

**GENERAL CONDITIONS
TABLE OF CONTENTS**

ARTICLE NO.	ARTICLE DESCRIPTION	PAGE NO.
1	BASIC DEFINITIONS	2
2	DISTRICT	9
3	ARCHITECT	14
4	CONTRACTOR	16
5	SUBCONTRACTORS	40
6	PROGRESS SCHEDULE	42
7	CONTRACT PRICE	49
8	CHANGES AND EXTRA WORK	54
9	TESTS AND INSPECTIONS	58
10	CORRECTION OF WORK	59
11	TERMINATION	60
12	CLAIMS AND DISPUTES	63
13	MISCELLANEOUS	67

ARTICLE 1. Basic Definitions

- 1.1. Action of the Governing Board.** A vote of a majority of the members of the Board of Trustees in an open public meeting conducted in accordance with Applicable Laws.
- 1.2. Acts of God.** An Act of God means an unforeseen and unforeseeable natural disaster resulting from natural causes, such as earthquakes, unusually severe weather conditions, floods and other similar occurrences. For purposes of earthquakes or seismic activity, an Act of God shall be as defined in Public Contract Code §7105.
- 1.3. Addenda.** District authorized changes to the Contract Documents which alter, explain or clarify the Contract Documents and are issued in a written instrument prior to the bid deadline.
- 1.4. Agents & Representatives.** All Project Participants employed by or holding contract with the District other than the Contractor.
- 1.5. Agreement.** The Construction Services Agreement included in the Contract Documents.
- 1.6. Applicable Laws.** All statutes, ordinances, rules, regulations, policies and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including but not limited to, principles of equity applied by the courts of the State of California, which are in effect at the time the Work is performed.
- 1.7. Application for Payment.** Contractor's itemized application for Progress Payment or Final Payment prepared, submitted and substantiated for review and approval by District in accordance with the requirements of the Contract Documents.
- 1.8. Approval.** Written authorization of District, including approval authority delegated to Agents & Representatives by the terms of the Contract Documents.
- 1.9. Architect.** Architect of Record/individual or representative acting as the licensed architect that has responsibility for preparing the Construction Documents and whose professional certification stamp will appear on the Construction Documents.
- 1.10. Award of Contract.** The action of the Board of Trustees duly awarding the Contract to the Contractor.
- 1.11. Bid Alternate.** A proposed alternative for adding or deleting a particular material, system, product, method or construction.
- 1.12. Board of Trustees.** The Governing Board of the South Orange County Community College District.
- 1.13. Change Order.** A written instrument, prepared, executed and approved in accordance with the requirements of the General Conditions, setting forth the agreement of District and Contractor on the terms of adjustment of the Contract Time and/or Contract Price for Changes. Adjustment of the Contract Time and/or Contract Price set forth in a Change Order prepared and approved in accordance with the General Conditions constitute the full and final adjustments thereof due the Contractor, releasing the District from liability or responsibility for any Contract Time or Contract Price adjustment not expressly incorporated into the terms of a Change Order.
- 1.14. Claim.** A written demand or assertion by the District or Contractor seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) claims by the District for Defective Work discovered by District after Final Payment by the District to the Contractor; (3) stop notice claims by Subcontractors or Subconsultants; or (4) the right of the District to specific performance or injunctive relief to compel performance or enjoin an action.
- 1.15. Close-Out Documents.** The Close-Out Documents are the collection of documents described in the Contract Documents as being assembled and prepared by Contractor upon completion of the Project for delivery to the Architect for review and acceptance on behalf of the District. Close-Out Documents include, without limitation, the Record Drawings and Specifications, warranties, guaranties, maintenance and operations manuals and other documents both hard copy and electronic format) that are to be maintained by the Contractor on the Site and delivered to the District upon Substantial Completion of the Work showing the condition of the Work as actually built

and installed. For purposes of these Contract Documents, the Record Drawings and Specifications are defined to include both hard copy and electronic files of the Drawings marked by Contractor to show the condition, location and placement of the Work as actually built, including, without limitation, the depths, locations, lengths and dimensions of mechanical, electrical, plumbing, or similar portions of the Work.

- 1.16. Compensable Change.** Circumstances involving the performance of Extra Work: (1) that are the result of (a) Differing Site Conditions, (b) amendments or additions to Applicable Laws which are enacted after the date of submission by Contractor of its Bidder's Price Proposal, (c) a change requested in writing signed in the manner required for authorization of Compensable Changes, (d) design deficiency, or (e) other circumstances involving a Change in the Work for which the Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment of the Contract Sum; (2) that are not caused, in whole or in part, by (a) an act or omission of the Contractor or a Subcontractor or Subconsultant, of any Tier, constituting negligence, willful misconduct or a violation of an Applicable Law, or (b) a failure by Contractor to comply with the Contract Documents (3) for which a Contract Adjustment is not prohibited by nor waived under the terms of the Contract Documents; and (4) that if performed would require the Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such circumstances.
- 1.17. Compensable Delay.** A Delay to the critical path of activities affecting Contractor's ability to achieve Substantial Completion of the entirety of the Work within the Contract Time: (1) that is the result of (a) a Compensable Change, (b) the active negligence of the District, College, a District Consultant or a Separate Contractor, (c) a breach by District of an obligation under the Contract Documents, or (d) design deficiency, or (e) other circumstances involving Delay for which the Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment to the Contract Sum; (2) that is not caused, in whole or in part, by (a) an act or omission of the Contractor or a Subcontractor or Sub-consultant, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, (b) a failure by Contractor to comply with the Contract Documents; and (3) for which a Contract Adjustment to the Contract Time is neither prohibited nor waived under the terms of the Contract Documents.
- 1.18. Concurrent Delay.** The portion of two or more delays affecting the critical path to Completion that are overlapping or co-existent.
- 1.19. Contract Documents; Contract.** The terms Contract Documents, Contract and Agreement are used interchangeably and shall be defined to have the same meaning. The documents identified in the Construction Services Agreement constitute the Contract Documents.
- 1.20. Contractor.** The entity identified as the Contractor in the Agreement. References to the Contractor shall include, but not be limited to the Contractor and Contractor's employees, representatives, subcontractor, agents, Board of Trustees, and Volunteers as required by the context of usage.
- 1.21. Construction Documents.** The DSA stamped Drawings, Specifications and other Construction Documents for the Project, including all addenda, District approved Change Orders, and DSA approved construction change directives ("DSA-CCDs").
- 1.22. Contract Price.** The total amount of compensation stated in the Construction Services Agreement that is payable to Contractor for the performance of the Work in accordance with the Contract Documents.
- 1.23. Contract Time.** The total number of Days set forth in the Construction Services Agreement within which Contractor must achieve Substantial Completion of the Work, as extended or shortened by a duly executed Change Order.
- 1.24. Day.** A "day" is a calendar day unless otherwise expressly provided.
- 1.25. Defective Work.** Work by Contractor or Subcontractors or Subconsultants that incorporates, contains, includes or constitutes materials, equipment, labor, workmanship, construction services or other construction that is: (i) faulty, omitted, incomplete, or deficient or (ii) does not conform to requirements of Applicable Laws, the Contract Documents, or any inspection, reference standard, test, code or approval specified in the Contract Documents.
- 1.26. Delay. Any circumstances involving delay, disruption, hindrance or interference.**
- 1.27. Differing Site Conditions.** Those unforeseen conditions that constitute a ground for Contract Adjustment.
- 1.28. DIR.** DIR is the Department of Industrial Relations of the State of California.

- 1.29. Discovery Date.** Contractor's obligation to give written notice of certain facts, conditions or circumstances, means the earlier of the dates that Contractor or any Subcontractor or Subconsultant either: (1) discovered such facts, conditions or circumstances; or (2) should have discovered such facts, conditions or circumstances in the exercise of the level of care required by the terms of the Contract Documents.
- 1.30. District.** The District is the South Orange County Community College District, a community college district organized under the laws of the State of California, acting through its Chancellor, Vice Chancellor(s) or their designees.
- 1.31. District Consultant.** A consultant engaged by the District to provide professional advice with respect to the design, construction or management of the Project.
- 1.32. District Controlled Allowance.** The District Controlled Allowance (Allowance) is intended for use at the sole discretion of the District. The Allowance has been established to allow for unanticipated project related requirements as identified by the District and to defer selection of actual materials and equipment to a later date when additional information is available. Allowance shall not be used in lieu of a Change Order for changes for the scope of work. The Allowance shall not be used by the Contractor without specific prior written direction and approval from the District's Project Manager. The Allowance will be identified separately on the Bid Proposal Form and will be included in the Total Bidder's Price Proposal Amount. The Contractor shall be required to list this Allowance value in the Schedule of Values as a line item. The Allowance may be removed from the Contract at any time at the discretion of the District's Project Manager by deductive change order. Any unused portions of the Allowance remaining at the end of the project will be deducted from the final construction cost and credited to the District in the form of a deductive change order (thereby reducing the total Contract value by that amount).
- 1.33. District Holiday.** Those Days recognized by District as being legal holidays for its staff and employees, comprised of the following: Martin Luther King Day; Presidents' Day; Cesar Chavez Day; Memorial Day; Fourth of July; Labor Day; Veteran's Day; Thanksgiving Day (two days); Christmas; and New Year's (approximately two weeks surrounding dates: December 24 to January 1).
- 1.34. Drawings.** The graphic and pictorial portions of the Construction Documents including without limitation, design, location, dimensions of the Work including plans, elevations, details, schedules, diagrams. The terms "Drawings" and "Plans" are used interchangeably.
- 1.35. DSA.** DSA is the Division of the State Architect of the Department of General Services for the State of California.
- 1.36. Environmental Laws.** All Applicable Laws which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Site or Existing Conditions (including, without limitation, soil, groundwater, and indoor and ambient air conditions), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Site of Existing Conditions), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C. §§ 1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Substances Transportation Act [49 U.S.C. §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Air Act [42 U.S.C. §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C. 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. §§ 4821 et seq.]; and all similar federal, state or local laws, rules orders, regulations, statutes, ordinances, codes, decrees or requirement.
- 1.37. Escrow Agent.** The entity serving as escrow agent pursuant to California Public Contract Code §22300 in connection with the deposit of securities or retention.
- 1.38. Excusable Delay.** A Delay, other than a Compensable Delay, to Contractor's ability to achieve Substantial Completion or Final Completion of the Work within the Contract Time that is: (1) not caused, in whole or in part, by an act or omission of Contractor, a Subcontractor or a Subconsultant, of any Tier, constituting negligence, willful misconduct, a

