the Contract Time or the Contract Price. If in performance of the Work, the Contractor violates applicable air pollution control requirements, the Contractor shall be solely responsible for discharging and satisfying any fine, penalty or remedial measure imposed by a governmental or quasi-governmental agency with authority or jurisdiction to enforce air pollution control measures. The scope of the Contractor's indemnity obligations under the Contract Documents shall include, without limitation, the defense, indemnity and hold harmless of the Indemnified Parties from any fine, penalty or remedial measure imposed by a governmental or quasi-governmental agency with authority or jurisdiction to enforce air pollution control measures as a result of the Contractor's failure or refusal to comply with its obligations hereunder.

4.3.8.4. Contractor Failure to Comply. If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District, Architect, District Inspector or Construction Manager are each authorized to notify the Contractor in writing of such failure and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from such notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by the District in connection with such actions shall be the sole responsibility of, and be borne by, the Contractor; the District may deduct such amounts from the Contract Price then or thereafter due the Contractor.

4.4. Labor and Materials.

4.4.1. Payment for Labor, Materials and Services. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, Construction Equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

4.4.2. Employee Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor or Sub-subcontractor, and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its employ, and direct any Subcontractor or Sub-subcontractor to dismiss from their employment, any person deemed by the District to be unfit or incompetent to perform Work and thereafter, the Contractor shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of the District, which consent may be withheld in the reasonable discretion of the District.

4.4.3. Intentionally Left Blank.

4.4.4. Contractor's Project Manager and Superintendent.

4.4.4.1. Qualifications of Contractor Superintendent and Contractor Project Manager. Prior to start of Work at the Site, the Contractor shall submit in writing to the District and Project Manager, the qualifications of the Contractor's proposed superintendent ("Contractor Superintendent") and the Contractor's proposed Project Manager ("Contractor PM") for acceptance by the Project Manager and District. The Contractor's proposed Contractor Superintendent and proposed Contractor PM shall each have recent experience in similar types of construction to the Work. The Contractor's proposed Contractor Superintendent

and Contractor PM shall be satisfactory to the District and Project Manager and shall not be changed during the Work unless the Contractor's employment of the Contractor Superintendent or Contractor PM is terminated by the Contractor for cause or the Contractor Superintendent or Contractor PM voluntarily ceases employment by the Contractor. The Contractor shall dismiss the Contractor Superintendent or the Contractor PM if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approve of the replacement Contractor Superintendent or Contractor Project Manager, as applicable.

4.4.4.2. Contractor Superintendent. Competency of the Contractor Superintendent shall include, without limitation, a minimum of three (3) years prior experience as a superintendent for a general contractor on projects similar in size, scope and complexity to the Work. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor Superintendent. The Contractor Superintendent shall represent the Contractor and communications given to the Contractor Superintendent shall be binding as if given to the Contractor.

4.4.4.3. Contractor Project Manager. The Contractor shall employ a Contractor PM who shall be a senior management employee of the Contractor. The Contractor PM shall be at the Site periodically to observe the progress and quality of the Work in progress and in place. The Contractor PM shall be responsible for directing and coordinating human and material resources of the Contractor and Subcontractors throughout the course of the Work using management techniques so that the Work is completed for the Contract Price and within the Contract Time.

4.4.5. Prohibition on Harassment.

4.4.5.1. Policy Prohibiting Harassment. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability, veteran status or other legally protected classification. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

4.4.5.2. Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of

discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.4.5.

- 4.4.5.3. Prohibition on Harassment at the Site. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to this Article. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. If the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor, and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, Board of Trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to

this Article 4.4.5.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

4.5. Taxes. The Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.

4.6. Permits, Fees and Notices; Compliance With Laws.

4.6.1. Payment of Permits, Fees. The Contractor shall secure and pay for permits, approvals, governmental fees, licenses, and inspections necessary or required for the proper execution and completion of the Work which are designated in the Contract Documents as the responsibility of the Contractor.

4.6.2. Compliance With Laws. The Contractor shall comply with and give notices required by the Laws and other orders of public authorities bearing on performance of the Work, including but not limited to any and all federal, state, local and District regulations, guidelines, policies and/or procedures related to COVID-19 or any other pandemic or epidemic.

4.6.3. Notice of Variation From Laws. If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with the Laws, the Contractor shall promptly notify the Architect, Construction Manager and the Project Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to the Laws without such notice to the Architect, Construction Manager and the Project Inspector, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

4.7. Submittals.

4.7.1. Purpose of Submittals. Submittals are not Contract Documents. Submittals are for the purpose of demonstrating, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.

4.7.2. Contractor's Submittals.

4.7.2.1. Prompt Submittals. The Contractor shall review, approve and submit to the Architect or such other person or entity designated by the District or the Contract Documents, the number of copies of Submittals required by the Contract Documents. All Submittals required by the Contract Documents shall be prepared, assembled and submitted by the Contractor within the time frames set forth in the Submittal Schedule incorporated and made a part of the Approved Construction Schedule. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor. If the Contractor fails or refuses to deliver Submittals in accordance with the Submittal Schedule, the Contractor shall be subject to per diem assessments in the amount set forth in the Special Conditions for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule for Contractor's submission of such Submittal. Contractor and the District acknowledge and agree that the per diem assessment for delayed submission of Submittals set forth in the Special Conditions represents a reasonable estimate of costs and expenses the District will incur as a result of delayed submission of Submittals and that the same is not a penalty. Notwithstanding Contractor's submission of all required Submittals in accordance with the Submittal Schedule, in the event that the District or the Architect reasonably determines that all or any portion of such Submittals fail to comply with the requirements of Articles 4.7.2.2, 4.7.2.3 and 4.7.2.4 of these General Conditions and/or such Submittals are not otherwise complete and accurate so as to require re-submission, Contractor shall bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Architect's fees incurred in connection therewith; provided that such costs are in addition to, and not in lieu of, Liquidated Damages imposed under this Article 4.7.2.1 for Contractor's delayed submission of Submittals. If Liquidated Damages are assessed for the Contractor's delayed submission of Submittals or if the Contractor is assessed Architect fees to review incomplete or inaccurate Submittals, the District may deduct the same from any portion the Contract Price then or thereafter due the Contractor. Submittals not required by the Contract Documents or which do not otherwise conform to the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to timely submit any Submittal.

4.7.2.2. Approval of Subcontractor Submittals. All Submittals prepared by Subcontractors, Material Suppliers, manufacturers or distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for re-submittal in conformity herewith, with

the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment to the Contract Time or the Contract Price.

- 4.7.2.3. Verification of Submittal Information. By approving and submission of Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. The Contractor has also verified that the Submittal includes notations of any portion of the Work depicted in the Submittal which is not in strict conformity to the Contract Documents.
- 4.7.2.4. Information Included in Submittals. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The foregoing information is in addition to, and not in lieu of, any other information required by the Contract Documents for the Architect's review, evaluation and acceptance of the Contractor's Submittals.
- 4.7.2.5. Contractor Responsibility for Deviations. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's review of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's review thereof.
- 4.7.2.6. No Performance of Work Without Architect Review. The Contractor shall perform no portion of the Work requiring the Architect's review of Submittals until the Architect has completed its review and returned the Submittal to the Contractor indicating "No Exception Taken" to such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the Architect in review of Submittals and other applicable portions of the Contract Documents.

4.7.3. Architect Review of Submittals. The purpose of the Architect's review of Submittals and the time for the Architect's return of Submittals to the Contractor shall be as set forth elsewhere in the Contract Documents. If the Architect returns a Submittal as rejected or requiring correction(s) with re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the Architect's direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Architect's review of the Submittals is for the limited purposes described in the Contract Documents. The following notations or notations of a similar nature noted on a reviewed Submittal will require the Contractor action noted below.

Notation	Action Required
No Exceptions Taken	No formal revision required
Make Corrections Noted	Make revision noted; re-submission of revised Submittal not required
Revise and Re-Submit	Revise Submittal in accordance with notations and re-submit for revision
Rejected Re-Submit	Prepare new alternative Submittal and re-submit for review

4.7.4. Deferred Approval Items. If any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for: (i) the design, engineering and specifying the materials/equipment forming any part of the Deferred Approval Item; (ii) integrating and/or coordinating the Deferred Approval Item with other portions of the Work; (iii) preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time; and (iv) timely obtaining DSA approval thereof.

4.8. Materials and Equipment.

4.8.1. Specified Materials, Equipment. References in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with

or without the words “or equal” shall be deemed to establish a minimum standard of quality or performance, and shall not be construed as limiting competition. Whenever a product, material or other item is specified with reference to a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other trade association standard (collectively, “the Standards”), the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying the product, material or other item to be furnished and installed complies with the Standards. When requested by the Architect or required by the Contract Document, support test data shall be submitted to substantiate compliance with the Standards.

- 4.8.2. Approval of Substitutions or Alternatives. The Contractor may propose to furnish alternatives or substitutes for a particular item specified in the Contract Documents, provided that: (i) such proposed substitution or alternative complies with the requirements of the Specifications relating to substitutions of specified items; (ii) the Contractor certifies to the Architect and District that the quality, performance capability and functionality (including visual and/or aesthetic effect) of the proposed alternative or substitute meets or exceeds the quality, performance capability and functionality of the item or process specified; and (iii) demonstrate to the reasonable satisfaction of the Architect and District that the use of the substitution or alternative is appropriate and will not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit calculations, engineering, construction, dimension, visual, aesthetic and performance data to the Architect to permit its proper evaluation of the proposed substitution or alternative. If requested by the Architect, Contractor shall promptly furnish any additional information or data regarding a proposed substitution or alternative which the Architect deems reasonably necessary for the evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the Architect’s review and final action on the proposed substitution or alternative; any alternative or substitution installed or incorporated into the Work without first obtaining the Architect’s review and final action of the same shall be subject to removal pursuant to Article 13 hereof. The Architect’s decision evaluating the Contractor’s proposed substitutions or alternatives shall be final. Neither the Contract Time nor the Contract Price shall be increased on account of any substitution or alternative proposed by the Contractor and which is accepted by the Architect; provided, however, that in the event a substitution or alternative accepted by the Architect and purchase, fabrication and/or installation or such accepted substitution or alternative shall be less expensive than the originally specified item, the Contract Price shall be reduced by the actual cost savings realized by the Contractor’s furnishing and/or installation of such approved substitution or alternative. The Contractor shall be solely responsible for all costs and fees incurred by the District to

review a proposed substitution or alternative, including without limitation fees of the Architect, and/or governmental agencies to review and/or approve any proposed substitution or alternative. The Contractor shall be solely responsible for any increase in the cost of any accepted substitution or alternative or any Work affected by such alternative or substitution. The foregoing notwithstanding, unless modified in writing elsewhere in the Contract Documents, including without limitation, the Specifications, Addenda or Bid Documents, all requests for the Architect's review and approval of any proposed substitution or alternative and all engineering, construction, dimension and performance data substantiating the equivalency of the proposed substitution or alternative shall be submitted by Contractor not later than thirty (30) days following the date of the District's award of the Contract to Contractor by action of the District's Board of Trustees; any request for approval of proposed alternatives or substitutions submitted thereafter may be rejected summarily. The foregoing process and time limits shall apply to any proposed substitution or alternative regardless of whether the substitute or alternate item is to be provided, furnished or installed by Contractor, any Subcontractor, any Sub- Subcontractor, Material Supplier or Manufacturer.

- 4.8.3. District Standards; "Sole Source" Products. If any material, equipment, product or other item is designated in the Contract Documents as a "District Standard" or similar words/terms, the District shall be deemed to have made a finding that such material, equipment, product or other item is designated and specified to match other materials, equipment, products, or other item in use in a completed or to be completed work of improvement and not subject to substitution. If any material, equipment, or other item is identified in the Contract Documents as being the only source of the material, equipment or other item necessary to accomplish the intended result(s), such material, equipment or other item shall be deemed a "sole source" and shall not be subject to substitution.
- 4.8.4. Placement of Material and Equipment Orders. Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the District, Construction Manager or the Architect, the Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor.

4.8.5. District's Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, if the Contractor shall, upon request of the District, Construction Manager or the Architect, fail or refuse, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. If the District exercises the right to place orders for materials and/or equipment pursuant to the foregoing, the District's conduct shall not be deemed to be an exercise, by the District, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of the Contractor. Notwithstanding the right of the District to place orders for materials and/or equipment pursuant to the foregoing, the election of the District to exercise, or not to exercise, such right shall not relieve the Contractor from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due to the Contractor.

4.8.6. Contractor and Subcontractor Communication. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available to the District, the Construction Manager and the Architect for review, inspection and reproduction as may be requested from time to time. The foregoing is a material obligation of the Contractor hereunder.

4.9. Safety.

4.9.1. Safety Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by the Laws required by the type or nature of the Work. The foregoing include, without limitation: (i) workplace safety programs mandated by the Laws. Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs.

4.9.2. Contractor Safety Plan. Prior to commencement of Work at the Site, the Contractor shall submit to the District and the Construction Manager, if any, the Contractor's Safety Plan for the Work for review and acceptance by the District. Acceptance by

the District is subject to the Safety Plan conforming to requirements of the Laws, conditions at or near the Site and the nature of the Work. The Contractor shall modify its Safety Plan as necessary to obtain the District's acceptance thereof. Notwithstanding the District's acceptance of the Contractor's Safety Plan, the Contractor shall remain solely responsible for implementing the Safety Plan and implementing measures as necessary to maintain safety of persons and property at and about the Site. The District's acceptance of the Contractor's Safety Plan shall not limit, restrict or otherwise modify the Contractor's obligations relating to safety at or about the Site in accordance with the Contract Documents and the Laws.

4.9.3. Safety Precautions. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or Subcontractors; and (iii) other property or items at the Site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement.

4.9.4. Safety Signs, Barricades. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, barricades, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

4.9.5. Safety Notices. The Contractor shall give or post all safety notices required by the Laws and comply with the Laws bearing on safety of persons or property or their protection from damage, injury or loss.