violation of an Applicable Law or a failure by Contractor to comply with the Contract Documents; (2) unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractors and Sub consultants, of every Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Contractor or a Subcontractor or Sub consultant, of any Tier, nor any failure by a Subcontractor or Sub consultant, of any Tier, to perform any obligation imposed by contract or Applicable Laws, shall constitute a ground for Excusable Delay.

- 1.39. Existing Conditions.** All existing conditions that, as of the date of Award of Contract are located above or below the surface of the ground at the Site, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities, whether or not shown in whole or in part in the Construction Documents.
- 1.40. Extra Work.** Labor, materials, equipment, services or other work, not reasonably inferable from the design and other information set forth in the Contract Documents, the performance of which requires the expenditure by the Contractor of additional and unforeseen costs or time. References to Extra Work shall not be deemed or interpreted as entitlement of the Contractor to adjustment of the Contract Time or Contract Price.
- 1.41. Field Order.** A written instrument that: (1) directs the performance of a Minor Change; (2) directs performance of Work or a Change with respect to which there exists a dispute or question regarding a Contract Adjustment; or (3) establishes a mutually agreed basis for Contract Adjustment under circumstances where performance of the Compensable Change needs to proceed in advance of complete substantiation and evaluation of the impact thereof on the Contract Sum or Contract Time.
- 1.42. Final Completion.** The point at which the following conditions have occurred with respect to the entire Work: (1) the Work is fully completed, including all minor corrective, or "punch list," items; (2) the Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturers' recommendations and buff dried by machine to bring the surfaces to sheen; (3) all conditions for Substantial Completion of the Work have been fully satisfied; (4) all conditions within the control or responsibility of Contractor or its Subcontractors or Subconsultants and pertaining to the Work that are required for the release of District's obligations to Governmental Authorities (including, but not limited to, matters involving grading, flood control, public works, transportation and traffic) have been satisfied; and (5) The Notice of Completion is accepted by the Board of Trustees.
- 1.43. Final Payment.** Payment by the District to the Contractor of the entire unpaid balance of the Contract Sum following Final Completion.
- 1.44. General Conditions.** The portion of the Contract Documents setting forth general terms and conditions governing performance of the Work.
- 1.45. General Requirements.** Division 01 of the Specifications of the Contract Documents setting forth detailed procedures and standards applicable to the Work.
- 1.46. Guarantee.** The period of time for repair or replacement of Work that may be unfit for use as specified or defective.
- 1.47. Governmental Authority.** The United States, the State of California, the County of Orange, the City in which the Project is located, any other local (other than county, regional, state or federal political subdivision, authority, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, Contractor or District, including, without limitation, any Governmental Authorities (including, without limitation, DSA) having jurisdiction to review and approve or reject the Construction Documents, Contract Documents or the Work based on compliance or non-compliance with Applicable Laws.
- 1.48. Hazardous Substance.** Either of the following: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic

substances,” “toxic material,” “restricted hazardous waste,” “special waste,” “contamination” or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”) and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any governmental Authority to be a hazardous waste or hazardous substance.

- 1.49. Illness and Injury Prevention Plan.** The plan prepared by the Contractor in accordance with codes, regulations, and laws setting forth the general safety policies and procedures governing the Contractor’s performance of the Work.
- 1.50. Inexcusable Delay.** Any Delay that is not a Compensable Delay or Excusable Delay or that constitutes a Compensable Delay or Excusable Delay for which Contractor is not entitled to a Contract Adjustment to the Contract Time, including, without limitation, the following: (1) An act or omission of Contractor or a Subcontractor or Subconsultant, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor to comply with the Contract Documents; (2) Delay for which Contractor has failed to provide a timely and complete Notice of Delay and Request for Extension; or (3) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor’s risk or at Contractor’s Own Expense.
- 1.51. Key Personnel.** Those individuals employed by the Contractor for performance of the Work that are considered of essence to the consideration for and performance of the Contract.
- 1.52. Locality.** The City and County where the Work is located.
- 1.53. Notice of Change.** A formal written notice required to be submitted by Contractor notifying District of circumstances that Contractor believes may give rise to a Contract Adjustment based on change in scope or duration.
- 1.54. Notice of Completion.** As defined in California Civil Code §9204 means the written notice by District and approved by the Board of Trustees confirming the date that the Contractor has achieved Final Completion.
- 1.55. Notice to Proceed.** The written notice issued by the District to the Contractor to begin physical construction of the Work at the Site. Permission granted by the District to conduct on-Site testing or investigation of the Site or other preliminary work in preparation for commencement of the Work shall not be interpreted as constituting a Notice to Proceed
- 1.56. Occupancy.** Occupancy of the Project whether in whole or in part by the District.
- 1.57. Product Data.** Illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for the Work.
- 1.58. Project Inspector.** A certified inspector approved by the Office of Regulations Services of the Division of State Architect for the Department of General Services of the State of California to inspect the Work pursuant to the Field Act (California Education Code, §§ 81130.3, et seq.) and applicable provisions of the California Code of Regulations with a class rating sufficient for the Work.
- 1.59. Progress Payment.** A payment of a portion of the Contract Sum that is based on the progress of the Work, less such amount as is authorized to be withheld therefrom as retention pending Final Completion.
- 1.60. Progress Schedule.** A Progress Schedule is the graphic depiction and accompanying narratives of the sequencing, interrelationships and durations of the activities necessary for the Contractor to perform and complete the Work within the Contract Time. The Progress Schedules of the Contractor shall be prepared and updated in accordance with requirements of the Contract Documents.
- 1.61. Project.** Any work related to improvements, demolition, design, and/or construction as provided for in the Contract Documents. The construction and services required by the Contract Documents that includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations.
- 1.62. Project Documents.** The term “Project Documents” is used interchangeably with the term Construction Documents.
- 1.63. Provide.** The term “provide” includes “provide complete in place”, that is, “furnish and install” in accordance with requirements of the Contract Documents, including approval or acceptance of the District or Architect as applicable.

- 1.64. Record Documents.** The collection of documents assembled and prepared by Contractor (including, without limitation, the record Drawings and Specifications, warranties, guaranties, maintenance and operations manuals and other documents both hard copy and electronic format) that are to be maintained by the Contractor on the Site and delivered to the District upon Substantial Completion of the work showing the condition of the Work as actually built. For purposes of these Contract Documents, the record Drawings and Specifications are defined to include electronic format marked by Contractor to show the condition, location and placement of the Work as actually built, including, without limitation, the locations, lengths and dimensions of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are depicted diagrammatically in the Contract Documents.
- 1.65. Reference Documents.** Those documents, or portions or provisions of documents that are identified, referenced or described in the Contract Documents as reference documents or materials. Reference Documents are not of the Contract Documents, but are applicable to the Work.
- 1.66. Request for Information (RFI).** A written request by Contractor for interpretation or clarification of what it perceives to be a discrepancy in the Contract Documents (including without limitation, information in the Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination, noncompliance with Applicable Laws or a variance between such information and conditions at the Site or in Existing Conditions).
- 1.67. Samples.** Physical examples including mock-ups that, when approved by District, illustrate materials, equipment or workmanship by which the Work is to be evaluated and judged.
- 1.68. Safety Orders.** Safety Orders are: (i) orders issued by the Division of Industrial Safety and OSHA safety and health standards for construction; and (ii) orders issued by any governmental authority governing, limiting, restricting or prescribing work or conduct at the Site.
- 1.69. Schedule of Values.** A detailed, itemized breakdown of the Contract Price, which provides for an allocation of the dollar values to each of the various parts of the Work.
- 1.70. Shop Drawings.** Shop Drawings are prepared by the Contractor, Subcontractor or Material Supplier to illustrate the components, details, installation and other similar matters of a portion of the Work and compliance with requirements of the Contract Documents. Shop Drawings include, but are not limited to, detail design calculations, fabrication and installation drawings, lists, graphs and operating instructions.
- 1.71. Site.** The Site is the area identified in the Contract Documents on which the Project is to be constructed. If identified in the Contract Documents as part of the Site, the Site includes areas that may be used by Contractor for staging, storage, parking or temporary offices during performance of Work.
- 1.72. Specifications.** The Specifications are the portion of the Construction Documents consisting of written requirements for materials, equipment, standards, workmanship and other similar matters for the Work.
- 1.73. Standards, Rules, and Regulations.** Recognized printed standards that shall be considered as one and a part of these Specifications within limits specified.
- 1.74. Storm Water Permit.** A State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity issued by the State Water Resources Board for the State of California.
- 1.75. Subconsultant.** A person or entity, other than a Subcontractor, that has a contract to perform any design, engineering or other professional services comprising all or a portion of the Work, including, without limitation, consultants, sub-consultants, architects and engineers, of any and every Tier.
- 1.76. Subcontractor.** A California licensed contractor in direct privity of contract with the Contractor to complete a portion of the Project.
- 1.77. Submittal(s).** Shop Drawings, Schedules, Product Data, Samples, detailed designs, exemplars, fabrication and installation drawings, lists, graphs, operating instructions and other documents required to be submitted by the Contractor under the Contract Documents for review by District or a District Representative.
- 1.78. Substantial Completion.** Defined the same as that term is used in Public Contract Code section 7107. It means the occupation, beneficial use, and enjoyment of a work of improvement, excluding any, occupancy, use or operation only for testing, startup, or commissioning by the District, or its agent, accompanied by cessation of labor on the work of

improvement. The acceptance by the public agency, or its agent, of the work of improvement. After commencement of the work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for recordation of a notice of cessation or a notice of completion.

1.79. Supplementary and Special Conditions. Those portions of the Contract Documents that supplement, by addition, modification or deletion, a portion of the General Conditions.

1.80. Surety. The person, firm, or corporation that executes the Bid Bond, Performance Bond and Labor and Materials Payment Bond. The Surety must be a California Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

1.81. Tier. The contractual level of a Subcontractor or Sub-consultant with respect to the Contractor. For example, a "first-tier" Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on. Use of the phrase "of every Tier", or similar phraseology, in the Contract Documents shall not be interpreted as implying that other provisions of the Contract Documents, where such phrases are not used, are intended to be limited application to only the first Tier or to only certain Tiers of Subcontractors or Sub-consultants.

1.82. Unexcusable Delay. A delay that does not entitle the Contractor to an adjustment of the Contract Sum and does not entitle the Contractor to an adjustment of the Contract Time.

1.83. Unilateral Change Order. Documents signed by District in accordance with the General Conditions, in which District unilaterally sets forth its determination of the undisputed portion of an otherwise disputed Contract Adjustment.

1.84. Work. The work, labor, materials, equipment, services and other similar items described in the Contract Documents to be furnished and completed by the Contractor, whether or not incorporated into the Project.

1.85. Workers. Laborer, worker, or mechanic employed to complete a part of the Work, whether at or off the Site.

1.86. Working Day. Monday through Friday, excluding Saturdays, Sundays and federal/State of California observed holidays.

1.87. Correlation, Interpretation and Intent of Contract Documents.

1.87.1. Conflicts. All conflicts encountered in the Contract Documents shall be reported to the District and Architect in writing before proceeding with the Work affected thereby. Notwithstanding the order of precedence governing conflicts in the Contract Documents, in the event of conflict between any of the Contract Documents, the more stringent requirement, greater quantity or higher quality requirement or criteria shall prevail, unless otherwise authorized in writing by the District. Conflicts that cannot be so resolved shall be interpreted in accordance with the following order of precedence (the first being the highest order of precedence):

1. Applicable Laws (provided, however, that where the Contract Documents or manufacturer's recommendations or specification required standards higher than those of Applicable Laws, the Contract Documents or manufacturer recommendations or specifications shall control).
2. Addenda;
3. Change Orders, Unilateral Change Orders and Field Orders;
4. Supplementary and Special Conditions;
5. General Conditions;
6. Final Construction Documents approved by District; and
7. Reference Documents.

1.87.2. Cross-References. Any cross-references between various portions of the Specifications, Drawings or other Contract Documents are provided for the convenience of the Contractor and shall not be construed as comprehensive of all applicable cross-references or alter the Contractor's obligations.

1.87.3. Incidental Items. The naming of any material or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and labor therefore, in accordance with first-class practices of the trade involved, unless specifically noted otherwise.

1.87.4. Omissions. Items missing from the Contract Documents shall nevertheless be provided by the Contractor, without Contract Adjustment, to the extent reasonably inferable from the Contract Documents as being necessary to satisfy the Project.

1.87.5. Singular, Gender, Captions. When appropriate to the contexts, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.87.6. Technical Words and Terms. Unless otherwise stated in the Contract Documents, technical words, terms and abbreviations incorporated into the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

ARTICLE 2. DISTRICT

2.1. Prohibited Interests. No official of District who is authorized in such capacity and on behalf of 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 any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in the Work or in any part thereof. No officer, employee, Architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Project or in any part thereof. Contractor shall receive no compensation and shall repay District for any compensation received by Contractor hereunder, should Contractor aid, abet or knowingly participate in violation of this Article 2.1.

2.2. Access to the Work; Photography/Video Consent

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

2.2.2. Photography/Video Consent. Contractor is advised that District intends, from time to time, to take photographs, videotapes and/or motion pictures of the Work, and workers located on the Site and proximate settings. Contractor consents to the use of Contractor's name and likeness in instructional or training uses, news releases, advertising and/or publicity throughout the world in perpetuity, in all media now known or hereafter invented. The Contractor further consents to the inclusion of personnel of the Contractor and subcontractors in photographs, videotapes or motion pictures of the Work; the Contractor is solely responsible for informing its personnel and the personnel of Subcontractors that they may be photographed or videotaped while at the Site; unless the Contractor provides the District with written objections of personnel to being photographed or videotaped at the Site, personnel of the Contractor and Subcontractors are deemed to have consented to being photographed or videotaped at the Site. Contractor shall include terms in its Subcontracts notifying Subcontractors of photography/video at the Site and consent by the Subcontractor to the use of Subcontractor's name and the likenesses of its employees on the same terms as provided for herein applicable to such consent by Contractor.

2.3. District Furnished Information.

2.3.1. Surveys, Site Information. Information and data concerning physical characteristics of the Site, including without limitation, soils/geotechnical reports, surveys, "as-built" conditions and utility locations to be provided by the District are set forth in the Contract Documents. Information and data provided by the District are, to the best of the District's knowledge and belief, complete and accurate; the District does not, however, warrant or represent that District-provided Site physical characteristics information or data are complete and accurate. The Contractor shall verify all Site physical characteristics information and data provided by the District. The Contractor shall, without adjustment of the Contract Price or Contract Time obtain all other information concerning Site physical characteristics required to complete the Work.

2.3.2. Soils Investigation Report.

2.3.2.1. Contractor Investigation. The Contractor shall be 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 and materials; 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 Agreement.

2.3.2.2. 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 are not a part of the Project Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades, or below grade elevations are approximate only and is 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 the Contract Price incorporates the Contractor's opinion of the conditions which may be encountered and costs therefor. Contractor agrees that no claim against District will be made by Contractor for damages and hereby waives any rights to damages in the event that during progress of work the Contractor encounters subsurface or latent conditions at the worksite materially different from those shown on project documents.

2.4. Occupancy.

2.4.1. Partial Occupancy or Use. District reserves the right to occupy or use any portion of the Work prior to completion of the Work. The District's right to partial occupancy or use of the Work prior to completion of the Work is subject to the following:

2.4.2. District Notice of Intent to Partially Occupy or Use. The District shall provide the Contractor with written notice of the District's intent to partially occupy or use a portion of the Work prior to completion ("Partial Occupancy Notice"). The Partial Occupancy Notice shall: (i) describe the portion of the Work subject to the District's partial occupancy or use; (ii) the effective date of commencement of the District's partial occupancy or use; (iii) Work the Contractor is required to complete prior to the commencement date of the District's partial occupancy or use; and (iv) the date for the District, Architect, Project Inspector and Contractor inspection of the portion of Work subject to the District's partial occupancy or use ("Partial Occupancy Inspection").

2.4.3. Partial Occupancy Inspection. At the date/time designated in the Partial Occupancy Notice, the District, Architect, Project Inspector and Contractor shall jointly inspect the portion of Work to be partially occupied or used by the District for preparation of a list of items to be completed or corrected by the Contractor, along with the time for the Contractor's completion or correction of such items. The Contractor shall complete or correct all completion/corrective Work items identified in the Partial Occupancy Inspection. If any completion/correction items noted in the Partial Occupancy Inspection are not completed within the time established, the District may nevertheless partially occupy or use the portion of the Work identified in the Partial Occupancy Notice. In such event, at the sole election and discretion of the District, the District may: (i) accept the incomplete or uncorrected Work and deduct the costs to complete or correct such Work from the Contract Price then or thereafter due the Contractor; or (ii) require the Contractor to complete/correct such items.

2.4.4. Equipment Maintenance and Operations. Prior to the District's partial occupancy or use, Contractor shall submit to District and Architect an itemized list of each piece of equipment located in or serving the area

subject to the District's partial occupancy or use, stating the operating commencement date of each such piece of equipment, together with operating instructions, manuals and other information required by the Contract Documents. District shall be responsible, from and after the District's partial occupancy or use, for utility consumption, regular operation and regular maintenance of building systems or equipment situated in or serving the area subject to the District's partial occupancy or use. Provided that the equipment and/or building systems located in or serving the area subject to the District's partial occupancy or use are complete and operational in conformity with requirements of the Contract Documents, the commencement of the Guarantee and warranty obligations under the Contract Documents or arising by operation of law shall be the date of the District's actual partial occupancy or use. If any portion of the equipment or building systems situated in or serving the area subject to the District's partial occupancy are not complete and/or not operational in conformity with requirements of the Contract Documents as of the date of the District's actual partial occupancy or use, the commencement of the Guarantee and warranty obligations shall be the date of completion or operational status of such equipment or building systems.