4.9.6. Safety Coordinator. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance of safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Construction Manager, Project Inspector and the Architect.

4.9.7. Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss.

4.9.8. Hazardous Materials.

4.9.8.1. General. If the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any

material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively “Hazardous Materials”), the Contractor shall comply with all Laws applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

4.9.8.2. Prohibition on Use of Asbestos Construction Building Materials (“ACBMs”). Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the Architect and the Project Inspector of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor’s obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor’s completion of the Work or the District’s acceptance of the Work. If the Contractor fails or refuses, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District’s written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Surety.

4.9.8.3. Disposal of Hazardous Materials. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about the Site. The Contractor’s obligations hereunder shall include without limitation, the

transportation and disposal of any Hazardous Materials in strict conformity with the Laws.

4.10. Maintenance of Documents.

4.10.1. Documents at Site. The Contractor shall maintain at the Site: (i) one record copy of the Drawings, Specifications and all addenda thereto; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Submittals reviewed by the Architect; (iv) Record Drawings; (v) Material Safety Data Sheets ("SDS") accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (vi) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations. During performance of the Work, all documents maintained by Contractor at the Site shall be available to the District, the Construction Manager, the Architect, the Project Inspector and DSA for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by the Contractor pursuant to the foregoing shall be assembled and transmitted to the Architect for delivery to the District.

4.10.2. Maintenance of Record Drawings. During its performance of the Work, the Contractor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by the Contractor during the performance of the Work. At any time during the Contractor's performance of the Work, upon the request of the District, the Project Inspector or the Architect, the Contractor shall make the Record Drawings maintained here under available for the District's review and inspection. The District's review and inspection of the Record Drawings during the Contractor's performance of the Work shall be only for the purpose of generally verifying that Contractor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the District's approval or verification of the completeness or accuracy thereof. The failure or refusal of the Contractor to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review

by the District may be deemed by the District to be Contractor's default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for the Contractor's failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that the Contractor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to the Contractor and the District may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. Prior to receipt of the Final Payment, Contractor shall deliver the Record Drawings to the Architect.

- 4.10.3. Daily Reports By Contractor. At the end of each work day, the Contractor shall submit a daily report to the Construction Manager and the Project Inspector for document control listing all labor, materials, and equipment involved with the Work for that day, including but not limited to: (i) Labor, number of classifications of work by contractor/subcontractors, (ii) Materials used, by contractor/subcontractor, (iii) Equipment used, by contractor/subcontractors, (iv) Any inspections or testing performed, (v) Any other authorized services or expenditures.

4.11. Site.

- 4.11.1. Contractor's Use of Site. The Contractor shall confine operations at the Site to areas permitted by the Laws or permits relating to the Work, subject to any restrictions or limitations set forth in the Contract Documents. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor is solely responsible for providing security at the Site with all such costs included in the Contract Price. The District shall at all times have access to the Site.

- 4.11.1.1. Marine Corps Base Camp Pendleton. For work pertaining to Santa Margarita, Stuart Mesa and North Terrace, the Contractor shall ensure that any and all personnel, contractor/subcontractors, and the like, have fulfilled the installation requirements for issuance of Base Access passes. Base Access is to be in accordance with Section 00 73 00 – SPECIAL CONDITIONS Attachment B to Special Conditions.
- 4.11.2. Limitations Upon Site Activities. Except in the circumstances of an emergency, no construction activities shall be permitted at or about the Site except during the District's hours and days set forth in the Special Conditions. Work performed outside of the hours and days noted in the Special Conditions will not result in adjustment of the Contract Time or the Contract Price; unless Work outside of the hours and days noted in the Special Conditions is expressly authorized by the District. Additional or premium costs incurred by the District for Work performed outside the

hours and days of Work permitted at the Site shall be borne solely and exclusively by the Contractor. The District may deduct such additional or premium costs from the Contract Price then or thereafter due the Contractor.

- 4.12. Clean-Up. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the Site in a "rake-clean" standard on a daily basis. If the Work includes painting and/or the installation of floor covering, before any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste materials, excess excavated materials, tools, Construction Equipment, machinery, surplus materials and any other items which are not the property of the District under the Contract Documents. Upon completion of the Work, the Site and all adjoining areas shall be left by the Contractor in a neat and broom clean condition satisfactory to District. The Project Inspector or Construction Manager shall be authorized to direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.
- 4.13. Access to the Work. The Contractor shall provide DSA, the District, the Construction Manager, the Project Inspector and the Architect access to the Work, whether in place, preparation and progress and wherever located.
- 4.14. Facilities and Information for the Project Inspector.
- 4.14.1. Information to Project Inspector. The Contractor shall furnish the Project Inspector access to the Work for obtaining such information as may be necessary to keep the Project Inspector fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein.
- 4.14.2. Facilities for Project Inspector. Facilities, services or other items to be provided by the Contractor for use by the Project Inspector, if any, shall be as set forth in the Special Conditions. If any such facilities, services or other items are designated in the Special Conditions and the Contractor fails or refuses to provide the same, the District may furnish such facilities, services or other items, with the costs, fees or expenses incurred to furnish the same being deducted from the Contract Price.
- 4.15. Patents and Royalties. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work.

- 4.16. Cutting and Patching. The Contractor is responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration. The Contractor shall not cut, patch or otherwise alter the construction by the District or separate contractor without the prior written consent of the District or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.
- 4.17. Encountering of Hazardous Materials. If the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless, or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, the Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the Project Inspector and the Architect, in writing, of such condition. The Contractor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. If such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Contract Price solely on account of the Contractor encountering such Hazardous Materials.
- 4.18. Wage Rates; Employment of Labor.
- 4.18.1. Prevailing Wage Rates.
- 4.18.1.1. Prevailing Wage Rate Schedules. Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§ 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code § 1773.1, apprenticeship or other training programs authorized by California Labor Code § 3093, and similar purposes when the term “per diem wages” is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. The Contractor shall post, at

appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

- 4.18.1.2. Payment of Prevailing Rates. There shall be paid each worker of the Contractor and Subcontractors, of any tier, engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such worker. The Contractor is solely responsible for obtaining and complying with prevailing wage rate determinations and modifications thereto during performance of the Work. Any such modification shall not result in an adjustment to Contract Price.
- 4.18.1.3. Prevailing Rate Penalty. The Contractor shall, as a penalty, forfeit not more than Two Hundred Dollars (\$200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The amount of the penalty for failure to pay applicable prevailing wage rates shall be determined and assessed in accordance with the standards established pursuant to Labor Code § 1775(a)(2). The amount of the penalty shall be determined based on consideration of both of the following: (i) whether the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the Contractor or Subcontractor; and (ii) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Contractor or Subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. When the penalty amount due hereunder is collected from the Contractor or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that Contractor or Subcontractor

shall be satisfied before applying that amount to the penalty imposed on that Contractor or Subcontractor hereunder. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4.18.1.4. Prevailing Wage Rate Monitoring and Enforcement. During the Work and pursuant to Labor Code § 1771.4, the Department of Industrial Relations shall monitor and enforce the obligation of the Contractor and Subcontractors of every tier to pay laborers performing any portion of the Work the Prevailing Wage Rate established for the classification of work/labor performed.

4.18.2. Payroll Records.

4.18.2.1. Certified Payroll Records. Pursuant to California Labor Code § 1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work.

4.18.2.2. Certified Payroll Records Submittal to Labor Commissioner. The Contractor and all Subcontractors shall prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code § 1771.4. The form and content of Certified Payroll Records shall be as established by the Labor Commissioner and the frequency of Certified Payroll Records submittal to the Labor Commissioner shall be pursuant to Labor Code § 1771.4.

4.18.2.3. Inspection and Copies of Certified Payroll Records. The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement ("DLSE") and the Division of Apprenticeship Standards of the Department of Industrial Relations ("Apprenticeship Council"); (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, DLSE and the Apprenticeship Council. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the

Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) 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 Apprenticeship Council or DLSE shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address. In the event of noncompliance with the foregoing requirements, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such ten (10) day period, the Contractor 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 Apprenticeship Council or DLSE, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The Contractor is solely responsible for compliance with the foregoing provisions.

4.18.3. Hours of Work.

4.18.3.1. Limits on Hours of Work. Pursuant to California Labor Code § 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code § 1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

4.18.3.2. Penalty for Excess Hours. The Contractor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so

employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

- 4.18.3.3. Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Saturdays, Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District. The Contractor shall be responsible for costs incurred by the District which arise out of Work performed by the Contractor at times other than regular working hours and regular working days. Upon determination of such costs, the District may deduct such costs from the Contract Price then or thereafter due the Contractor.

4.18.4. Apprentices.

- 4.18.4.1. Employment of Apprentices. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code § 3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§ 3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

- 4.18.4.2. Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code § 1777.5. Prior to the commencement of the Work, the Contractor and Subcontractors shall submit contract award information (on Form DAS-140) to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. Concurrently with

submission of contract information on Form DAS-140 to the Apprenticeship Council, the Contractor shall deliver a copy of its completed DAS-140 to the District and the Construction Manager. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

- 4.18.4.3. Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code § 1777.5. The minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The Contractor or any Subcontractor covered by this Article and California Labor Code § 1777.5, upon the issuance of the approval certificate, or if it has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code § 1777.5. This Article shall not apply to contracts of general contractors, or to contracts of specialty contractors not

bidding for work through a general or contractor, involving less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

- 4.18.4.4. Exemption From Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.
- 4.18.4.5. Contributions to Trust Funds. The Contractor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall, using California Apprenticeship Council Training Fund Contributions Form CAC-2, pay a like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code § 227. Such contributions shall not result in an increase in the Contract Price.

- 4.18.4.6. Contractor's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Article are subject to the provisions of California Labor Code § 3081. If the Contractor willfully fails to comply with the provisions of this Article and California Labor Code § 1777.5, pursuant to California Labor Code § 1777.7, the Contractor shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, Fifty Dollars (\$50.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code § 1727, upon receipt of such determination, the District shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the District pursuant to this Article shall be deposited in the General Fund or other similar fund of the District. The interpretation and enforcement of California Labor Code §§ 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- 4.18.5. Employment of Independent Contractors. Pursuant to California Labor Code § 1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractors' license issued pursuant to California Business and Professions Code §§ 7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code § 2750.5. If the Contractor employs any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code § 1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code § 1021.5, Contractor's violation of this Article 4.18.5 or the provisions of California Labor Code § 1021.5 shall be deemed an event of Contractor's default under Article 15.1 of these General Conditions. The Contractor shall require any Subcontractor or Sub- Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.
- 4.19. Assignment of Antitrust Claims. Pursuant to California Government Code § 4552, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (California Business and Professions Code §§ 16700 et seq.), arising from purchases of goods,

services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§ 4550 et seq., the assignor thereof 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 Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one 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 (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

4.20. DSA Construction Oversight. All of the Work is subject to DSA Construction Oversight processes and procedures; a material obligation of the Contractor hereunder is the Contractor's compliance with the processes and procedures established by DSA for the Work. As applicable, the foregoing shall include without limitation, the processes and procedures established under DSA PR 13-01 in effect at the time of performing the Work hereunder. The foregoing shall include:

4.20.1. DSA Approved Documents. The Contractor shall carefully study the DSA approved documents and shall plan a schedule of operations well ahead of time.

4.20.2. Correction of Non-Conforming Work. If at any time it is discovered that Work is not in accordance with the DSA approved construction documents, the Contractor shall correct the Work immediately.

4.20.3. Verification of DSA 152 Forms. The Contractor shall verify that DSA 152 forms were issued prior to the commencement of construction.

4.20.4. Test/Inspection Communications. The Contractor shall meet with the Architect, Construction Manager, the Laboratory of Record retained by the District for special tests/inspections and the Project Inspector to mutually communicate and understand the testing and inspection program, and the methods of communication appropriate for the Work.

4.20.5. DSA Form 156 Notifications to Project Inspector. The Contractor shall notify the Project Inspector, in writing, of the commencement of construction of each and every aspect of the Work at least 48 hours in advance by submitting Commencement/Completion of Work Notification (form DSA 156), or other agreed upon written documents, to the Project Inspector. The Contractor shall notify the Project Inspector of the completion of construction of each and every aspect of the

Work by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

4.20.6. Limitations on Contractor Work. Until the Project Inspector has signed off applicable blocks and sections of the form DSA 152, the Contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved Work. Any subsequent construction activities, that cover up the unapproved Work, will be subject to a “Stop Work Order” from DSA or the District, and are subject to removal and remediation if found to be in non-compliance with the DSA approved construction documents.

4.20.7. Final Verified Report. The Contractor shall submit the final Contractor Verified Report (form DSA 6-C) to DSA and the Project Inspector. The DSA 6-C reports are required to be submitted by the Contractor upon occurrence of any of the following events: (i) the Work is substantially complete (DSA considers the Work to be complete when the construction is sufficiently complete in accordance with the DSA approved construction documents so that the owner can occupy or utilize the Work); (ii) Work is suspended for a period of more than one (1) month; (iii) services of the Contractor are terminated for any reason prior to the completion of the Work; or (iv) DSA requests a verified report.

4.20.8. Failure to Submit Final Verified Report. Should Contractor fail or refuse to submit the final Contractor Verified Report (form DSA 6-C) to DSA and the Project Inspector, the Final Payment due the Contractor shall be reduced by Twenty-Five Thousand Dollars (\$25,000.00) until such time as the Contractor submits the final Contractor Verified Report (form DSA 6-C) to DSA and the Project Inspector.

4.21. DSA Verified Reports

4.21.1. Contractor Actions. The Contractor acknowledges and agrees that a material obligation of the Contractor under the Contract Documents is the completion by the Contractor of all actions and activities which by the Contract Documents or by the Laws are the responsibility of the Contractor relating to DSA reporting requirements pursuant to Education Code § 81141 (including amendments thereto) and issuance of DSA’s Certificate of Compliance for the Project pursuant to Education Code § 81147 (including amendments thereto) upon completion of the Work. The foregoing shall include without limitation, the timely preparation, completion and filing of Verified Reports during Project construction and the filing of the Final Verified Report with DSA within thirty (30) days of the determination of Final Completion. The Contractor shall provide the District, the Project Inspector, Architect, Construction Manager with copies of all Verified Reports completed by the Contractor and submitted to DSA; such copies shall be provided to the Project

Inspector, Architect, the Construction Manager and the District concurrently with the Contractor's submission thereof to DSA.

- 4.21.2. District Withholdings From Final Payment. Notwithstanding any provision of the Contract Documents to the contrary, the completion and filing of the Final Verified Report with DSA by the Contractor is an express condition precedent to the District's disbursement of the Final Payment. If the Contractor fails to prepare and file the Final Verified Report with DSA within thirty (30) days of the determination of Final Completion, the District may in the sole and exclusive discretion of the District retain and withhold ten percent (10%) of the Final Payment from disbursement to the Contractor as damages for the failure of the Contractor to have timely and completely discharged its obligations hereunder. The Contractor acknowledges and agrees that the foregoing withholding by the District is a reasonable estimate of the damages and other losses the District will sustain due to the failure of the Contractor to have timely and fully discharged its obligations hereunder.

ARTICLE 5: SUBCONTRACTORS

5.1. Subcontracts. Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District and the Architect. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contractor is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 15 hereof, subject to the prior rights of the Surety if the District terminates the Contract for the Contractor's default. The Contractor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor's execution of the Agreement. During performance of the Work, the Contractor shall, from time to time, as and when requested by the District, the Architect or the Construction Manager provide the District with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor's default of a material term of the Contract Documents.

5.2. Subcontractor DIR Contractor Registration.

5.2.1. No Subcontractor Performance of Work Without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.

5.2.2. Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.

5.2.3. Contractor Obligation to Request Substitution of Listed Subcontractor Who Is Not DIR Registered Contractor. If Contractor inadvertently identified a Subcontractor in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work whose DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code § 1771.1(c)(3) and/or Labor Code § 1771.1(d).

5.2.4. Contractor/Subcontractor Penalties pursuant to Labor Code § 1771.1(g). "If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5."

5.2.5. Subcontractor Penalties pursuant to Labor Code § 1771.1 (h)(1). "In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000)."

5.3. Substitution of Listed Subcontractor.

5.3.1. Substitution Process. Request of the Contractor to substitute a listed Subcontractor will be considered only if in strict conformity with this Article 5.3 and California Public Contract Code § 4107. All costs incurred by the District, including without limitation, costs of the Project Inspector, the Architect, the Construction Manager or attorney's fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due to the Contractor.

5.3.2. Responsibilities of Contractor Upon Substitution of Subcontractor. The District's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution. If the District consents to substitution

of a listed Subcontractor, the Architect shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor ("Substituted Subcontractor"). If the Architect determines that revised or additional Submittals are required of a Substituted Subcontractor, the Architect shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Architect not later than thirty (30) days following the date of the Architect's written notice to the Contractor pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the Architect, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by a Substituted Subcontractor in less than thirty (30) days, the Architect shall so state in its written notice to the Contractor. If the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as determined by the Architect pursuant to the preceding sentence, following the Architect's written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments for late Submittals as set forth in Article 4.7.2.1 of these General Conditions. Any revised or additional Submittals required pursuant to this Article 5.3.2 shall conform to the requirements of Article 4.7 of these General Conditions. Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Architect, the District's administrative costs and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.3.2; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.3.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

- 5.4. Subcontractors' Work. Whenever the Work of a Subcontractor is dependent upon the Work of the Contractor or another Subcontractor, the Contractor shall require the Subcontractor to: (i) coordinate its Work with the dependent Work; (ii) provide necessary dependent data and requirements; (iii) supply and/or install items to build into the dependent Work of others; (iv) make appropriate provisions for dependent Work of others; (v) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (vi) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify the Contractor in writing and not proceed with the Subcontractor's Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor's Work.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

- 6.1. Worker's Compensation Insurance; Employer's Liability Insurance. The Contractor shall purchase and maintain Workers' Compensation Insurance as will protect the Contractor from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Contractor hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions.
- 6.2. Commercial General Liability and Property Insurance. The Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which the Contractor may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to the Contractor's obligations under the Contract Documents; (vi) Completed Operations; and (vii) pollution liability.
- 6.3. Builder's Risk "All-Risk" Insurance. The Contractor, during the progress of the Work and until Final Acceptance of all Work by the District, shall maintain Builder's Risk "All-Risk" Completed Value Insurance Coverage on all insurable Work included under the Contract Documents which coverage is to provide extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the entire Work which is the subject of the Contract Documents, and including completed Work and Work in progress to the full insurable value thereof. Contractor's Builders Risk Insurance shall include coverage and insurance against the perils of earthquake if so indicated in the Special Conditions. Such insurance shall include the District as an additional named insured, and any other person with an

insurable interest designated by the District as an additional named insured. The risk of 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.

6.4. Coverage Amounts. The insurance required of the Contractor hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance required to be obtained and maintained by the Contractor hereunder, the Contractor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Contract Price on account thereof.

6.5. Required Qualifications of Insurers. The Contractor and Subcontractors' policies of Commercial General Liability and Property/Casualty insurance and the Contractor's Builders Risk insurance will be accepted by the District only if the insurer(s) are: (a) A.M. Best rated A- or better; (b) A.M. Best Financial Size Category VII or higher; and (c) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California. If at any time during performance of the Work, the insurer(s) issuing a policy of insurance covering Commercial General Liability or Property/Casualty is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, the Contractor or Subcontractor, as applicable shall within thirty (30) days of the District's written notice of the insufficiency of an insurer to the Contractor, obtain insurance coverage(s) from alternative insurer(s) who is/are then A.M. Best rated A- or better and who is/are A.M. Best Financial Size Category VII or higher. If the Contractor fails to deliver Certificate(s) of Insurance from an alternative insurer(s) meeting or exceeding the A.M. Best rating and A.M. Best Financial Size Category set forth above, within thirty (30) days of the date of the District's issuance of a written notice pursuant to the preceding sentence, in addition to any other right or remedy of the District under the Contract Documents or arising by operation of law, the District may withhold disbursement of any Progress Payment otherwise due hereunder until the Contractor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

6.6. Evidence of Insurance; Subcontractor's Insurance.

6.6.1. Certificates of Insurance. Prior to commencing the Work, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District

may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Contractor hereunder shall also name the District as an additional insured as its interests may appear. The additional Insured acknowledgement shall be submitted as a separate declaration from the Contractor's insurance provider (ACCORD form modifications are not acceptable). Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. The Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Contractor to comply with the District's request may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.

6.6.2. Subcontractors' Insurance. Each Contractor shall require that every Subcontractor obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform to the requirements of this Article 6. Upon request of the District, Contractor shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Contractor to provide the District with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

6.7. Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after the District's Final Acceptance of all of the Work for the full one-year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and the Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for

payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the Contractor's obligation to pay Liquidated Damages. In no instance will the District's exercise of its option to occupy and use completed portions of the Work relieve the Contractor of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

- 6.8. Contractor's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Contractor's Builder's Risk Insurance or the Comprehensive General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price.
- 6.9. Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct the District or the Architect, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the District's Inspector); (ii) the Architect its respective agents and employees; and (iii) if one is designated by the District for the Work, the Construction Manager and its agents and employees. The Contractor's obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorney's fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the negligent, grossly negligent or willful acts, omissions or other conduct of the Contractor, any Subcontractor or any person or entity engaged by them for the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Payment Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action

or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

- 6.10. Payment Bond; Performance Bond. Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor's faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor's performance of the Work under the Contract Documents. The penal sum of the Performance Bond and the Payment Bond shall each be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Article 6.10 may be deemed by the District as a default by the Contractor of a material obligation hereunder. Upon request of the Contractor, the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

ARTICLE 7: CONTRACT TIME

7.1. Substantial Completion of the Work Within Contract Time. Unless otherwise expressly provided in the Contract Documents, the Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Substantial Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District pursuant to the Agreement, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Substantial Completion is the date certified by the Architect and the Project Inspector as such in accordance with the Contract Documents. References in the Contract Documents to the Contract Time shall be deemed references to the Contract Time for each Contractor for a Bid Package to achieve Substantial Completion of its portion of the Work of the Project, as set forth in the Special Conditions.

7.2. Progress and Completion of the Work.

7.2.1. Time of Essence. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of the Work within the Contract Time. The Work may require Contractor to perform in different areas of the Site simultaneously in order to achieve Substantial Completion of the Work within the Contract Time. As each area becomes available, Contractor shall begin work in those respective areas with additional crews, if necessary, to avoid a reduction of effort in other areas already under construction. The Contract Price shall not be subject to adjustment on account of any action or activity of the Contractor to perform Work simultaneously in different areas of the Site.

7.2.2. Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work or any designated portion thereof (whether described as milestones, phases, segments or other similar terms) is complete in accordance with the Contract Documents so the District can occupy or use the Work or designated portion thereof for its intended purpose. Substantial Completion shall be determined by the Architect, Construction Manager, if any, and the Project Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector, Construction Manager, if any and the Architect shall be controlling and final.

7.2.3. Correction or Completion of the Work After Substantial Completion.

- 7.2.3.1. Punch list. Upon achieving Substantial Completion of the Work, the District, the Project Inspector, the Construction Manager, if any, the Architect and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor (“the Punch list”). The exclusion of, or failure to include, any item on the Punch list shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.
- 7.2.3.2. Time for Completing Punch list Items. In addition to establishing the Punch list items pursuant to Article 7.2.3.1, the Construction Manager, if any, Contractor and Architect shall, after the joint inspection, establish a reasonable time for Contractor’s completion of all Punch list items. If mutual agreement is not reached to establish the time for the Contractor’s completion of Punch list items, the Architect shall determine such time, and in such event, the time determined by the Architect shall be final and binding upon the District and Contractor so long as the Architect’s determination is made in good faith. The Contractor shall promptly and diligently proceed to complete all Punch list items within the time established. If the Contractor fails or refuses, for any reason, to complete all Punch list items within the time established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.5 hereof. The foregoing notwithstanding, if the Contractor fails or refuses to complete all Punch list items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining Punch list items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete Punch list items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith, and the District may deduct such costs from the Contract Price then or thereafter due to the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are jointly and severally liable to District for any such excess costs.
- 7.2.4. Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, all Punch list items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect, Construction Manager, if any and the Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector, Construction Manager, if any, and the Architect shall be controlling and final.

7.2.5. Contractor Responsibility for Multiple Inspections. If the Contractor requests determination of Substantial Completion or Final Completion by the Project Inspector, Construction Manager, if any, and the Architect and it is determined by the Project Inspector, Construction Manager, if any, or the Architect that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Architect, Construction Manager, if any, and the Project Inspector. The District may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

7.2.6. Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Trustees; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents is the date upon which the District's Board of Trustees approves of the Final Acceptance of the Work.

7.3. Construction Schedule.

7.3.1. Construction Schedule Terms Defined.

7.3.1.1. Bid Schedule. The term "Bid Schedule" refers to the Construction Schedule issued with the Bid Documents, which shall be used by Bidders and their respective Subcontractors for preparation of Bidders' Bid Proposals.

7.3.1.2. Preliminary Baseline Construction Schedule. The term "Preliminary Baseline Construction Schedule" refers to the Construction Schedule issued by the Construction Manager, within ten (10) days after the Notice of Award is issued by or on behalf of the District to a Contractor. The Preliminary Baseline Construction Schedule may incorporate modifications to the Bid Schedule, which do not affect critical path activity durations, but may adjust the date(s) for achieving Substantial Completion and Final Completion of the Work if the date of the issuance of the Notice to Proceed has varied from that indicated in the Bid Schedule.

7.3.1.3. Baseline Construction Schedule. The term "Baseline Construction Schedule" refers to the Construction Schedule developed and prepared by the Construction Manager based upon the proposed modifications or other comments of each Contractor for a Bid Package to the Preliminary Baseline Construction Schedule. The Baseline Construction Schedule, upon issuance by the Construction Manager, shall be used to manage and coordinate the Work of each Contractor for a Bid Package and to monitor the progress of construction activities until an Updated Construction Schedule is issued.

7.3.1.4. Updated Construction Schedule. The term “Updated Construction Schedule” refers to all Construction Schedules prepared and issued by the Construction Manager after issuance of the Baseline Construction Schedule. Work of each Contractor for a Bid Package shall conform to the then most recent Updated Construction Schedule. Actions of the Contractor necessary to conform the progress of the Contractor’s Work with the then current Updated Construction Schedule shall be undertaken and completed as directed by the Construction Manager without adjustment of the Contract Price or the Contract Time.

7.3.1.5. Recovery Schedule. The term “Recovery Schedule” refers to a Construction Schedule for the Work of one or more Bid Packages prepared by the Contractor for the Bid Package to identify and establish the activities and other actions necessary for such Contractor to recover lost time due to delays to the progress of the Contractor’s Work, ability to meet Milestones and/or Project completion dates/requirements. A material obligation of each Contractor for a Bid Package is its preparation of a Recovery Schedule as directed by the Construction Manager including, without limitation, the incorporation of requirements therein as directed by the Construction Manager. If directed by the Construction Manager to prepare a Recovery Schedule, the Contractor’s submittal of the Recovery Schedule for review and acceptance by the Construction Manager within the time established by the Construction Manager is a material obligation of the Contractor under the Contract Documents. If a Contractor is directed by the Construction Manager to prepare a Recovery Schedule, the Contractor shall modify the Recovery Schedule as necessary to obtain the Construction Manager’s acceptance of the entirety thereof. If a Contractor fails or refuses to prepare a Recovery Schedule as directed by the Construction Manager, the Construction Manager may, at the cost and expense of the Contractor, develop a Recovery Schedule on behalf of such Contractor. In such event, a material obligation of the Contractor shall be its implementation of all measures necessary to conform to the rate of progress to that indicated in the Recovery Schedule prepared by the Construction Manager; and the Contractor’s reimbursement to the District of the costs and expenses incurred to prepare such Recovery Schedule, provided that in lieu of such reimbursement and at the sole election and discretion of the District such costs and expenses may be deducted from any portion of the Contract Price then or thereafter due the Contractor. Neither the preparation of Recovery Schedules nor the actions of the Contractor necessary to comply and conform to the progress indicated in a Recovery Schedule accepted by the Construction Manager (or prepared by the Construction Manager upon failure or refusal of the Contractor to prepare a

Recovery Schedule) shall result in adjustment of the Contract Time or the Contract Price.