2.4.5. No Acceptance of Defective Work. The District's partial occupancy or use of any portion of the Work shall not constitute the District's acceptance of Defective Work. Notwithstanding the District's partial occupancy or use of the Work, the Contractor shall promptly correct, repair or replace all Defective Work in areas partially occupied or used by the District. The District's partial occupancy or use of the Work does not constitute a waiver of District rights or remedies relating to Defective Work in the area subject to the District's partial occupancy.

2.4.6. Partially Occupied or Used Areas.

2.4.6.1. Security. As of the first day of the District's actual partial occupancy of the Work, the District shall be responsible for security of the area of Work subject to the District's partial occupancy and personal property items situated within such area of the Work. The foregoing notwithstanding, the Contractor acknowledges that the Work subject to the District's partial occupancy or use is adjacent to or adjoining areas where there are on-going construction operations of the Contractor. The Contractor agrees to cooperate with and coordinate the Contractor's security measures for the Work with the District's security measures for the portion of Work subject to the District's partial occupancy or use.

2.4.6.2. Damage. Unless caused by the Contractor, the Contractor is not responsible for correction, repair or replacement of Work in the area partially occupied or used by the District that is damaged after the first day of the District's actual partial occupancy or use.

2.4.7. Partial Occupancy Not Completion. The District's partial occupancy or use of the Work thereof shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

2.5. 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. 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 waive or limit the exercise of any other right or remedy of the District under the Contract Documents or Applicable Laws. If Work is stopped or suspended pursuant to the foregoing, the Contract Price and the Contract Time are not subject to adjustment.

2.6. Drawings and Specifications.

2.6.1. General. Drawings and Specifications are intended to delineate and describe the Work and its component parts to such a degree as will enable skilled and competent Contractors to complete the Work in accordance with the requirements described therein, within the Contract Time and the Contract Price. Drawings and Specifications are intended to comply with Applicable Laws and other requirements of Governmental Authorities with jurisdiction over any portion of the Work. The Contractor shall exercise reasonable diligence consistent with industry standards of care and best practices to identify observable deviations in the Drawings or Specifications from requirements of Applicable Laws or Governmental Authorities. The Contractor shall notify the Architect in writing upon discovery of any such deviations from Applicable Laws or requirements of Governmental Authorities. The Contractor shall, without adjustment

of the Contract Price or the Contract Time, correct, replace or otherwise remedy Work depicted in the Drawings or Specifications which the Contractor knew or should have known deviates from Applicable Laws or requirements of Governmental Authorities without first consulting the Architect for further instructions regarding such Work, or disregards the Architect's instructions regarding such Work.

- 2.6.2. District Ownership.** The Drawings, Specifications, calculations, design data and other incidental architectural and engineering instruments of services relating to the Work are and remain the sole property of the District. The foregoing includes without limitation, addenda, amendments, revisions and other similar changes thereto which occur during the Work.
- 2.6.3. Other Use Prohibited.** The Drawings, Specifications and other Contract Documents may be used by the Contractor and Subcontractors only in connection with the Work. Use of the Drawings, Specifications and other Contract Documents for any other purpose is strictly prohibited. The Contractor is responsible for informing and notifying Subcontractors of the prohibitions on unauthorized use of the Drawings, Specifications or other Contract Documents.
- 2.6.4. Proper Performance.** All parts of the described and shown construction shall be of the best quality of their respective kinds and the Contractor is hereby advised to use all diligence to become fully involved as to the required construction and finish, and in no case to proceed with the different parts of the work without obtaining first from the Architect such directions and/or Drawings as may be necessary for the proper performance of the work.

2.7. Other Contracts.

- 2.7.1. General.** The District reserves the right to let other contracts in connection with the Work. The Contractor shall afford other contractors a reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate the Work with the work of such other Contractors.
- 2.7.2. Inspect and Report.** If any part of Contractor's work depends for proper execution or results upon work of any other Contractor, the Contractor shall inspect and promptly report to Architect in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held accountable for damages to District for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other Contractor's work as fit and proper for reception of its work, except as to defects which may develop in other Contractors' work after execution of Contractor's work.
- 2.7.3. Define Changes in Work.** To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Architect in writing any discrepancy between executed work and Project Documents.
- 2.7.4. Review Work Compatibility.** Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Agreement in the light of such other contracts, if any.
- 2.7.5. Non-Exclusive Occupancy.** Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at Site of Project. Contractor shall not cause any unnecessary hindrance or delay to any other Contractor working on Project. If simultaneous execution of any contract for Project is likely to cause interference with performance of some other contract or contracts, District shall decide which Contractor shall cease work temporarily and which Contractor shall continue or whether work can be coordinated so that Contractors may proceed simultaneously.
- 2.7.6. No Damages.** District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

2.8. Project Inspector

- 2.8.1. General.** One or more Project Inspectors, including special inspectors, as required, will be employed by

District and will be assigned to the Project.

- 2.8.2. Authority of Project Inspector.** In addition to the authority and rights of the Project Inspector as provided for in the Contract Documents and by Applicable 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 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.
- 2.8.3. 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.
- 2.8.4. 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 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. The Contractor shall furnish such other information requested by the Project Inspector as necessary for the Project Inspector's discharge of its duties and responsibilities relating to the Work.
- 2.8.5. Contractor and District Responsibilities for Project Inspector Costs and Fees.** 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 Contractor holiday days ("Project Inspector Standard Workdays"). Unless the District directs the Contractor to perform Work exceeding the Project Inspector Standard Workdays, for any Work performed by the Contractor outside the Project Inspector Standard Workdays, the Contractor shall be responsible for payment of Project Inspector fees for Project Inspector services relating to such Work. All services provided by the Project Inspector exceeding an eight (8) hour workday Mondays through Fridays and/or the first eight (8) hours on Saturdays shall be at one and one-half (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 District's 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 such fees from the Contract Price then or thereafter due the Contractor.
- 2.8.6. Notification.** Contractor understands and agrees that the Project Inspector may also serve concurrently as inspector for other District projects and may not therefore be available on Site during the entire work day. It shall be the responsibility of Contractor to notify the Project Inspector in writing not less than twenty-four (24) hours in advance of the need for the Project Inspector to be present at the Site for Work-related activities, including without limitation, when materials tests/inspections are scheduled to be conducted at the Site.
- 2.8.7. Contractor Furnished Facilities and Services for Project Inspector.** If required, the Contractor shall provide for the exclusive use of the Project Inspector such as facilities, furniture, furnishings and equipment, and services set forth in Division 01 Section 01 50 00, Temporary Facilities and Controls, without adjustment of the Contract Price. The Contractor shall provide and pay for adequate electric lights, telephone service (not a pay phone), and adequate heat for the field office until authorized removal.
- 2.9. Project Records Management.** The District reserves the right to implement project document management procedures, processes or software. The Contractor shall utilize project document management procedures, processes or software implemented by the District for the Project without adjustment of the Contract Price or the time. The Contractor shall utilize the procedures, processes or software set forth in the Supplemental Conditions without adjustment of the Contract Price or Contract Time.

ARTICLE 3. ARCHITECT

- 3.1. General.** The Architect shall be the District's representative during construction and shall observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. 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 Project Documents. The Architect will not be required to make exhaustive or continuous Site inspections to check quality or quantity of the Work.
- 3.2. Evaluate Performance.** The Architect shall be, in the first instance, the judge of the performance of the Work. Architect shall exercise authority under the Project Documents to enforce Contractor's faithful performance of its obligations under the Project Documents.
- 3.3. Authority.** The Architect shall have all authority and responsibility established by Applicable Law. The Architect has the authority to enforce compliance with the Project Documents and the Contractor shall promptly comply with instructions from the Architect or an authorized representative of the Architect. Architect shall have authority to stop work whenever such stoppage may be necessary in Architect's reasonable opinion to ensure the proper execution of the Work. The Architect is authorized to reject Defective Work. The Architect shall have authority to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed as deemed necessary to implement the intent of the Project Documents.
- 3.4. Governing Decision.** The Architect's decisions relating to acceptability of materials, equipment or workmanship, interpretation of Project Documents, and the acceptable performance of the Contractor are final and binding on the Contractor.
- 3.5. Limits on Architect Authority.** The authority of the Architect relating to the Contract Documents and the Work shall not include control over or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, are of which are solely the Contractor's responsibility. The Architect shall have no control over or responsibility for acts or omissions of the Contractor or its Subcontractors.
- 3.6. Detail Drawings and Instructions**
- 3.6.1. Clarification; Contractor Request for Information.** Questions regarding interpretation of Drawings and Specifications or other portions of the Contract Documents shall be clarified in writing by the Architect upon written request of the Contractor. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information provided in the Contract Documents relating to such Work. Contractor shall immediately notify Architect and District in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Contract Documents that the Contractor believes in good faith to have an effect on or impair the Contractor's completion of the Work. If the Contractor or a Subcontractor completes Work it knew or should have known to be in error, inconsistent, ambiguous, or not sufficiently detailed or explained, Contractor shall, without adjustment of the Contract Price or the Contract Time, complete all necessary remedial work to conform such Work with the requirements and intent of the Contract Documents.
- 3.6.2. Contractor Request for Information.** In requesting clarifications or interpretations from the Architect, the Contractor shall act with promptness in submitting any such written request so as to allow the Architect reasonable and adequate 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 for failure of the Contractor to timely request clarifications or interpretations from the Architect. The Contractor's submittal of requests for clarifications or interpretations shall be on such forms and in accordance with procedures established by the District.
- 3.6.3. Architect Response to Request for Information.** The Architect's responses to Contractor Requests for Information will be in writing and issued within a reasonable time after receipt a Request for Information. The Architect's response to a Request for Information may include additional instructions or details by means as necessary for proper execution of the Work. All such additional instructions shall be consistent

with Contract Documents, prior revisions thereto, and reasonably inferable therefrom. Work shall be executed in accordance with the Architect's responses to Requests for Information, including the Architect's additional instructions.