7.3.1.6. Construction Schedule(s). The term “Construction Schedule(s)” as used in the Contract Documents refers collectively to the Bid Schedule, Preliminary Baseline Construction Schedule, Baseline Construction Schedule, and Updated Construction Schedule.

7.3.1.7. Three (3) Week Look Ahead Schedules. The term “Three Week Look Ahead Schedules” refers to the detailed schedule of construction activities prepared by each Contractor for a Bid Package for the ensuing three (3) week period; construction activities indicated in each Contractor’s Three Week Look Ahead Schedules shall conform to the then current Updated Construction Schedule.

7.3.2. Bid Schedule. The Bid Schedule is for bidding purposes to establish preliminary contract durations of various activities necessary to complete the Work of each Bid Package and the Work of the Project. The Project will be constructed by separate contractors, each under direct contract with the District for a specific scope of Work of the Project, as further defined in the Bid Package descriptions incorporated into the Contract Documents. The scheduling and coordination of the Work of each Bid Package and the overall Work of the Project shall be by the Construction Manager. Without adjustment of the Contract Price or the Contract Time, each Contractor for a Bid Package shall comply with the Construction Manager’s directives regarding the scheduling, sequencing and coordination of the Work of each Bid Package. The District expressly reserves the right to modify the Bid Schedule based upon input from each Contractor or other Project requirements. The Contractor acknowledges and agrees that modifications to the Bid Schedule after award of the Contract shall not be a basis for adjustment of the Contract Time or the Contract Price.

7.3.3. Preliminary Bid Package Schedules. Within fourteen (14) days following issuance of the Notice of Award for a majority of the Bid Packages, the Construction Manager shall arrange a Project Schedule meeting with all Contractors to review a Preliminary Baseline Schedule. This Preliminary Baseline Schedule shall include any modifications incorporated since development of the Bid Schedule. Within seven (7) days after the Project Schedule meeting, each Contractor shall prepare and submit to the Construction Manager all revisions and recommendations to the Preliminary Baseline Schedule and Submittal Schedule indicating, in graphic form, the estimated rate of progress, manpower required (estimated men per day) and sequence of all Work of the Bid Package as required under the Contract Documents. Each Contractor for a Bid Package acknowledges and agrees that its proposed modifications to the Preliminary Baseline Schedule and/or Submittal Schedule are subject to acceptance by the District and the Construction Manager in the sole and exclusive discretion of

the District and the Construction Manager. Contractors may submit proposed revisions to the Preliminary Baseline Schedule depicting completion of the Work of the Contractor's Bid Package in a duration shorter than the Contract Time established for the Bid Package; provided that if such proposed modifications to the Preliminary Baseline Schedule are accepted, such acceptance shall not be a basis for adjustment to the Contract Price in the event that completion of the Work of the Bid Package shall occur after the time depicted therein, nor shall revisions to the Preliminary Baseline Schedule be the basis for any extension of the Contract Time. A Contractor may not submit proposed revisions which shorten the Architect's review time for submittals. If a Contractor does not propose modifications or other recommendations relating to the Preliminary Baseline Schedule and Submittal Schedule within seven (7) days after the Project Schedule meeting, the Preliminary Baseline Schedule and Submittal Schedule shall be deemed to be accepted by the Contractor. The Construction Manager shall review, incorporate, or reject the proposed modifications to the Preliminary Baseline Schedules and Submittal Schedule and issue the Baseline Construction Schedule within fourteen (14) days of receipt of Contractor's information stated herein.

- 7.3.4. Baseline Construction Schedule. Based upon the approved input to the Preliminary Baseline Schedule for the entirety of the Project, the Construction Manager will develop and issue the Baseline Construction Schedule. The Baseline Construction Schedule shall control and govern over the sequencing and scheduling noted in the Bid Schedule. The Work of each Bid Package shall conform to the Baseline Construction Schedule, including updates and/or revisions thereto. The Baseline Construction Schedule shall be reviewed and updated at Project meeting(s) held periodically during the progress of the Work. If the Work of any Bid Package appears to be delayed such that the Work of the Bid Package will not comply with required milestone dates, the Bid Package Substantial Completion date and/or the Project completion date set forth in the Baseline Construction Schedule(s), the Contractor whose activity is on the critical path and/or who has caused the delay(s) shall be liable and assessed Liquidated Damages in accordance with the terms and provisions of the Agreement and these General Conditions. The District shall not be liable nor obligated to any Contractor for the payment of any costs, charges, fees, or expenses arising out of or related in any manner to extended overhead, general conditions, impact costs, home-office costs, out- of-sequence Work, money or any other type of compensation, by any name or characterization, for any delay to any activity not designated as a critical path item on the latest approved Construction Schedule(s). If any delay occurs to any critical path item, compensation to the Contractor, if any, impacted by delays to a critical path item shall only be in strict conformity with applicable provisions of the Contract Documents.

7.3.5. Updated Construction Schedules. In the event that the progress of the Work of a Bid Package or the sequencing of the activities of the Work of a Bid Package shall materially differ from that indicated in the Baseline Construction Schedule, the Construction Manager may direct the Contractor for a Bid Package to propose revisions to update the approved Baseline Construction Schedule. The Contractor shall prepare and submit, within two (2) days of the Construction Manager's directive, to the Construction Manager revised input, in graphic form, to the Baseline Construction Schedule. The Contractor may request consent of the Construction Manager to revise the approved Baseline Construction Schedule. Any such request shall be considered by the Construction Manager and District only if in writing setting forth the Contractor's proposed revision(s) to the Baseline Construction Schedule and the reason(s) therefore. The Construction Manager and District may consent to, or deny, any such request of the Contractor to revise the Baseline Construction Schedule in its reasonable discretion. Also, the Construction Manager may incorporate elements of the Three (3) Week Look Ahead Schedules, as described below, into the Updated Construction Schedule. The Construction Manager will incorporate accepted revisions to the Baseline Construction Schedule and issue an Updated Construction Schedule.

7.3.6. Recovery Schedules. The Contractors working on critical path items or whose progress of Work is behind the progress indicated in the current Updated Construction Schedule shall monitor and update the most recently approved Updated Construction Schedule on a monthly basis, (or more frequently as required) by the conditions or progress of the Work, or as may be requested by the Construction Manager. The Contractor(s) for such Bid Package(s) shall provide the Construction Manager with updated Recovery Schedules indicating utilized and projected manpower, progress achieved and activities commenced or completed within the prior Updated Construction Schedule. The Contractor must also provide a written and/or graphic plan to the Construction Manager, within 48 hours of request, that recovers lost time to achieve the milestone dates and sequencing of activities established in the most recent Updated Construction Schedule. The Construction Manager may direct the sequence for performance of various portions of Work within a Bid Package or between Bid Packages and may adjust the Construction Schedule(s) at any time the Construction Manager considers the completion date to be in jeopardy because of "activities behind schedule". Without adjustment of the Contract Time or the Contract Price, the Contractor for a Bid Package shall comply and perform in accordance with revisions to the Construction Schedule(s) issued by the Construction Manager hereunder, and if directed by the Construction Manager, shall take all necessary measures to recover the lost time including, without limitation, increasing its labor force, its supervision force, the number of work shifts, overtime, work on weekends and holidays, increasing the equipment on the Project, revising or modifying its

construction procedures and sequences, and/or any other measures which the Construction Manager considers necessary. If requested by the Construction Manager, the Contractor shall also submit, with its updates, a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by the Contractor. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to the Contractor's Performance Bond Surety the Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to the Contractor's Performance Bond Surety shall not limit the Contractor's obligations under the Contract Documents.

7.3.7. Three (3) Week Look Ahead Schedules. The Contractor shall prepare and submit at each Weekly Construction Meeting, a Three (3) Week Look Ahead Schedule for its portion of the Work. The Three (3) Week Look Ahead Schedule shall provide additional definition of manpower, activities and sequencing to that identified on the then current updated Construction Schedule. The form, content and extent of detail in the Contractor's Three (3) Week Look Ahead Schedules shall be in accordance with the directives and instructions of the Construction Manager. Failure of the Contractor to provide a Three (3) Week Look Ahead Schedule may be deemed by the District as the Contractor's default in the performance of a material obligation of the Contractor under Contract Documents.

7.3.8. Cost of Scheduling. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction, Recovery or Three (3) Week Look Ahead Schedules shall be solely at the expense of the Contractor without adjustment to the Contract Price. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, submittal, and maintenance or updating of the Construction Schedules. If the Contractor does not comply with the District's request for an Updated Construction Schedule, the District may have the update completed by others at the Contractor's expense. In such event, the updated Construction Schedule shall be deemed binding upon the Contractor and the District may deduct all costs, fees or expenses in preparing such updated Construction Schedule(s) from any portion of the Contract Price then or thereafter due to the Contractor.

7.3.9. Scheduling Software & Requirements. Unless otherwise provided in the Special Conditions, the Construction Schedules required under this Article 7 shall; (i) be prepared with a commercially available computer software program in a critical path format; (ii) indicate the date(s) for commencement and completion of various portions of the Work of the Bid Package including without limitation, procurement, fabrication and delivery of major items, materials or equipment; (iii) indicate manpower

(estimated men per day) and other resources required for completion of each scheduled activity; (iv) indicate costs for completion of each scheduled activity; and (v) identify each Submittal required by the Contract Documents, the date for the Contractor's submission of each Submittal and the date for the return of the reviewed Submittal to the Contractor.

7.3.10. Float. As used herein, "float time" shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule. If the Construction Schedules required under this Article 7 incorporate therein any "float" time, such float shall be deemed to belong to and be owned by the District. If the construction progress is ahead of schedule based on the Construction Schedule(s) and a delay is encountered (even if such delay is a District caused delay), no compensation of any type will be due to the Contractor, and the District may claim float days equal to the delay until such float days are exhausted and the delay extends the overall project substantial completion date.

7.4. Adjustment of Contract Time. If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4.

7.4.1. Excusable Delays. If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Architect; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions, DSA directive to stop the Work or a pandemic or epidemic, including but not limited to COVID-19. Neither the financial resources of the Contractor nor any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust

the Contract Time directly and adversely impacted the progress of the Work as indicated in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. The foregoing provisions notwithstanding, if the Special Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work exceeds those noted in the Special Conditions and such additional Rain Days directly and adversely impact the critical path progress of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of such additional Rain Days. Any and all District approved COVID-19 or other pandemic or epidemic delays shall be excusable, non-compensable delays.

7.4.2. Compensable Delays. If Substantial Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Architect, or separate contractor employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the Architect and the District. In accordance with California Public Contract Code § 7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages, including without limitation, home office expenses, bond capacity impairment or loss of prospective economic advantage. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

7.4.3. Inexcusable Delays. Inexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Inexcusable Delays.

7.4.4. Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same.

7.4.5. Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Inexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which such delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny any request by the Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule.

7.5. Liquidated Damages. Should the Contractor neglect, fail or refuse to: (i) submit Submittals in accordance with the Approved Construction Schedule; (ii) achieve Substantial Completion of the Work or designated portions thereof within the Contract Time, (subject to adjustments authorized under the Contract Documents); or (iii) complete Punch list items within the time established pursuant to the Contract Documents, the Contractor agrees to pay to the District the amount of per diem Liquidated Damages set forth in the Special Conditions, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Submittals are submitted, Substantial Completion or completion of the Punch list items are achieved. The Liquidated Damages amounts set forth in the Special Conditions are agreed upon by and between the Contractor and the District because of the difficulty of fixing the District's actual damages in the event of delayed submission of Submittals, Substantial Completion or completion of Punch list items. The Contractor and the District specifically agree that said amounts are reasonable estimates of the District's loss of use damages in such event, and that such amounts do not constitute a penalty. Liquidated Damages may be deducted from the Contract Price then or thereafter due to the Contractor. The Contractor and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Contract Price then

held or retained by the District. In the event that the Contractor shall fail or refuse to complete Punch list items and the District elects to exercise its right to cause completion or correction of such items pursuant to Article 7.2.3.2 hereof, the District's assessment of Liquidated Damages pursuant to the foregoing shall be in addition, and not in lieu of, the District's right to charge Contractor with the cost of completing or correcting such items of the Work, as provided for under Article 7.2.3.2. The Contractor and the District acknowledge and agree that the provisions of this Article 7.5 are reasonable under the circumstances existing at the time of the Contractor's execution of the Agreement. The Contractor acknowledges and agrees that if the Work of the Contractor is not completed in accordance with the Baseline Construction Schedule or Updated Construction Schedules, as applicable, the Contractor shall be liable for costs, fees, expenses or losses incurred by other contractors for other Bid Packages to the extent that the acts or omissions of the Contractor cause or contribute to such costs, fees, expenses or losses sustained by other contractors. The Liquidated Damages liability of the Contractor to the District shall not operate to limit the Contractor's liability for the District's actual damages incurred, including but not limited to extended inspection, architect and Construction Manager costs resulting from the acts or omissions of the Contractor. The Liquidated Damages liability of the Contractor to the District shall not operate to limit the Contractor's liability for any and all costs, fees, expenses or losses sustained by other contractors resulting from the acts or omissions of the Contractor.

7.6. District Right to Take-Over Work.

7.6.1. Progress of Work. Unless caused by the District, Architect, Construction Manager or the Project Inspector, if the Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with the then current Construction Schedule after seventy-two (72) hour advance written notice from the Construction Manager to the Contractor of its failure or refusal, the District may, without terminating the Contract or waiving, limiting or conditioning any right or remedy of the District, thereafter furnish or cause to be furnished such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All costs, expenses or other charges (whether direct, indirect and administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of the Contractor, and the District may deduct the same from the Contract Price then or thereafter due to the Contractor. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents.

7.6.2. Non-exclusive Remedy. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents or the Laws.

ARTICLE 8:CONTRACT PRICE

- 8.1 Contract Price. The Contract Price is the amount stated in the Agreement, and, subject to adjustments thereto in accordance with the Contract Documents, is the total amount payable by the District to the Contractor for completion of the Work and other obligations of the Contractor under the Contract Documents. The District's payment of the Contract Price to the Contractor shall be in accordance with the Contract Documents. References in the Contract Documents to the Contract Price shall be deemed references to the Contract Price under each Contract awarded by the District to a Contractor for construction of a portion of the Work of the Project.
- 8.2 Cost Breakdown. Within fifteen (15) days of the execution of the Agreement by Contractor, Contractor shall furnish, in a form acceptable to the District, a detailed estimate and complete Cost Breakdown of the Contract Price. The Cost Breakdown is subject to the District's review and approval of the form and content thereof. If the District objects to any portion of the Cost Breakdown, within ten (10) days of the District's receipt of the Cost Breakdown, the District shall notify the Contractor, in writing of the District's objection(s) to the Cost Breakdown. Within five (5) days of the date of the District's written objection(s), Contractor shall submit a revised Cost Breakdown to the District for review and approval. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District has approved of the entirety of the Cost Breakdown. Upon the District's approval of the Cost Breakdown, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted, conditioned or withheld in the sole discretion of the District. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as such items are reflected in the Cost Breakdown, shall be made by the District in equal installments with its disbursements of Progress Payments and the Final Payment with the amount of each such installment equal to the aggregate amount of such items as reflected in the Cost Breakdown divided by the number of months of the Contract Time.
- 8.3 Progress Payments.
- 8.3.1 Applications for Progress Payments. During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the District, Project Inspector, Construction Manager, if any, and the Architect, Applications for Progress Payments ("Payment Applications"), on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments thereon. Values utilized in the Payment Applications shall be based upon the District approved Cost Breakdown pursuant to Article 8.2

above provided that such values are only for determining the basis of Progress Payments to Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price, or for determining the extent of Work actually completed.

8.3.2 Payment Application Review for Determination of Proper Payment Application.

In accordance with Public Contract Code § 20104.50, upon receipt of an Application for Progress Payment, the District shall cause the same to be reviewed by the Project Inspector, the Construction Manager, if one is designated by the District, and the Architect, as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.3.2, an Application for Progress Payment shall be deemed “proper” only if it is submitted on the form approved by the District, with all of the requested information of such form of Application for Progress Payment completely and accurately provided by the Contractor and such completed Application for Progress Payment is accompanied by: (i) the form of Verification of Certified Payroll Records Submittal to Labor Commissioner, executed under penalty of perjury by the Contractor’s Superintendent and/or the Contractor PM; which verifies that all Certified Payroll Records for the Contractor and all Subcontractors for the period of time covered by the Application for Progress Payment have been completed and submitted in strict conformity with Labor Code § 1771.4; (ii) Certified Payrolls of the Contractor and all Subcontractors for laborers performing any portion of the Work for which the Progress Payment is requested; (iii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code § 8132 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iv) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code § 8134 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment; (v) if applicable, a current union statement reflecting that the Contractor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which the Contractor or any such Subcontractor is a party to or is otherwise bound by; (vi) a certification by the Contractor that it has continuously maintained, or caused to maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed be for which the Progress Payment is requested, it being understood that such certification is subject to verification by

the District, Architect or the Construction Manager prior to disbursement of the Progress Payment; and (vii) an updated Construction Schedule, reflecting Work actually completed and in progress. In accordance with Public Contract Code § 20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

8.3.3 Verification of Work Completed. Upon receipt of a Payment Application, the Architect, Construction Manager, if any, and the Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with requirements of the Contract Documents and to determine the portion of the Payment Application which is properly due to the Contractor under the terms of the Contract Documents.

8.3.4 District's Disbursement of Progress Payments.

8.3.4.1 Timely Disbursement of Progress Payments. Pursuant to Public Contract Code § 20104.50, within thirty (30) days after the District's receipt of a proper Payment Application, there shall be paid, by District, to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Payment Application which is actually in place as of the date of the Payment Application, as verified by the Project Inspector, Construction Manager, if any, and the Architect and the pro rata portion of the Contractor's overhead, supervision and general conditions costs and profit for that month; provided, however, that the District's obligation to disburse any Progress Payment shall be subject to the District's receipt of all documents set forth in Article 8.3.2 above, each and all of which are conditions precedent to the District's obligation to disburse Progress Payments. If a Payment Application is determined not to be proper due to the failure or refusal of the Contractor to submit documents with the Payment Application, as required by Article 8.3.2, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress Payment is deemed to commence on the date

that the District is actually in receipt of documents not submitted with the Payment Application, or corrections to documents with the Payment Application so as to render them complete and accurate, or the date upon which the Contractor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

- 8.3.4.2 Untimely Disbursement of Progress Payments. Pursuant to Public Contract Code § 20104.50, if the District fails to make a Progress Payment within thirty (30) days after receipt of an undisputed and proper Payment Application, the District shall pay the Contractor interest on the undisputed amount of such Payment Application at the legal rate of interest set forth in California Code of Civil Procedure § 685.010(a). The foregoing notwithstanding, if the District determines that any Payment Application is not proper, pursuant to Article 8.3.2 above, and the District does not return such Payment Application within the seven (7) day period provided for in Article 8.3.2, the period of time for the District's disbursement of the Progress Payment on such Payment Application without incurring interest liability shall be reduced by the number of days exceeding the seven (7) day return period.
- 8.3.4.3 District's Right to Disburse Payments by Joint Checks. Provided that the District is in receipt of the applicable Subcontract or Purchase Order, the District, may, in its sole discretion, issue joint checks to the Contractor and Subcontractors/Material Suppliers in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.
- 8.3.4.4 No Waiver of Defective or Non-Conforming Work. The approval of any Payment Application or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective or non- conforming Work. Notwithstanding approval or disbursement of a Progress Payment for Work deemed to be defective or non-conforming, the Contractor shall remain obligated under the Contract Documents to repair, replace or otherwise correct such defective or non-conforming Work
- 8.3.5 Progress Payments for Changed Work. The Contractor's Payment Applications may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the Project Inspector, the Architect and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

8.3.6 Materials or Equipment Not Incorporated Into the Work.

- 8.3.6.1 Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which, at the time of the Contractor's submittal of a Payment Application, has/have not been incorporated into and made a part of the Work.
- 8.3.6.2 Materials or Equipment Delivered and Stored at the Site. The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of the Contractor's submittal of a Payment Application requesting payment for such materials or equipment if all of the following are complied with: (i) the materials or equipment have been delivered to the Site; (ii) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (iii) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the Site pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment shall not be deemed the District's default hereunder. If the District elects to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (ii) and (iii) of this Article 8.3.6.2 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses.
- 8.3.6.3 Materials or Equipment Not Delivered or Stored at the Site. No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site or which are in the process of fabrication or transportation to the Site.
- 8.3.6.4 Materials or Equipment in Fabrication or Transit. The provisions of this Article 8.3.6 notwithstanding, the District shall not make any payment on account of any materials or equipment which are in the process of

being fabricated or which are in transit to the Site of or other storage location.

- 8.3.7 Exclusions From Progress Payments. In addition to the District's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither the Contractor's Payment Application shall include, nor shall the District be obligated to disburse any portion of the Contract Price for amounts which the Contractor does not intend to pay any Subcontractor or Material Supplier because of a dispute or any other reason.
- 8.3.8 Title to Work. The Contractor warrants that title to all Work covered by a Payment Application will pass to the District no later than the time of payment. The Contractor further warrants that upon submittal of a Payment Application, all Work for which a Progress Payment has been previously disbursed and the Contractor has received payment from the District therefor shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, stop payment notices, security interests or encumbrances in favor of the Contractor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 8.3.9 Substitute Security for Retention. Pursuant to California Public Contract Code § 22300, eligible and equivalent securities may be substituted for any monies withheld by the District to ensure the Contractor's performance under the Contract Documents at the request and expense of the Contractor and in conformity with the provisions of California Public Contract Code § 22300. The foregoing and the provisions of California Public Contract Code § 22300 notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following the date of award of the Contract to Contractor shall be deemed a waiver of such right.

8.4 Final Payment.

- 8.4.1 Application for Final Payment. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the Architect, Construction Manager, if any, and the Project Inspector will promptly make a final inspection of the Work and when the Architect, Construction Manager, if any and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect, Construction Manager, if any, and the Project Inspector will thereupon promptly approve the Application for Final Payment, stating that to

the best of their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by the District.

- 8.4.2 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect; (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) consent of the Surety on the Labor and Material Payment Bond and Performance Bond, to Final Payment if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors/Material Suppliers in accordance with California Civil Code §§ 8136 and 8138, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Drawings; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (x) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (xi) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop payment notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.
- 8.4.3 Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items in Article 8.4.2 above as conditions precedent to the District's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code § 7107, if there is any

dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute. If the Contractor fails to timely submit completed DSA Reports in accordance with Article 4.20.7 above, the Final Payment due the Contractor shall be reduced in accordance with Article 4.20.8, above.

8.4.4 Waiver of Claims. The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation or otherwise in connection with the Contractor's performance of the Contract.

8.4.5 Claims Asserted After Final Payment. Any lien, stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor and the Surety. The Contractor and Surety shall indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorney's fees incurred by the District in connection therewith.

8.5 Withholding of Payments. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or back charge the Contractor to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of the Contractor to make payments when due to Subcontractors/Material Suppliers; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Payment Notice Claims filed with the District pursuant to California Civil Code § 9350 et seq.; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code § 12419.4; (vi) other claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due the Contractor; (vii) any amounts due from the Contractor to the District under the terms of the Contract Documents; or (viii) the Contractor's failure to perform any of its obligations under the Contract Documents, its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the District shall not be obligated to process any Payment Application or Application for Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the

Work or the performance thereof or any portion thereof, given by the District, the Project Inspector, the Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld.

- 8.6 Payments to Subcontractors. The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code § 10262, the provisions of which are deemed incorporated herein by this reference. If the Contractor fails to make payment to Subcontractors in conformity with California Public Contract Code § 10262, the provisions of California Public Contract Code § 10253 shall apply; by this reference, the provisions of California Public Contract Code § 10253 are incorporated herein in its entirety, except that the references in said Section 10253 to “the director” shall be deemed to refer to the District. The Contractor shall timely make payment of retention due to Subcontractors in accordance with Public Contract Code § 7107.

8.7 Computerized Job Cost Reporting System.

- 8.7.1 Job Cost Reporting. The Contractor and each Subcontractor shall maintain a computerized job cost reporting system conforming to the requirements set forth herein. The computer program(s) utilized by the Contractor and applicable Subcontractors shall be subject to the review and acceptance by the District. The job cost reporting systems for the Work shall be updated in regular intervals of not more than one (1) calendar month.

- 8.7.2 Job Cost Reporting System Requirements. The computerized job cost programs utilized by the Contractor and applicable Subcontractors shall conform and comply with generally accepted accounting principles applied in a consistent manner and with recognized and generally accepted construction industry accounting standards, guidelines and procedures. The job cost reporting system format and configuration shall follow the general format of the District approved Cost Breakdown and budgets established for each line item shall be traceable to a bid estimate of costs. The job cost reporting systems utilized by the Contractor and applicable Subcontractors shall be capable of: (i) providing overall cost status on a monthly and cumulative basis; (ii) providing comparative analysis of the original budgeted costs, actual costs, remaining budget, and projected cost of completion; the job cost reporting system shall be capable of providing comparative analysis for individual line items and the totality of the Work reflected in the job cost report; and (ii) tracking adjustments to original budget amounts for Changes to the Work (including, without limitation, issued, pending and potential Change Orders).

8.7.3 Job Cost System Information. Upon request of the District, the Contractor and applicable Subcontractors shall make available written job cost reports and/or provide the District with the electronic files of the then current or requested job cost report. The Contractor's obligations hereunder are material.

ARTICLE 9: CHANGES

- 9.1. Changes in the Work. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions, require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, the Contractor shall promptly commence and diligently complete any Change to the Work subject to the District's written authorization issued pursuant to the preceding sentence; the Contractor is not relieved or excused from its obligation to promptly commence and diligently complete any Change subject to the District's written authorization by virtue of the absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order pursuant to this Article 9 in connection with any Change authorized by the District under this Article 9.1 is not a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. The District's right to make Changes shall not invalidate the Contract nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by the DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by Laws enacted after award of the Contract.
- 9.2. Construction Change Directive. A Construction Change Directive is a written instrument issued by or on behalf of the District directing a Change to the Work prior to the Contractor and District reaching full agreement on an adjustment of the Contract Time and/or Contract Price on account of such Change. The Contractor shall promptly commence and diligently complete any Change to the Work subject to a Construction Change Directive issued hereunder. The issuance of a Change Order pursuant to this Article 9 in connection with any Construction Change Directive authorized by the District is not a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Construction Change Directive. Upon completion of the Work subject to a Construction Change Directive, if the Contractor and District have not agreed on the adjustment of Contract Time and/or Contract Price for such Change, District shall issue a Unilateral Change Order pursuant to this Article 9.
- 9.3. Contractor Notice of Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District or the Architect which in the opinion of the Contractor constitutes a Change to the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only

if the Contractor gives the Architect, Construction Manager, if any and the Project Inspector written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination is the Contractor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

9.4. Contractor Submittal of Data. Within thirty (30) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, the Contractor shall submit to the Architect, Construction Manager, if any, the Project Inspector and the District a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

9.5. Adjustment to Contract Price and Contract Time on Account of Changes to the Work.

9.5.1. Adjustment to Contract Price. Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority. Costs computed to any of the following methods shall exclude: (i) fees, salaries or other compensation for: field/office supervisory personnel, project engineers, scheduler, estimator, drafting/detailing; (ii) vehicles not directly engaged in performance of a Change; (iii) field/home office expenses, including personnel, materials, supplies, etc.; (iv) on-Site or off-Site trailer, storage costs (whether rented, leased or owned); and (v) except as incorporated into an applicable Prevailing Wage Rate for labor required to complete a Change, insurance (including without limitation, general liability, automobile liability, employer's liability and workers compensation).