3.6.4. Contractor Responsibilities. If the Architect reasonably determines that any of Contractor's Requests for Information: (i) does not reflect adequate or competent management, supervision or coordination by the Contractor or a 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, the Contractor shall be liable to the District for all costs and fees 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 and Design Consultants. The Architect will note any such determination in responding to Requests for Information. The District may deduct such costs or fees from the Contract Price then or thereafter due the Contractor.

3.6.5. Contractor Notice. If the Contractor believes in good faith that any Architect response to a Request for Information or any additional instruction responding to a Request for Information constitutes a Change justifying adjustment of the Contract Time or the Contract Price, the Contractor shall give written notice thereof to the Architect and District within five (5) days of the receipt of such response or additional instruction. Such written notice shall include without limitation: (i) detailed explanation and substantiation of the basis for the asserted adjustment of the Contract Price or the Contract Time; (ii) if an adjustment to the Contract Price is asserted, a detailed breakdown of labor, materials, equipment and other costs forming any part of the asserted Contract Price adjustment; and (iii) if an adjustment of the Contract Time is asserted, a fragnet analysis of the impact of such response or additional instruction on the Progress Schedule Critical Path. If mutual agreement with the District is not reached for adjustment of the Contract Price or Contract Time, if any, the Contractor shall diligently proceed to complete Work in accordance with the response or additional instruction.

3.7. Periodic Site Observations. 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 will not be 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.

3.8. Review of Applications for Payment. The Architect will review the Contractor's Applications for Progress Payments and for Final Payment, evaluate the extent of Work performed and certify to the District the amount properly due the Contractor on such Application for Payment.

3.9. Rejection of Defective Work. The Architect is authorized to reject Defective Work. Whenever the Architect, considers it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect may require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. The authority of the Architect or a decision made in good faith by the Architect to exercise or not to exercise such authority shall not give rise to a duty or responsibility to the Contractor, Subcontractors or Material Suppliers.

3.10. Submittal Review.

3.10.1. Architect Review. The Architect will review and approve or take other appropriate action upon the Contractor's Submittals for the limited purpose of checking for general conformance with information given and the design 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 are the responsibility of the Contractor. 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.

3.10.2. Time for Architect 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 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 elsewhere in the Contract Documents or in the Progress Schedule.

3.10.3. Architect Submittal Review Response. The Architect’s review responses to Submittals will be the following or terms similar to the following:

- “NO EXCEPTIONS TAKEN” The Contractor is authorized to proceed with completing the Work in accordance with the reviewed Submittal.
- “MAKE CORRECTIONS NOTED” The Contractor is authorized to proceed with the Work incorporating the corrections noted, formal resubmittal of the Submittal with the noted correction will not be required.
- “REVISE AND RESUBMIT” The Contractor is not authorized to proceed with the Work; the Contractor shall revise the Submittal in accordance with the revision notes and re-submit for Architect review.
- “REJECTED RESUBMIT” The Contractor is not authorized to proceed with the Work; the Contractor shall re-submit the Submittal for Architect review.

3.10.4. Contractor Re-Submission of Submittals. The Contractor shall promptly revise and re-submit Submittals as required by the Architect. The Contractor is responsible for any impact to the progress of Work resulting from time required for re-submission of Submittals and the Architect’s reviews thereof. The Contractor shall direct specific attention re-submitted Submittals to revisions other than those requested by Architect or District on previous Submittals. Costs, fees, expenses or completion of Work as required by revised and re-submitted Submittals are solely the responsibility of the Contractor and not basis for adjustment of the Contract Price.

3.10.5. Architect Re-Submittal Review Fees and Costs. The Contractor shall be responsible for fees, costs and expenses incurred by the District for reviews of requiring re-submission, including without limitation, fees of the Architect and Design Consultants. The District may deduct such fees, costs and expenses from the Contract Price then or thereafter due the Contractor.

3.11. Changes to the Work; Change Orders. The District will prepare Change Orders for the Project. The Architect may authorize minor changes in the Work which do not result in adjustment of the Contract Time or the Contract Price in the form of Architect’s Supplemental Instructions.

ARTICLE 4. CONTRACTOR

4.1. Contractor Status

4.1.1. Independent Contractor. Contractor, in the performance of this Agreement, shall be and act as an independent Contractor and not an employee of the District. Contractor and its subcontractors, understand and agree that they shall not be considered officers, agents, employees, or volunteers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers’ Compensation. Contractor assumes the full responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Work to be provided under this Agreement. Contractor shall assume full responsibility for withholding and payment of all federal, state, local and applicable income taxes; workers’ compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Contractor and Contractor’s employees. Contractor should be aware that the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Contractor or Contractor’s employees or subcontractors. Contractor agrees to defend, indemnify and hold the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers harmless from and against any and all liability arising from any failure or alleged failure of Contractor to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Contractor’s employees or

Subcontractors.

- 4.1.2. Licensed Contractor.** Contractors and each Subcontractor are required by Applicable Laws to be licensed and regulated by the Contractors' State License Board. Any Contractor not so licensed is subject to penalties under the Applicable Laws. A material obligation of the Contractor is to maintain its Contractors' License in a valid, good standing status at all times during performance of the Work.
- 4.1.3. DIR Registered Contractor.** The Contractor each Subcontractor shall be a DIR Registered Contractor pursuant to Labor Code §1725.5 at all times during performance of the Work. Failure of the Contractor or a Subcontractor to be a DIR Registered Contractor when performing Work shall subject the Contractor or Subcontractor, as applicable to penalties and assessments pursuant to Labor Code §1771.1.
- 4.1.4. Change of Contractor Name or Status.** If the Contractor effectuates a change to its name or the type of entity, the Contractor shall provide the District with written notice thereof within thirty (30) days of the effective date of such change(s). If requested by the District, the Contractor shall provide the District with Certificates of Insurance and/or Performance Bond, Labor and Materials Payment Bond reflecting such change(s). No change of Contractor name or type of Contractor entity shall alter the Contract Documents or the obligations of the Contractor thereunder.

4.2. Contractor's Key Personnel.

4.2.1. Key Personnel.

- 4.2.1.1. Key Personnel.** The Contractor shall designate and assign Key Personnel to supervise, coordinate and manage Work at the Site. Key Personnel shall consist of at least a Project Manager ("Contractor PM") and Superintendent along with such additional personnel necessary to complete the Work in accordance with the Contract Documents, within the Contract Price and the Contract Time. Without being deemed to have assumed responsibility for means, methods and sequences for completing the Work and without adjustment of the Contract Price, the District may direct the Contractor to augment Key Personnel if such augmented Key Personnel are reasonably determined by the District to be necessary for completion of the Work in accordance with the Contract Documents, within the Contract Time and the Contract Price. Compliance with such directive is a material obligation of the Contractor. Before commencing the Work, Contractor provide the District, Project Inspector and Architect with written statements of the qualifications of the Contractor's proposed Key Personnel. If there are objections of the District, Project Inspector or Architect to any of the Contractor's proposed Key Personnel, the Contractor shall provide alternative Key Personnel acceptable to the District, Project Inspector and the Architect.
- 4.2.1.2. Dismissal of Key Personnel.** Key Personnel accepted by the District shall not be changed except: (i) upon request of the District; (ii) upon the Contractor's determination of unsatisfactory performance; or (iii) Key Personnel voluntary cessation of 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.
- 4.2.1.3. Key Personnel Qualifications.** The Contractor PM and Superintendent shall each have served as a project manager or superintendent, as applicable for at least five (5) prior projects within the past ten (10) years similar in size, scope, complexity and dollar-value as the Work.
- 4.2.2. Key Personnel at Site During Work.** No Work at the Site will be permitted unless one of the Contractor's Key Personnel are at the Site. The District, Project Inspector or Architect may direct cessation of any Work of at the Site if Work occurs without Key Personnel being at the Site. Such Work shall not continue or proceed until Key Personnel are at the Site. No adjustment of the Contract Time or the Contract Price will be permitted for delays resulting from failure of Key Personnel to be at the Site during performance of Work.
- 4.2.3. Superintendent.** The Superintendent shall be assigned on a full-time basis at the Site. The Superintendent shall devote her/his time solely to the Project and until Final Completion of the Work is achieved, the

Contractor shall not assign the Superintendent any employment duties except for those as Superintendent for the Work. The Contractor shall assign such assistants to the Superintendent and field foremen as necessary for supervision, coordination or management of Work.

4.2.4. Contractor Project Manager (PM); Full-Time Contractor PM. The Contractor PM shall devote such time as necessary to supervise, coordinate and manage the Work and to oversee, supervise and direct Contractor personnel so the Work is completed in accordance with the Contract Documents, within the Contract Time and the Contract Price. 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. The extent of the Contractor PM's time devoted to the Work or the scope of the Contractor PM's oversight, supervision and direction duties shall be as required by the circumstances of the Work. Without being deemed to have assumed responsibility for means, methods and sequences for completing the Work and without adjustment of the Contract Price, the District may direct the extent of the Contractor PM's time devoted to the Work or the scope of the Contractor oversight, supervision and direction duties. If the Contract Price set forth in the Agreement exceeds Five Million Dollars (\$5,000,000), the Contractor PM shall devote their time solely to the Project and until Final Completion of the Work is achieved, the Contractor shall not assign the PM any employment duties except for those as Contractor PM for the Work.

4.2.5. Subcontractors' Key Personnel. The Contractor shall require all Subcontractors to assign a superintendent and field foremen to supervise, coordinate and manage the Work of the Subcontractor at the Site. The Contractor shall not permit any Subcontractor to perform Work at the Site unless the Subcontractor's superintendent and/or field foreman are at the Site to supervise, coordinate and manage such Work. The District, Project Inspector or Architect may direct cessation of any Work of a Subcontractor at the Site if completion of such Work occurs without the Subcontractor's superintendent or field foreman being at the Site. Such Work shall not continue or proceed until the Subcontractor's superintendent or field foreman are at the Site.

4.2.6. Communications to Key Personnel. Correspondence, directives, and other similar communications relating to the Work or the Contract Documents given or transmitted to Contractor Key Personnel are deemed given or transmitted to the Contractor and binding on the Contractor.

4.3. Duty to Provide Fit Workers

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

4.3.2. Excluded from Work. Any person in the employ of the Contractor or Subcontractors whom District or Architect may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed at the Site except with written consent of District which may be granted, conditioned or denied in the sole discretion of the District.

4.4. Completion of Work.

4.4.1. Project Knowledge. The Contractor represents that it is a skilled, knowledgeable, and experienced contractor possessing the skills, knowledge experience along with resources including manpower, materials and equipment necessary to complete the Work in accordance with the Contract Documents for the Contract Price and within the Contract Time. The Contractor and its Key Personnel shall review and study the Contract Documents to fully understand requirements of the Work and the Contractor obligations under the Contract Documents. The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention, applying such skills and providing such labor, materials and other resources necessary to complete the Work in accordance with the Contract Documents, for the Contract Price and within the Contract Time.

4.4.2. Contract Documents Inconsistency. The Contractor shall notify the District and Architect in writing of any error, inconsistency or omission which Contractor encountered in the Contract Documents. The Contractor shall be liable to the District for damages, losses and/or costs to correct or remedy Work

resulting from errors, inconsistencies, or omissions in the Contract Documents which the Contractor encountered or should have encountered upon exercise of reasonable diligence.

- 4.4.3. Verify Dimensions.** The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing Work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and field conditions with other information known to the Contractor or set forth in the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported in writing to the District and Architect at once. Upon commencement of any item of Work, the Contractor is responsible for dimensions and related conditions related to such item of Work; shall make any corrections necessary to make Work properly fit without adjustment of the Contract Time or the Contract Price. The responsibility for verification of dimensions is a non-delegable duty of the Contractor. The obligations of the Contractor to verify dimensions is in addition to the obligation of Subcontractors, if any, for verification of dimensions.
- 4.4.4. Layout and Field Engineering.** All field engineering if required for laying out of Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified civil engineer approved by the District.
- 4.4.5. Surveys.** . Surveys to determine locations of construction, grading, and site work, shall be provided by Contractor without adjustment of the Contract Price.
- 4.4.6. Reasonably Inferable Work.** Work not specifically shown or indicated in the Contract Documents, but is reasonably inferable therefrom as necessary to meet the intent of the Contract Documents or the intended use of the Project is deemed part of the Work.
- 4.4.7. Documents on Work.** The Contractor shall keep on the job Site at all times one legible copy of all Project Documents, including addenda and change orders, and all approved Drawings, Plans, schedules and Specifications. All such documents shall be kept in good order and available to Architect, Architect's representatives, and the District for inspection or reproduction upon request of the Architect or District. The Contractor shall be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project.
- 4.4.8. Work to Comply with Applicable Laws and Regulations.** The Contractor shall give all notices required by the Applicable Laws and comply with Applicable Laws.
- 4.4.9. Assignment of Anti-Trust Claims.**
- 4.4.9.1. Public Contract Code §7103.5 Assignment.** The Contractor acknowledges that Public Contract Code §7103.5 provides: "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body (District) all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties".
- 4.4.9.2. Contractor Assignment of Rights.** Contractor, for itself and all Subcontractors, agrees to assign to District all rights, title, and interest in and to all such causes of action Contractor and any Subcontractor may have under the Agreement. This assignment shall become effective at the time District tenders final payment to the Contractor and Contractor shall require assignments from all subcontractors to comply herewith.
- 4.5. Contractor Daily Reports.** At the close of each Working Day, the Contractor shall submit a Daily Report to the District, Architect and the Project Inspector, on forms approved by the District which include the following information required by the following. Submittal of Daily Reports is a material obligation of the Contractor. If the Contractor fails to submit Daily Reports in conformity herewith, the District may withhold payment of any portion of the Contract Price due the Contractor until all Daily Reports required of the Contractor have been submitted.

- 4.5.1. Labor.** The number of Contractor employees performing Work at the Site and the number of hours of Work per employee. Each Key Personnel at the Site and hours at the Site of each Key Personnel shall be reported. For employees of the Contractor engaged in craft-work or other field-work, the hours of Work and general description of labor provided shall be reported.
- 4.5.2. Materials and Equipment Deliveries.** Deliveries of materials or equipment for incorporation to the Project or Construction Equipment for use in connection with the Work. Include descriptions of delivered materials, equipment and Construction Equipment, including quantity descriptions, special handling requirements and other similar matters.
- 4.5.3. Subcontractors.** Identify all Subcontractors performing Work at the Site. For each Subcontractor, include the Labor/Material and Equipment Deliveries information required by Paragraphs 4.5.1 and 4.5.2 above.
- 4.5.4. Tests/Inspections.** Identify all materials or other portions of the Work subject to a test or inspection, include a description of the conformity of the tested/inspection materials or other Work with requirements of the Contract Documents and any impacts to progress of the Work resulting from the completed tests/inspections.
- 4.5.5. Work Completed.** Provide a general description of Work completed, including a breakdown of Work completed by trade, craft, Work area and other similar breakdowns as necessary to provide a complete and accurate understanding of the Work completed. Provide a general description and assessment of conformity of the Work completed with the progress of Work necessary to achieve Substantial Completion within the Contract Time.
- 4.5.6. Accidents/Safety.** Describe any Site accidents and any safety violations. Describe post-accident actions of the Contractor. Described Contractor actions to address or other remedy any safety violation.
- 4.5.7. Visitors/Guests.** Provide summary of visitors/guests at the Site. Provide summary description of any impact or hindrance to the progress of Work resulting from the presence of visitors/guests at the Site.
- 4.6. Record Documents.**
- 4.6.1. Contractor Maintenance of Record Documents.** During performance of the Work, the Contractor shall continuously maintain complete and accurate Record Documents consisting of a set of the Drawings marked by the Contractor to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, Changes and all concealed or buried installations, including without limitation, piping, conduit and utility service lines. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Documents. Underground or buried portions of the Work shall note depths and other similar data or notations necessary to accurately locate the as-built/installed Work. The Record Documents shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Documents relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and other similar data necessary to depict the entirety of the as-built conditions of such portions of the Work.
- 4.6.2. Review and Inspection of Record Documents.** Upon request of the District, the Project Inspector, and/or the Architect, the Contractor shall make the Record Drawings available for review and inspection. 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.
- 4.6.3. Contractor Failure to Maintain Record Documents.** Compliance by Contractor with the requirements of this Article shall be deemed a condition to Contractor's right to payment upon its Application for Payment.
- 4.6.4. Record Documents Property of District.** All Record Documents are the sole property of the District and at upon Final Completion or earlier termination of the Contract, the Contractor shall deliver all Record Documents to District.
- 4.6.5. Record Documents on Substantial Completion.** Upon Substantial Completion, the Contractor shall deliver to the District: (i) one (1) annotated hard copy; and (ii) one (1) high resolution PDF file of the Record Documents. All electronic files of the Record Documents shall conform to the requirements of the District. Each page of

such Record Documents and the cover page of the Record Documents shall prominently bear the words "Record Documents". Delivery of the Record Drawings shall be by the form of Record Documents Transmittal certifying that, that the Record Documents depict the actual as-built condition of the Work with such detail and data as required by the Contract Documents. In addition to other requirements established by the Contract Documents, the Contractor's delivery of complete and accurate Record Documents is a condition to the Contractor's achieving Final Completion and the District's obligation to disburse the Final Payment.

4.7. Progress Meetings. A material obligation of the Contractor is the attendance at required meetings by the Contractor's Key Personnel for the Work 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.

4.7.1. Pre-Construction Conference. The Contractor's Key Personnel (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: (i) responsibilities of the Contractor and Subcontractor; (ii) administrative matters, including an overview of the respective responsibilities of the District, Architect, Contractor, Subcontractors, Project Inspector and others performing any part of the Work or services relating to the Work; (iii) Submittals; (iv) Changes and Change Order processing; (v) 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 ("DSLE") monitoring and enforcement of prevailing wage rate requirements; (vi) Progress Schedule development and maintenance; (vii) development of Schedule of Values and payment procedures; (viii) communications procedures, including the handling of Requests for Interpretation; (ix) conduct of pre-installation meetings to plan and coordinate work of new Contractors, separate Contractors and to plan for utility outages; (x) emergency and safety procedures; (xi) Site visitor policies; (xii) conduct of Contractor /Subcontractor personnel at the Site; (xiii) punchlist/close-out procedures; and (xiv) Contractor and Subcontractor DIR Contractor Registration.