- 9.5.1.1. Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of the District, Construction Manager, if any, or the Architect, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. The Contractor's estimate of increase or decrease in costs pursuant to the foregoing, if requested, shall be in sufficient detail and in such form as to allow the District, the Project Inspector and the Architect to review and assess the completeness and accuracy thereof. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of the District or the Architect for such estimate.
- 9.5.1.2. Determination by the District. By the District, whether or not negotiations are initiated pursuant to Article 9.5.1.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. In the event that the procedure set forth in this Article 9.5.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor is deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor notifies the District, the Architect, Construction Manager, if any and the Project Inspector, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District, the Construction Manager, the Architect and the Project Inspector of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.5.1.2, Contractor shall, pursuant to Article 9.9 below, diligently proceed to perform and complete any such Change.
- 9.5.2. Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.5.1.1 or 9.5.1.2 above, the basis for adjustment of the Contract Price shall be as follows:

9.5.2.1. Allowable Labor Costs. Except in the event adjustment of the Contract Price for a District authorized Change is computed by unit prices, the labor costs allowable for incorporation into a Contract Price adjustment for a Change shall be limited as set forth herein.

9.5.2.1.1. Limitation to Field Labor and Prevailing Wage Rates. The Contract Price adjustment for labor necessary to complete a Change shall be limited to the laborers of the Contractor or Subcontractors actually and necessarily engaged in the performance of the Change and for which there is a prevailing wage rate classification. Wage rates for laborers shall not exceed the applicable prevailing wage rate in the locality of the Site for the classification(s) of labor necessary to complete a Change. Use of a prevailing wage rate classification which increases the costs of a Change shall not be allowed. Overtime labor charges for performing any part of the Change shall only be allowed if authorized in writing by the Architect, Construction Manager and the District prior to Contractor's performance of the overtime labor. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted.

9.5.2.1.2. Fringe Benefits, Payroll Taxes and Labor Burden. The Contractor or Subcontractor may adjust the prevailing wage rate for allowable labor costs to reflect fringe benefits, payroll taxes and labor burdens actually incurred by Contractor and provided to such labor directly engaged in performing a Change. The allowable adjustment for fringe benefit payments, payroll taxes and labor burdens shall not, however, exceed fifteen percent (15%) of the applicable prevailing wage rate and shall not be subject to the additional mark-up set forth herein.

9.5.2.1.3. Excluded Labor Costs. The Contract Price adjustment for labor costs on account of a Change shall exclude costs: (i) for preparing estimate(s) of the costs of the Change; (ii) to maintain records relating to the costs of the Change; (iii) for coordination and assembly of materials and information relating to the Change or performance thereof; (iv) to supervise, coordinate or manage the Work of a Change; or (v) any other general administrative overhead or general conditions costs associated with the Change or performance thereof as such costs are incorporated into the overhead and general conditions mark-up costs set forth herein.

9.5.2.2. Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are

available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

- 9.5.2.3. Construction Equipment. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, Construction Manager, if any, the Project Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, Construction Manager, if any, the Project Inspector and the District, the

allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

9.5.2.3.1. Mark-up on Costs of Changes to the Work. In determining the cost to the District and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed fifteen percent (15%), regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. If a Change to the Work reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by the District to the Contractor for the reduced or deleted Work. In such event, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth in the Special Conditions for mark-ups on the cost of a Change adding to the scope of the Work. Upon approval of the District Representative, the usage of any allowance specified in this contract shall include a mark-up of no more than fifteen percent (15%). In the event that any portion of the allowance is not utilized, the unspent amount, shall be returned to the School District.

9.5.2.4. Contractor Maintenance of Records. If the Contractor is directed to perform any Changes to the Work pursuant to Article 9.1, 9.2 or 9.3, or should the Contractor encounter conditions which the Contractor believes to obligate the District to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. If more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If any Subcontractor provides or performs any portion of a Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative which shall constitute the Contractor's representation and warranty to the District that all information contained therein is true,

accurate, complete and relates only to the Change referenced therein. All records maintained by a Subcontractor relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Architect, Construction Manager, if any, or the Project Inspector upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work, the District's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

9.5.3. Adjustment to Contract Time. In the event of any Change to the Work authorized pursuant to this Article 9, the Contract Time affects the critical path of the Work, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. The Contractor is solely responsible for timely submitting scheduling data, analysis and other materials necessary or required by the District to substantiate the Contract Time adjustment requested by the Contractor for a Change. The District is not obligated to consider any adjustment to the Contract Time on account of a Change until the Contractor has submitted such scheduling data, analysis and other materials.

9.5.4. Addition or Deletion of Alternate Bid Item(s). If the Bid Proposal for the Work includes proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, the District may elect, pursuant to this Article to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Contract or delete any such Alternate Bid Item(s) if the same formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's Bid. If any Alternate Bid Item is added or deleted from the Work pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted to the extent that the addition or deletion of an Alternate Bid Item actually affects Work on the critical path of the Construction Schedule as of the date upon which an Alternate Bid Item is added to or deleted from the Work.

9.6. Change Orders. If the District approves of a Change, a written Change Order prepared by the Architect on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, including without limitation: impacts of any kind; preparation and processing of any and all related RFIs, ASIs, Bulletins, FCDs, Quotes, and/or CCDs; inefficiencies; productivity losses; delay; acceleration; field and home office overhead; and any and all other incidental costs for all of the work described in the Change Order, as well as any and all adjustments to the Contract Time necessitated thereby. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 9.6, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Architect; such approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

9.7. Unilateral Change Orders. A Unilateral Change Order is a Change Order issued by the District, in the sole and exclusive discretion of the District, before the Contractor and District have agreed on the extent of adjustment of the Contract Time or the Contract Price relating to a Change. The District may, in its sole reasonable discretion, issue a Unilateral Change Order for any Change to the Work authorized by the District when the Contractor and the District have been unable to reach mutual agreement as to the extent of any adjustment to the Contract Price or Contract Time on account of such Change. If the District elects to issue a Unilateral Change Order, the District shall forward to the Contractor a copy of the proposed Unilateral Change Order (for the Contractor's

information) at least ten (10) days prior to the date of the Board of Trustees' meeting to review and consider approval of the Unilateral Change Order. Any Unilateral Change Order issued hereunder shall be binding upon the District and Contractor only if the District's Board of Trustees' takes action to approve or ratify the Unilateral Change Order. Any and all claims by the Contractor arising out of such Unilateral Change Order, and/or the Change giving rise to such Unilateral Change Order, shall accrue as of the date of the Board of Trustees' action approving or ratifying a Unilateral Change Order and shall be subject to the claim provisions set forth in Article 16.11. Notwithstanding any provision of the Contract Documents to the contrary, an express condition precedent to the Contractor's exercise of rights and remedies under Article 16.11 relating to a Unilateral Change Order, is the Contractor notification to the District, Architect and Construction Manager, if any, in writing of the Contractor's objections to all or any portion of a Unilateral Change Order within ten (10) days after the date of the Board of Trustees meeting ratifying or approving a Unilateral Change Order; failure of the Contractor to do so is deemed the Contractor's acceptance of the entirety of a Unilateral Change Order, as approved or ratified by the District's Board of Trustees and an express unequivocal waiver by the Contractor of any right or remedy of the Contractor, under the Contract Documents or the Laws to: (i) object to the Unilateral Change Order or any portion thereof; or (ii) further adjustment of the Contract Time or the Contract Price on account of the Change(s) incorporated into a Unilateral Change Order.

- 9.8. Contractor Notice of Changes. If the Contractor claims that any instruction, RFI, FCD, ASI, Bulletin, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the Construction Manager, if any, the Project Inspector and the Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the Project Inspector and the Architect. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or

other situation. In the event that the District determines that the Contract Price or the Contract Time is subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article 9.8, any such adjustment shall be determined in accordance with the provisions of Articles 9.5.1 and 9.5.2.

- 9.9. Disputed Changes. If there is any dispute or disagreement between the Contractor and the District regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance and completion of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The Contractor's failure or refusal to so proceed with such Work is the Contractor's default of a material obligation of the Contractor under the Contract Documents.
- 9.10. Emergencies. In an emergency affecting or threatening the safety of persons, or which affects or threatens the Work, or property, the Contractor, without special instruction or prior authorization from the District, Construction Manager or the Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be submitted and determined in accordance with this Article 9.
- 9.11. Minor Changes in the Work. The Architect may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the District and the Contractor. The Contractor shall carry out such orders promptly.
- 9.12. Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect, Construction Manager and the Project Inspector in the manner and within the time set forth in Articles 9.2 or 9.7 shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense. The failure of the District to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve the Contractor from any liability on account thereof.

ARTICLE 10: SEPARATE CONTRACTORS

- 10.1. District's Right to Award Separate Contracts. The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.
- 10.2. District's Coordination of Separate Contractors. The District shall provide for coordination of the activities of the District's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Approved Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the District until subsequently revised.
- 10.3. Mutual Responsibility. The Contractor shall afford the District and separate contractors of the District reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.
- 10.4. Discrepancies or Defects. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect, Construction Manager, if any, and the Project Inspector any discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to so report shall constitute an acknowledgment that the District's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discoverable by the Contractor's reasonable diligence.
- 10.5. District's Right to Withhold for Delay to Separate Contractors..
- 10.5.1. Progress of Work. Unless caused by the District, Architect, Construction Manager, Project Inspector, or separate contractor, if the Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment, tools and/or services to maintain progress of the Work in accordance with the then current

Construction Schedule thereby delaying the Work of separate contractor(s), the District may, after forty-eight (48) hours advance written notice from the District to the Contractor of its failure or refusal, direct, instruct and authorize the separate contractor(s) to furnish or cause to be furnished such materials, labor, equipment, tools and/or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule.

10.5.2. District's Right to Withhold. If the work of a separate contractor to the District on the Project is delayed by the acts or omissions of the Contractor, any and all costs, expenses, and/or other charges incurred by the District for the work of such separate contractor(s) resulting from such acts or omissions of the Contractor shall be the sole responsibility of, and be borne by, the Contractor, and the District may deduct the amount of any and all such costs, expenses, and/or other charges from the Contract Price then or thereafter due the Contractor. If the Contract Price then or thereafter due the Contractor is insufficient to cover such amounts, the Contractor and the Performance Bond Surety shall be jointly and severally liable to the District for such amounts in excess of the Contract Price, provided that the liability of the Performance Bond Surety shall be limited to the penal sum of the Performance Bond. The assessment and/or withholding of the amount of such costs, expenses, and/or other charges shall be in addition to, and not in lieu of, any liquidated damages assessed and/or withheld from Contractor under Article 7.5 hereof.

10.5.3. Non-exclusive Remedy. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents or arising by operation of the Laws.

ARTICLE 11: TESTS AND INSPECTIONS

11.1. Tests; Inspections; Observations.

11.1.1. Contractor's Notice. If the Contract Documents, the Laws or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the Construction Manager and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. If any portion of the Work subject to tests, inspection or approval is covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

11.1.2. Cost of Tests and Inspections. The District will pay for fees, costs and expenses for the initial tests/inspections of materials/equipment which are conducted at the Site or locations within a one hundred (100) mile radius of the Site. All fees, costs or expenses for subsequent tests/inspections or for tests/inspections conducted at a location more than a one hundred (100) mile radius from the Site (including without limitation, travel and travel-related expenses) shall be borne solely and exclusively by the Contractor. The foregoing notwithstanding, if the portion(s) of the Work subject to tests/inspections is/are not ready for such test/inspection at the time indicated in the Contractor's notice under Article 11.1.1 or if upon completion of such test/inspection, the portion(s) of the Work subject to such test/inspection do not meet or exceed the minimum requirements of such test/inspection, the Contractor shall be solely responsible for the payment of all fees, costs or expenses arising out of or related in any manner to subsequent tests/inspections of such portion(s) of the Work, and resulting delays, disruptions or other impacts to completion of the Project. Further, notwithstanding the District's payment of fees, costs or expenses for conducting initial tests/inspections, if any actions or failures to act of the Contractor or person or entity providing or performing Work under the direction or control of the Contractor require tests/inspections to be conducted over a period of more than eight (8) hours per day by any single person or on weekends/holidays, the Contractor shall be solely responsible for the payment of fees, costs or expenses which result from test/inspection services which exceed eight (8) hours per day by any single person or on weekends/holidays.

11.1.3. Testing/Inspection Laboratory. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents. All such tests and inspections shall be in conformity with the Laws, including without limitation, Title 24 of the California Code of Regulations. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector, the Construction Manager or the Architect and not by the Contractor.

11.1.4. Additional Tests, Inspections and Approvals. If the Architect, the Construction Manager, the Project Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the Architect or Construction Manager, if any will, upon written authorization from the District, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the Contractor shall give timely notice to the Architect, the Construction Manager and the Project Inspector of when and where tests and inspections are to be made so the Project Inspector and the Architect may observe such procedures. The District shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the fees of the Architect, Construction Manager, if any, and the Project Inspector in connection therewith.