4.7.2. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's Key Personnel and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the District or Architect and will generally include as agenda items: Site safety, field issues, coordination of Work, a review of a three-week look-ahead schedule prepared by the Contractor, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include: 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 Progress Schedule and Submittals.

4.7.3. Pre-Installation Conference. The Contractor's Key Personnel (and representatives of Subcontractors shall schedule and facilitate Pre-Installation Conferences 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. The Pre-Installation Conferences shall be scheduled to include Key Personnel from the District, Architect, and Project Inspector, and 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.

4.7.4. 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. Attendance of the Contractor's Key Personnel, Subcontractors and others as directed by the District at Special Meetings is a material obligation of the Contractor.

4.7.5. Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the District or Architect will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting. Unless the Contractor notifies the District and Architect in writing of objections or

corrections to minutes prepared hereunder within five (5) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the District or Architect; such objections or corrections shall be submitted to the District and Architect 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.

4.7.6. Objections to Meeting Minutes Not In Lieu of Notice Requirements. Under no circumstances shall information contained in Contractor's daily job reports, monthly reports or progress meeting minutes relieve Contractor of its obligations to comply with, serve as a substitute for, not constitute a waiver by District of its right to insist upon Contractor's compliance with the provisions of the Contract Documents relative to timely and complete notice to District of changes, delays, claims or other matters for which written notice is required by the Contract Documents.

4.8. Materials and Work

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

4.8.2. New Materials. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

4.8.3. Substitutions. Except for District approved substitution of "or equal" specified materials, equipment or other items subject to the Contractor's substitution request submitted during the bidding process, the Contractor shall furnish and install materials, equipment and other items as specified. The District will not consider or approve substitution of specified materials, equipment or other items except during the bidding process. The District at its sole discretion and under special circumstances may review and approve a substitution during the construction phase.

4.8.4. Storage. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required. District has no obligation to pay for any prefabricated material stored offsite until delivered and installed to the jobsite and inspected and approved by the Project Inspector.

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

4.8.6. District Materials Orders. If the Contractor fails to timely place orders for materials/equipment pursuant to the foregoing, the District reserves the right to place orders for such materials and/or equipment as it may deem advisable in order that the work is completed within the Contract Time, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by the Contractor. The District may deduct such expenses from the Contract Price then or thereafter due the Contractor.

4.8.7. No Interest Retained. No materials, supplies, or equipment for work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to District free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Agreement shall have any right to lien upon District property or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

- 4.8.8. Protection of Supplier's Rights.** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hand of District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials or labor when no formal contract is entered into for such materials or labor.
- 4.8.9. Contractor Retains Title.** The title to new materials and/or equipment and attendant liability for its protection and safety, shall remain in the Contractor until incorporated in the Work and accepted by the District; no part of said materials and/or equipment shall be removed from its place of onsite/offsite storage except for immediate installation in the work; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the District or its authorized representative.
- 4.9. Use of Site.** Contractor shall coordinate operations with, and secure the approval of, District before using any portion of the Site.
- 4.9.1. Staging Area.** Contractor will be assigned staging space on or adjacent to the Site, and all field offices, materials and construction equipment shall be stored or situated within the designated staging area. Unless otherwise expressly provided in the Contract Documents, Contractor shall restore the staging area and adjacent areas to the condition existing prior to Contractor's commencement of the Work.
- 4.9.2. Existing Conditions.** During the Work, Contractor shall protect and preserve Existing Conditions. The Contractor shall restore damage, destruction or other changes to Existing Conditions during the Work to the condition existing prior to Contractor's commencement of the Work. All such restoration of damage shall be completed prior to Substantial Completion of the project and shall be a condition to the release of Final Payment to the Contractor.
- 4.9.3. Unauthorized Use.** The Contractor, Subcontractors and their personnel shall not occupy, live upon or otherwise make use of the Site for any purpose other than completion of the Work.
- 4.9.4. Site Operations.** Contractor shall anticipate and take all necessary and reasonable measures to minimize and control dust and noise that might interfere with the use or enjoyment of the Site and adjacent areas by the District and the students, staff and visitors at or about the Site. The Contractor shall familiarize itself with the academic, student and other scheduled activities at the Site, including, without limitation, campus functions and ceremonies and plan the Work so as to avoid interferences or disturbances therewith. The Progress Schedule shall incorporate such operations at the Site and take into account the impacts to Project progress resulting from such Site operations.
- 4.9.5. Site Enclosure.** The Contractor shall enclose the working area with a substantial barricade, as specified in the District's Division 01 documents, arrange Work and take measures necessary to minimize inconvenience to students, faculty, staff and visitors while ensuring safety during Work at the Site. Fences, barricades and other perimeter security shall be maintained in good condition and secured with locking devices, with key access provided to the District Authorized Personnel and Project Inspector. Damage to any perimeter security measure shall be repaired immediately. Graffiti and unauthorized postings shall be removed or painted over so as to maintain a clean and neat appearance.
- 4.9.6. Site Security.** Contractor is responsible for the security of the Site and the Work, including Work in place or in progress, materials/equipment for incorporation into the Work, Construction Equipment and all other personal property items situated at or about the Site. Mobile equipment and operable machinery shall be kept locked or otherwise made inoperable whenever left unattended.
- 4.9.7. Persons on Site.** Contractor shall not allow any person, other than the workers on the Project, or other individuals authorized by District, to access any portion of the Site where the Work is being performed. Only authorized personnel will be permitted on the Site. Contractor shall at all times maintain good discipline and order among its employees and the employees of Subcontractors. Any person in the employ of Contractor or any of Subcontractor whom District may deem, in its sole and absolute discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of District and all losses to Contractor or District associated therewith shall be paid at Contractor's own expense. The District reserves

the right to limit or re-direct access to the Site at any time at its sole discretion.

- 4.9.8. Limitation of Work Activities to Site.** Contractor shall confine apparatus, the storage of materials and the operations of the workers to the Site and other limits indicated by Contract Documents or as otherwise directed by District in writing. Contractor shall confine access and parking at the Site to areas permitted by Applicable Laws and/or District direction. Contractor acknowledges that it is experienced in performing construction within limited and confined areas and spaces such as those that are anticipated to exist for the Work. The Contractor assumes responsibility, without adjustment of the Contract Time or Contract Price, to implement all measures (including, without limitation, those related to protection, storage, staging and deliveries) as may be necessary by limitations, restrictions or other constraints of the Site.
- 4.9.9. Smoke-Free Workplace Certification.** The Contractor shall comply with and enforce the Smoke-Free Workplace Certification submitted with the Contractor's Bid Proposal for the Work.
- 4.9.10. Dust, Fumes, Noise.** Contractor shall take preventive measures to minimize, and eliminate wherever reasonably possible the generation or disbursal of dust, fumes and noise.
- 4.9.11. Clean-Up.** Contractor at all times shall keep work Site free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the Site and shall remove same promptly and with not greater than one week between removals. Upon completion of Work, Contractor shall clean interior and exterior of building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site. If Contractor fails to clean up, the District shall do so and the cost thereof shall be charged to the Contractor and deducted from any payment due the Contractor.

4.10. Site Operations.

4.10.1. Integration of Work.

- 4.10.1.1. General.** Contractor shall do all cutting, fitting, patching, and preparation of work as required to make its several parts come together properly, and fit it to receive or be received by work of other Contractors or existing conditions showing upon, or reasonably implied by, the Drawings and Specifications, and shall follow all directions given by the Architect.
- 4.10.1.2. Contractor Costs.** All costs caused by defective or ill-timed work shall be borne by Contractor.
- 4.10.1.3. Consent of Architect.** Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other Contractor without the written consent of the Architect. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.
- 4.10.1.4. DSA Review.** Cutting, boring, saw-cutting or drilling through structural elements of Existing Conditions is not to be started until the details (if the details are not already shown in, or as shown do not conform to, the DSA-approved Contract Documents) have been reviewed and approved the appropriate subconsultant responsible for structural engineering and the DSA field engineer.
- 4.10.1.5. Match Existing.** When modifying Existing Conditions or installing new work adjacent to existing work, Contractor shall match, as closely as conditions of Site and materials will allow, the finishes, textures, and colors of the Existing Conditions, refinishing Existing Conditions as required, at no additional cost to District.
- 4.10.1.6. Phased Construction.** Contractor is aware that this Project may be split into several phases. If the Project is split into phases pursuant to the specifications identified in the Contract Documents, then Contractor has made allowances for any delays or damages which may arise from coordination with Contractors for other phases. If any delays should arise from a Contractor working on a different phase, Contractor's sole remedy for damages, including delay

damages, shall be against the Contractor who caused such damage and not the District. Contractor shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