11.2. Delivery of Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

11.3. Timeliness of Tests, Inspections and Approvals. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.1. Inspection of the Work.

12.1.1 Access to the Work. All Work and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the District, the Construction Manager, the Architect and the Project Inspector for conformity with the Contract Documents. The Contractor shall, at its cost and without adjustment to the Contract Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection by the District, the Construction Manager, the Architect, the Project Inspector, DSA

or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

- 12.1.2 Limitations Upon Inspections. Inspections, tests, measurements, or other acts of the Architect and the Project Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform to the requirements of the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the Architect or the Project Inspector shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.
- 12.2 Uncovering of Work. If any portion of the Work is covered contrary to the request of the Architect, the Project Inspector or the requirements of the Contract Documents, it must, if required by the Architect or the Project Inspector, be uncovered for observation by the Architect and the Project Inspector and be replaced at the Contractor's expense without adjustment of the Contract Time or the Contract Price.
- 12.3 Rejection of Work. Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which constitutes Defective or Non-Conforming Work may be rejected by the District, the Construction Manager, the Architect or the Project Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the Defective or Non-Conforming nature of the Work, materials or equipment.
- 12.4 Correction of Work. The Contractor shall promptly correct any Defective or Non-Conforming Work whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting Defective or Non-Conforming Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Defective or Non-Conforming Work.
- 12.5 Removal of Non-Conforming or Defective Work. The Contractor shall, at its sole cost and expense, remove from the Site all Defective or Non-Conforming Work which are neither corrected by the Contractor nor accepted by the District.

- 12.6 Failure of Contractor to Correct Work. If the Contractor fails to commence to correct Defective or Non-Conforming Work within three (3) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such Defective or Non-Conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation for the Architect's services, attorney's fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall be jointly and severally liable to the District for any such excess amount.
- 12.7 Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Defective or Non-Conforming Work in lieu of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable. The District's determination of the extent of reduction of the Contract Price on account of Defective or Non-Conforming Work accepted by the District shall be binding, conclusive, dispositive and not subject to appeal or other dispute resolution procedures, unless such determination is manifestly unreasonable.

ARTICLE 13: WARRANTIES

- 13.1 Workmanship and Materials. The Contractor warrants to the District that: (i) the Work and all materials and equipment incorporated therein conform to requirements of the Contract Documents; (ii) all materials and equipment incorporated into the Work are new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents; and (iii) all Work and workmanship is of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect, Project Inspector, Construction Manager or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed Defective or Non-Conforming. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item. The obligations of the Contractor hereunder are in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by the Laws.
- 13.2 Warranty Work. If, within two (2) years after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. If the Contractor fails or refuses to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. Neither the District's Final

Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

- 13.3 Guarantee. Upon completion of the Work, Contractor shall execute and deliver to the District a form of Guarantee, to be submitted to the Construction Manager for review and approval prior to acceptance. The Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor and any right of the Contractor to Final Payment.
- 13.4 Survival of Warranties; Surety Obligations. The Contractor's warranty obligations hereunder shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract. The obligations of the Surety issuing the Performance Bond shall include assumption and discharge of the Contractor's warranty obligations if the Contractor fails or refuses to perform its warranty obligations hereunder in strict conformity herewith.

ARTICLE 14: SUSPENSION OF WORK

- 14.1 District's Right to Suspend Work. The District may, without cause, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.
- 14.2 Adjustments to Contract Price and Contract Time. In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

ARTICLE 15: TERMINATION

15.1 Termination for Cause.

15.1.1. District's Right to Terminate. The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as will ensure Substantial Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within ten (10) days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards the Laws or requirements of any public entity having jurisdiction over any portion of the Work; (iv) if the Contractor disregards proper directives of the Architect, the Construction Manager, the Project Inspector or District; (vii) Defective/Non-Conforming Work which the Contractor neglects or refuses to correct; or (viii) if the Contractor otherwise violates any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or the Laws.

15.1.2. District's Rights Upon Termination. If the Contract is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on or about the Site and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment at or about the Site or for which the District has paid the Contractor but

which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest price for completion of the Work. If the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

- 15.1.3. Completion by the Surety. If the Contract is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above.
- 15.1.4. Assignment and Assumption of Subcontracts. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.
- 15.1.5. Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees, fees for additional professional and consultant services, and the District's administrative costs, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and Surety shall be jointly and severally liable for payment of such difference to the District.
- 15.1.6. Contractor Responsibility for Damages. The Contractor and the Surety shall be jointly and severally liable for all damage sustained by the District resulting from, in any manner, the termination of Contract under this Article 15.1, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work exceeding the Contract Price.
- 15.1.7. Conversion to Termination for Convenience. In the event the Contract is terminated under this Article 15.1, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations

of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

15.1.8. District's Rights Cumulative. In the event the Contract is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by the Laws or under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

15.2. Termination for Convenience. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of a termination for convenience. Should the District proceed with a termination for convenience as set forth herein, the Contractor's damages shall be limited to those set forth in this Article 15.2. The District may, in its sole discretion, elect to have Subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for the District's convenience.

ARTICLE 16: MISCELLANEOUS

- 16.1. Governing Law. This Contract shall be governed by and interpreted in accordance with the laws of the State of California.
- 16.2. Marginal Headings; Interpretation. The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor.
- 16.3. Successors and Assigns. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.
- 16.4. Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 16.5. Severability. If any provision of the Contract Documents is deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.
- 16.6. No Assignment by Contractor. The Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion.
- 16.7. Gender and Number. Whenever the context of the Contract Documents so require, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.

- 16.8. Independent Contractor Status. In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the District and not an agent or employee of the District.
- 16.9. Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.
- 16.10. Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.
- 16.11. Dispute/Claims Resolution.
- 16.11.1. Contractor Continuation of Work. Notwithstanding any claim, dispute, disagreement or other matter in controversy between the District and the Contractor relating to the Contract Documents and/or the Work, the Contractor shall continue to diligently prosecute and perform the Work in accordance with requirements of the Contract Documents, pending any final determination or decision regarding any such claim, dispute, disagreement or matter in controversy.
- 16.11.2. Public Contract Code § 9204 Claims Resolution Procedures. Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code § 9204 ("Section 9204") provided, however, that the Contractor's initiation of Section 9204 procedures is expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.
- 16.11.2.1. Claim Defined. The term "Claim" shall be as defined in Section 9204.

16.11.2.2. Claim Documentation. The Contractor shall furnish reasonable documentation to support each Claim. “Reasonable documentation” includes, without limitation: (i) contractual and legal basis establishing Claim entitlement or merit; (ii) factual basis establishing District liability for the Claim; (iii) detailed breakdown of labor, materials, equipment and other costs included in the Claim; and (iv) detailed basis, including Construction Schedule analysis and fragments supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.

16.11.2.3. District Claim Review Statement. Within forty five (45) days (or such other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the District will conduct a reasonable review of the Claim and provide the Contractor with a written statement identifying the disputed and undisputed portions of the Claim (“Claim Review Statement”). If the District does not provide the Contractor with the Claim Review Statement for any Claim within forty five (45) days (or other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the Claim is deemed rejected in its entirety and thereupon, the Contractor may initiate the Meet and Confer process described below. A Claim deemed rejected pursuant to the foregoing does not constitute an adverse finding of Claim merit or the Contractor’s responsibility or qualifications. If the Claim Review Statement identifies any undisputed portion of a Claim (“Undisputed Claim”) and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after the issuance date of the Claim Review Statement.

16.11.2.4. Meet and Confer.

16.11.2.4.1. Meet and Confer Demand. If the Contractor disputes any portion of the Claim Review Statement, or if a Claim is deemed rejected by the District not providing the Contractor with the Claim Review Statement within the time permitted under Section 9204, the Contractor may demand an informal conference to meet and confer with the District for settlement of the issues in dispute (“Meet and Confer”). The Contractor’s Meet and Confer request must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; and (iii) within ten (10) days after the Claim Review Statement is submitted to the Contractor or within ten (10) days after the date the Claim is deemed rejected, as applicable. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor’s right to request the Meet and Confer and the Non- Binding Mediation procedures under Section

9204. If the Contractor strictly complies with the foregoing, the District will schedule the Meet and Confer conference within thirty (30) days of the Contractor's Meet and Confer request for settlement of disputed portions of the Claim Review Statement.

16.11.2.4.2. Meet and Confer Statement. Within ten (10) business days after conclusion of the Meet and Confer conference, if any portion of a Claim remains disputed, the District shall provide the Contractor a written statement identifying the disputed and undisputed portions of the Claim ("Meet and Confer Statement"). If the Meet and Confer Statement identifies any Undisputed Claim and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after date the Meet and Confer Statement is issued.

16.11.2.5. Non-Binding Mediation.

16.11.2.5.1. Contractor Initiation. The Contractor may request nonbinding mediation ("Mediation") of disputed portions of a Claim identified in the Meet and Confer Statement. The Contractor's Mediation demand must be submitted to the District: (i) in writing; by registered mail or certified mail, return receipt requested; within ten (10) days after the Meet and Confer Statement is submitted to the Contractor; and (iv) with specific identification of the disputed Claims issues subject to Mediation. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor's right to demand Mediation procedures under Section 9204.

16.11.2.5.2. Mediator Selection. The District and Contractor shall mutually agree to a mediator within ten (10) business days after the date of the Contractor's demand for Mediation. If the District and Contractor do not mutually agree to a mediator, the District and Contractor shall each select a mediator and the District/Contractor selected mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim.

16.11.2.5.3. Mediation Procedures. Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the District and Contractor in dispute resolution through negotiation or by issuance of an evaluation.

16.11.2.5.4. Mediation Costs. All costs, fees and expenses of the mediator(s) and mediation administration shall be shared equally by the District and Contractor. The foregoing notwithstanding, the Contractor and District

shall each bear the costs, fees and expenses of their own attorneys, experts and consultants.

16.11.2.5.5. Post-Mediation Disputed Claims. Any Claims or issues in dispute after Mediation shall be resolved in accordance with the applicable provisions of the Contract Documents.

16.11.2.5.6. Waiver. The District and Contractor may mutually agree to waive, in writing, Mediation under Section 9204 and, subject to the Contractor's compliance with Government Code Claim requirements, proceed directly to commencement of a civil action or binding arbitration.

16.11.2.6. Payments of Undisputed Claims. If a payment due from the District for Undisputed Claims identified in the Claim Review Statement or the Meet and Confer Statement issued for a Claim is not made within the time established under Section 9204 the overdue portion of such payment shall bear interest at the rate of seven percent (7%) per annum from the date due. The District's credit application of any amount due for an Undisputed Claim against amounts due from the Contractor under the Contract Documents shall be deemed payment of the Undisputed Claim.

16.11.2.7. Subcontractor Claims.

16.11.2.7.1. Subcontractor Claim Submittal. If a Subcontractor, of any tier (collectively "Subcontractor") lacks legal standing to assert a Claim against the District because privity of contract does not exist, the Contractor may present the District a Claim on behalf of the Subcontractor ("Subcontractor Claim"). Each Subcontractor requesting submittal of a Subcontractor Claim to the District shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor's written request to submit a Subcontractor Claim, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Subcontractor Claim to the District. If the Contractor did not present the Subcontractor Claim, the Contractor shall provide the Subcontractor with a statement of the reasons for not having done so.

16.11.2.7.2. Contractor Certification of Subcontractor Claim. The District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor's review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; the Subcontractor Claim is supported by

reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code § 12650 et seq). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents.

16.11.2.7.3. District Review of Subcontractor Claim. Subcontractor Claims presented by the Contractor to the District are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for the District to conduct Meet and Confer and/or non-binding mediation procedures must be submitted jointly by the Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and mediation administration fees and costs shall be borne equally by the District, Contractor and Subcontractor.

16.11.2.7.4. Disputed Subcontractor Claims. Subcontractor Claims which are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Section 20104.4 Dispute Resolution Procedures or binding arbitration, as applicable. Commencement of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings in connection with any Subcontractor Claim is subject to compliance with Government Code Claims requirements.

16.11.3. Government Code Claim Requirements. Pursuant to Government Code § 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Contractor, whether on behalf of itself or a Subcontractor, against the District for money or damages, including without limitation Claims or portions thereof remaining in dispute after completion of the Section 9204 non-binding dispute resolution procedures described above are deemed a “suit for money or damages” and shall be subject to the provisions of GOVERNMENT CODE §§ 945.4, 945.6 AND 946 (“GOVERNMENT CODE CLAIMS PROCESS”). An express condition precedent to the Contractor’s initiation of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings pursuant to the following is the Contractor’s compliance with the Government Code Claims Process, including without limitation, presentation of the claim, demand, dispute, disagreement or other matter in controversy between the Contractor and the District seeking money or damages to the District and acted upon or deemed rejected by the District in accordance with Government Code § 900, et seq.

16.11.4. Binding Arbitration of Claims.

16.11.4.1. JAMS Arbitration. Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process and any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted before one (1) retired judge in accordance with the CONSTRUCTION ARBITRATION RULES AND PROCEDURES OF JUDICIAL ARBITRATION MEDIATION SERVICES ("JAMS") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.

16.11.4.2. Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If more than one Demand for Arbitration is filed by either the District or the Contractor relating to the Work or the Contract Documents, all Demands for Arbitration shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator.

16.11.4.3. Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in CALIFORNIA CODE OF CIVIL PROCEDURE § 1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.

16.11.4.4. Arbitration Award. The award rendered by the Arbitrator ("Arbitration Award") shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect at the time the Arbitration Award is issued; and (iii) supported by written findings of fact and

conclusions of law in conformity with CALIFORNIA CODE OF CIVIL PROCEDURE § 1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to CALIFORNIA CODE OF CIVIL PROCEDURE §§ 1286.4 AND 1296, vacate the Arbitration Award if, after review, the Court determines that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post- award proceedings shall be as set forth in CALIFORNIA CODE OF CIVIL PROCEDURE § 1285 ET SEQ.

16.11.4.5. Arbitration Fees and Expenses. The expenses and fees of the Arbitrator shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator may award arbitration costs, including Arbitrator's fees but excluding attorneys' fees, to the prevailing party. By this arbitration provision, the District and the Contractor acknowledge and agree that neither shall recover from the other any attorney's fees associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder. The limited exceptions in the Contract Documents that provide attorney's fees for specific issues shall neither be construed as applying to this arbitration provision under CALIFORNIA CIVIL CODE § 1717(A) nor be deemed to be "authorized by the Laws."

16.11.5. Inapplicability to Bid Bond. The arbitration proceedings described above are not applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond. All claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

16.12. Force Majeure. Neither party will be liable to the other for unanticipated delays or failures in performance resulting from causes beyond the reasonable control of that party, including but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, casualties, pandemics, epidemics, or quarantines; provided that the delayed party: (i) gives the other party prompt written notice of such cause, (ii) uses its reasonable efforts to correct such failure or delay in its performance, and (iii) resumes performance as soon

as reasonably practicable. Any and all delays resulting from a force majeure event, as specified herein, will only be classified as excusable, non-compensable delays.

- 16.13. Limitation on Special/Consequential Damages. In the event of the District's breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. The Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District.
- 16.14. Capitalized Terms. Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.
- 16.15. Attorney's Fees. Except as expressly provided for in the Contract Documents, or authorized by the Laws, neither the District nor the Contractor shall recover from the other any attorney's fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.
- 16.16. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 16.17. Prohibited Interests. No employee of the District, who is authorized in such capacity on behalf of the District to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or subcontract in connection with the Work shall become directly or indirectly financially interested in the Work or any part thereof.
- 16.18. Days. Unless otherwise expressly stated, references to "days" in the Contract Documents shall be deemed to be calendar days.
- 16.19. Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of

the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

[END OF SECTION]

SPECIAL CONDITIONS

- A. **Time of Performance.** The Contractor shall mobilize and commence work on the Project on the date specified in the Agreement. The Contractor shall complete the project within the period specified in the Agreement and in accordance with the schedule for the Project developed for the District. Contractor acknowledges and agrees that the duration stipulated herein is adequate and reasonable for the size and scope of the Project.
1. Contractor shall complete work under this Contract as identified in the Specifications/Scope of Work.
 2. The Contractor acknowledges that it fully understands the Project work to be performed has been scheduled by the District for a specific time period. In addition, the Contractor acknowledges that it fully understands that scheduling has been established for this Project in order to promote the best usage of school facilities and to timely provide an appropriate learning environment for students to the fullest extent possible. With these understandings in mind, pursuant to the General Conditions regarding the District's Right to Terminate Contract, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide all submittals in the time specified and identified. Furthermore, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide a full work crew or properly skilled workers with proper and sufficient materials and equipment from the first day of Project work scheduled. If the site will not be available after the scheduled start date, Contractor shall utilize this time period for administrative tasks and initial mobilization and shall coordinate such activities with District.
- B. **Documents Furnished.** The number of copies of deliverables, drawings and specifications to be furnished by Contractor free of charge to OUSD, per Article 3 of the General Conditions, one set.
- C. **Future Work:** All future work awarded from this bid shall be coordinated with the District's Director of Buildings & Grounds or his or her designee and the Contractor. No work shall be started until scheduling has been agreed upon by all parties.
- D. **Liquidated Damages – Contract Submittals:** If the executed Contract and required bonds and certificates of insurance are not received by the District prior to the scheduled start date, the agreed liquidated damages established in the General Conditions is Two Thousand Five Hundred (\$2,500.00) per day for each calendar date the start date is delayed.
- Liquidated Damages – Time of Completion:** If work under this Contract is not ready for the intended use within the specified time period, the agreed liquidated damages established in the General Conditions is Two Thousand Five Hundred (\$2,500.00) per day for each calendar date completion is delayed.

- E. **Certification Requirements:** The Contractor or subcontractor must be certified by the factory or manufacturer to install any equipment or other products that may require a certification. Such certifications must be obtained prior to submittal of the bid.
- F. **Time of Work Restrictions:** The worksite will be available Monday through Saturday, from 7:00am to 5:00pm. This schedule is subject to change as the needs of the District require and would be scheduled with the District's Director of Buildings & Grounds or his or her designee.

G. Project Schedule:

Anticipated Start Date: {June 13th, 2025}

Completion Date: {August 14th, 2025}

Time Sensitivity & Schedule

This is a time-sensitive project that must be completed during the **summer break window** to avoid disruptions to the educational program. The anticipated project duration is **63 Calendar days with 40 being weekdays**, with work expected to commence immediately following the last day of school and conclude before the start of the new academic year.

The Contractor is expected to provide detailed phasing and manpower plans to meet this compressed schedule. Any delays may impact school reopening, and time is of the essence.

The Owner will provide delivery schedules for Owner-furnished materials to ensure availability at the time of installation.

- H. **Executed Copies.** The number of executed copies of the Contract, the Performance Bond, and the Payment Bond for Public Works required is one (1), preferably electronic.
- I. **License Classification.** Each bidder shall be a licensed Contractor pursuant to the Business and Professions Code and shall be licensed in the following classification: **Class B Building Contractor License.**
- J. **Fingerprinting.** Pursuant to the provisions of Article 25 of the General Conditions, the District determination of fingerprinting requirement application follows:

The District has considered the totality of the circumstances concerning the project and has determined that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 and are subject to Paragraph (b) of Article 24 of the General Conditions.

- K. **Allowances.** Include the following allowance amounts in this bid. The following allowances will be used only at the discretion of the District. If additional work is requested by the District, the price for such work will be negotiated in accordance with Article 9, Changes, of the General Conditions. Allowance amounts not used by the District will be deducted from the contract amount by Change Order. Include allowance amount in bid. Upon approval of the District Representative, the usage of any allowance specified in this contract shall include a mark-up of no more than fifteen percent (15%). In the event that any portion of the allowance is not utilized, the unspent amount shall be returned to the School District.

1. The allowance referenced in the bid form in the contract Total Bid number is for potential project modifications and unforeseen conditions above and beyond those noted in the Contract Documents, Construction Documents, Specifications, and Exhibits. The District Controlled Allowance is not to be utilized for the gross negligence, willful misconduct, or fraud of the

Contractor or any subcontractor, or any party for which any of them are liable or responsible at law or under the Contract Documents.

2. Allowance may not to be used for the contractor's scope gaps. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Allowance, in the maintenance of records relating to the costs of the Allowance or the supervision and other overhead and general conditions costs associated with the Allowance or performance thereof.
3. Allowance Requests shall include actual cost of material and labor, which shall not exceed prevailing wage rates, and the percentage for overhead and profit. Contractor backs up documentation shall include the following:
 - a. Material (attach itemized quantity and unit cost plus sales tax)
 - b. Labor (total labor cost per hours completed, provide itemized hours and base rates from identified prevailing wage rate schedules at the time of bid.)
 - c. Subtotal
 - d. Subcontractor's overhead and profit as defined not to exceed 10% of Item (c)
 - e. Contractor's Overhead and Profit, shall not to exceed 5% of Item (c) for work performed by subcontractor, or 10% if self-performed by Contractor.
4. The term "overhead and profit" for the Contractor and any subcontractors shall be considered to include insurance other than mentioned in above, field and office supervisors and assistants, watchman, use of small tools, consumables, and general field and home office expenses, and no separate allowance will be made therefore.
5. All Allowances shall be inclusive of all costs associated with the impacts of the changes, including but not limited to: interference, disruptions, rescheduling, changes in the sequence of work, delays and/or associate acceleration. Therefore, there will be NO reservation of rights allowed.

L. **Self-Performance.** The contractor must perform at least ten percent (10%) of the work with its own forces, installing materials that will become a permanent part of the work. Ten percent (10%) of the work means 10% of the total value of the contract work in place, excluding the costs of Bonds, insurances, mobilizations, other general conditions, and supervision. Procurement of materials for use by subcontractors will not count toward the 10%. Own forces means direct employees of the contractor.

M. **Bid Protests.** Bidders must submit bid protests within three (3) calendar days of the notice of intent to award the contract or such protests shall be rejected as untimely. If the last day to submit a bid protest falls on a weekend or holiday, the bid protest deadline shall be extended to the next business day. Bid protests must be in writing and contain the name and address of the bidder, the name(s) of the bidder whose bid(s) are the subject of the bid protest, the legal and factual basis for the protest, and any supporting documentation related to the protest. Bid protest(s) must be submitted to: Oceanside Unified School District, Purchasing Department, Attn: Chris Altstatt, 2111 Mission Avenue, Building A, Oceanside, CA. 92058, E-Mail christopher.altstatt@oside.us.

- N. **Trailer Moves.** As notated in plans, if necessary.
- O. **Restricted Entry and Exit from School.** Contractor and its employees and subcontractors and their employees shall not enter or exit the site from 12:00am to 5:00am and from 5:00pm to 11:59pm on weekdays. Deliveries to contractor or subcontractors, either entering the school or exiting from the school, shall not occur from 12:00am to 5:00am and from 5:00pm to 11:59pm on weekdays.
- P. **Project Site Security, Access, Temporary Fence and Sanitary Facilities.** Contractor shall be responsible to ensure that only authorized personnel enter the project site. The Construction Manager shall provide the contractor with list of authorized personnel in addition to contractors and subcontractors workers. Contractor shall be responsible to provide whatever personnel may be needed to ensure that This requirement is met.

Playfields may be accessible to the public. OUSD Maintenance and Operations will be on Site to perform maintenance and cleaning of facilities not in Contract.

Contractor vehicles, subcontractor vehicles and delivery vehicles shall not exceed 5 mph when operating on school property.

Contractor shall provide spotter for all contractor, subcontractor and delivery vehicles operating on school property and outside of the contractor's fenced work area. The spotter shall walk ahead of the vehicle in the direction of vehicle travel to ensure no student or school employee is in the path of vehicle travel. Spotter shall signal the vehicle to stop should students or school employees be in the immediate path of the vehicle. The vehicle shall remain stopped until no student or school employee remains in the immediate path of the vehicle. Provide fencing with screen cloth around all work areas.

The contractor is responsible for providing adequate sanitary facilities for all personnel on the job site, in compliance with applicable health, safety, and labor regulations. This includes the installation, maintenance, and regular servicing of restrooms to ensure they remain clean, functional, and accessible throughout the duration of the project. The contractor must ensure that the number and type of facilities provided meet the project's scope and workforce size, as well as any specific contract requirements or local codes.

- Q. **Contractor Parking.** When parking on the school campus, contractor parking shall remain within the fenced construction area shown on the fencing plan.
- R. **Construction Traffic Access.** All construction traffic shall be coordinated with the Construction Manager.
- S. **Construction Traffic Hours.** No construction traffic shall be allowed between the peak traffic hours of 4:00pm and 6:00pm.

- T. **Haul Route.** A haul route permit shall be obtained at least (7) days prior to the start of hauling operations and must be approved by the City of Oceanside Transportation Manager. Hauling operations shall be limited to the hours between 8:00am to 3:30pm Monday through Friday unless approved otherwise. Hauling access in the project shall be from Discuss with Maintenance Director. No trucks shall use any other residential street in the area. Contractor shall pay for haul route permit.
- U. **Project Management Information System.** The Contractor shall use the District's Project Management Information System (Procore) to submit and review responses to Requests for Information (RFIs) and to submit Daily Work Journals with information to include but not limited to descriptions of work, manpower and equipment. All sketches, attachments, etc. for RFIs shall be sent electronically via the Procore system. Accessing the District's Project Management Information System shall be via the internet using a personal computer.
- V. **Progress Schedule.** Contractors shall provide a cost and manpower loaded CPM schedule. Contractor shall be required to provide a bar chart showing activity start and end dates, expected durations and any dependencies.
- W. **Shop Fabrication Outside of Area:** The added cost of shop fabrication inspection and material testing outside of the State of California or outside a 150 mile radius from the Project site will be paid by the District and back charged to the Contractor.
- X. **Salvage.** The following will be salvaged by the District at the District's option:
- Y. **Notice.** Provide Forty Eight (48) hours notice to Construction Manager before cutting off any power or water.
- Z. **Phasing Plans.** N/A

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION
(Contractor *REQUIRED* to complete.)

One of the boxes below **must** be checked, and an executed copy of this form must be attached to the Independent Contractor Agreement (“Agreement”):

- ☐ Contractor’s employees will have no contact or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor’s services under this Agreement.
- ☐ Contractor’s employees will have contact or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor’s services under this Agreement, and Contractor certifies its compliance with these provisions as follows: *“Contractor certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may have unsupervised interaction with District pupils during the course and scope of the Agreement is attached hereto.”*

WHEN CONTRACTOR PERFORMS A CRIMINAL BACKGROUND CHECK, IT SHALL IMMEDIATELY PROVIDE ANY SUBSEQUENT ARREST AND CONVICTION INFORMATION IT RECEIVES TO ANY LOCAL EDUCATIONAL AGENCY THAT IT IS CONTRACTING WITH PURSUANT TO THE SUBSEQUENT ARREST SERVICE.

Megan’s Law (Sex Offenders). Contractor shall verify and continue to verify that the employees of Contractor that will be on the project site and the employees of the subcontractor(s) that will be on the project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:
I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

MUST BE COMPLETED BY DISTRICT'S AUTHORIZED REPRESENTATIVE:

As an authorized District official, I am familiar with the facts herein certified and am authorized to execute this certificate on behalf of the District.

DISTRICT

By: _____

Name: Andrea Norman, Ed.D.

Title: Associate Superintendent of Business Services

Date: _____

[END OF DOCUMENT]