- 4.10.2. Disturbed Areas, Roadway Requirements.** The Contractor shall ensure that all disturbed unpaved roads and disturbed areas within the Site are watered at least three times daily during dry weather. Watering, with complete coverage of disturbed areas shall occur at least three times a day, preferably in the mid-morning, afternoon and at completion of a Working Day. To the extent feasible, haul routes shall not pass directly by sensitive land uses.
- 4.10.3. Vehicle Operations.**
- 4.10.3.1. Idling Limitations.** In accordance with California Code of Regulations, Title 13, Section 2485, heavy-duty trucks accessing the Site shall not idle for greater than five minutes at any location. This measure applies to construction traffic. Prior to grading, a sign shall be posted at the Site stating that workers informing vehicle operations of such idling limitations. The Contractor shall enforce the vehicle idling limitations of Section 2485 and other similar limitations/requirements arising by operation of the Applicable Laws.
- 4.10.3.2. Speed Limits.** The Contractor shall ensure that traffic speed on unpaved roads, at the Site and roadways within the Campus the Site is situated on are reduced to 15 miles per hour or less to reduce PM10 and PM2.5 fugitive dust haul road emissions by approximately 44%.
- 4.10.4. Construction Equipment.** All Rubber Tired Dozers and Scrapers shall be CARB Tier 2 Certified or better. Construction Equipment shall be staged in areas that will create the greatest distance between construction related noise sources and at least three hundred (300) feet from the closest noise sensitive receptor to the Site. All Construction Equipment shall be equipped with properly operating and maintained mufflers.
- 4.10.5. Drainage, Erosion.** The Contractor is responsible for changes in patterns of surface water drainage resulting from, and related erosion control made necessary by, the performance of the Work. Erosion control measures and other measures required as a result of surface water drainage changes arising from the Work shall be completed without adjustment of the Contract Time or Contract Price.
- 4.10.6. Storm Water Pollution Prevention Plan.** District projects, including the Work are part of a larger common plan of development. The Contractor is required to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) regardless of size of Project impacted area. Development and implementation of the SWPPP shall be without adjustment of the Contract Time or the Contract Price.
- 4.10.6.1. Contractor's Responsibility.** The Contractor shall: (i) file and obtain the Storm Water Permit for the Work by submitting the Permit Registration Documents and associated fees; ii) furnish all notices required under the Storm Water Permit; (iii) prior to starting any Work at the Site prepare the Storm Water Management Plans and SWPPP; and (4) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans, SWPPP and all Applicable Laws pertaining to the elimination, reduction or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, the appropriate Regional Water Quality Control Board and municipal storm water management programs.
- 4.10.6.2. SWPPP Reports.** The Contractor shall complete and submit all reports and similar items required by the Storm Water Permit, Storm Water Management Plan and SWPPP (collectively "SWPPP Reports"). The Contractor shall provide the District and Project Inspector copies of all SWPPP Reports concurrently with the Contractor's submittal or filing thereof.
- 4.10.6.3. SWPPP Violations.** The Contractor recognizes and understands that failure to comply with the requirements of the Storm Water Permit, Storm Water Management Plan or SWPPP constitute violations of Applicable Laws; the Contractor shall be liable for all penalties, assessments or other enforcement actions resulting from such violations.
- 4.10.6.4. Condition of Payment.** The Contractor's strict compliance with and completion of actions required

by the Storm Water Permit, Storm Water Management Plan or SWPPP are express conditions precedent to the Contractor's right to receipt of any payment for the Work or the District's obligation to disburse payment for the Work. Without waiving or limiting any other right or remedy, the District may withhold the Contract Price then or thereafter due until the Contractor strictly complies with and completes actions required by the Storm Water Permit, Storm Water Management Plan or SWPPP.

- 4.10.6.5. SWPPP Termination.** Upon Substantial Completion, the Contractor shall file for Notice of Termination of the permit. Acceptance by SWRCB shall be a condition of Final Payment.
- 4.10.7. Land Clearing and Excavation Activities.** Land clearing, excavation and related activities at the Site are subject to the following. All impacts to the progress of Work resulting from compliance with the following are incorporated into the Contract Time and shall be incorporated into the Contractor's Progress Schedules.
- 4.10.7.1. Nesting Birds Survey.** Prior to land-clearing activities from February 1 through August 31, at the expense of the Contractor and without adjustment of the Contract Price, a qualified biologist shall first evaluate the type and extent of vegetation removal and the impact, if any on nesting birds. If determined necessary, the biologist shall conduct a survey and specify the appropriate mitigation measures for impacts which may include avoidance of occupied nests, working outside an established buffer area, modified scheduling of grading and clearing, and monitoring of active nests during construction. If the biologist is retained by the District, costs, charges, fees and expenses for completion of the bird nest survey will be deducted from the Contract Price. If the biologist is retained by the Contractor, the biologist shall be subject to acceptance by the District and all reports, analysis, evaluations and other similar materials prepared, compiled or received by the Contractor retained biologist shall be provided to the District upon the Contractor's receipt.
- 4.10.7.2. Paleontological Assessment.** Prior to any excavation, the Contractor shall compare the limits of proposed excavations with the depth and lateral extent of existing sub-surface disturbances, including foundations, utility and fill materials using information including but not limited to: as built construction plans, underground utility surveys and geotechnical information including boring and trenching logs. Should excavations exceed five feet in depth, a qualified paleontologist shall be retained to conduct additional paleontological assessment using pre-construction geotechnical surveys to better define the subsurface geological feature of the campus. Should data indicate paleontological sensitivity, District shall retain a qualified paleontologist to facilitate a preconstruction meeting and monitor all earth-moving activity with the potential to disturb previously undisturbed paleontologically sensitive sediment. Should resources be uncovered as a result of grading or excavation shallower than five feet, Work shall cease pending review and direction of a District retained paleontologist.
- 4.10.7.3. Wind Limitations.** All clearing, grading, earth-moving or excavation activities shall cease when winds exceed 25 mph per SCAQMD guidelines or other limitations imposed by any other Governmental Authority relating to grading, earth-moving or excavation activities or dust/debris controls.
- 4.10.8. Solid Waste Management.** Contractor shall comply with Applicable Laws relating to waste management and materials recycling (including, without limitation, the requirements of the California Public Resources Code, rules and regulations of the California Integrated Waste Management Board and provisions of any Site-specific plans adopted by District) applicable to the Work. Compliance shall be without adjustment of the Contract Price or the Contract Time.
- 4.10.8.1. Recycling.** Without limitation to the foregoing, the Contractor shall take action to ensure that no less than ninety percent (90%) of marketable materials generated from the Contractor and Subcontractor activities at Site that are not fully consumed in the performance of the Work are recycled.
- 4.10.8.2. Records; Recycled Content Certification.** The Contractor shall maintain and shall provide for review and inspection upon request of the District, Architect or Project Inspector records, logs and other data relating to recycled construction materials during the Work. Upon completion of the Work and as a condition to the District's disbursement of the Final Payment, the Contractor shall submit the

Recycled Content Certification to the Architect.

- 4.10.8.3. Condition of Payment.** Compliance by the Contractor with the provisions hereof is an express condition to the District's disbursement of the Contract Price due on an Application for Progress Payment.

4.10.9. Trenches

- 4.10.9.1. Protection.** Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation, which conform to applicable safety standards.

- 4.10.9.2. Greater than Five Feet.** If this Work involves excavation of any trench(es) five (5) feet or more in depth, and the Project cost is in excess of \$25,000, the Contractor shall, in advance of excavation, submit to the District for acceptance or to whomever District designates which may include a registered civil or structural engineer employed by the District to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Agreement for completion of the work as set forth in the Project Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such plan delivered to the District.

- 4.10.9.3. Greater than Four Feet.** If Work involves the digging of trenches or excavations that extend deeper than four (4) feet below the surface such work shall be executed in adherence to Public Contract Code §7104.

- 4.10.9.4. Contractor Notice.** The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the Site different from those indicated; (iii) unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

- 4.10.9.5. District Investigation.** The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Project Documents. In the event a dispute arises between the District and the Contractor, the Contractor shall not be excused from any scheduled completion date provided for by the Project Documents, but shall proceed with all the work to be performed under the Project Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.10.10. Non-Utilization of Asbestos Materials.

- 4.10.10.1. General.** The Contractor will be required to execute and submit the Certificate Regarding Non-Asbestos Containing Materials in accordance with the Contract Documents.

- 4.10.10.2. Criteria for Removal.** Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria: (i) decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos

abatement and accredited by the Environmental Protection Agency (EPA); (ii) the asbestos removal Contractor shall be an EPA accredited Contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter; (iii) the asbestos consultant shall be chosen and approved by the District who shall have sole discretion and final determination in this matter; (iv) the work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

4.10.10.3. Cost. Cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal Contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by the District shall be borne entirely by the Contractor.

4.10.10.4. Hold Harmless. Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the Contractor acknowledges the above and agrees to hold harmless the District, its Governing Board, employees, agents, and Architect and assigns for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risks and liabilities.

4.10.11. Lead. Pursuant to the Lead-Safe Schools Protection Act (Education Code Sections 32240, et seq.) and other applicable law, the Contractor shall not use lead-based paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization or renovation of any existing school facility.

4.10.12. Existing Utility Lines; Removal, Restoration

4.10.12.1. Unidentified Utilities. Pursuant to Government Code §4215, the District assumes the responsibility for removal, relocation, and protection of utilities located on the construction Site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in the Plans and Specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the District to provide for removal or relocation of such utility facilities. If the Contractor, while performing work under this Agreement, discovers utility facilities not identified by the District in the Plans or Specifications, Contractor shall immediately notify the District and the utility in writing. Contractor shall be compensated according to the provisions governing changes in the work.

4.10.12.2. Other Utilities. This Article shall not be construed to preclude assessment against the Contractor for any other delays in completion of the work. Nothing in this Article 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 construction Site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

4.10.12.3. Code Requirements. As part of the Work to be performed, Contractor shall provide the notices and proceed in accordance with Government Code §§4216.2, 4216.3 and 4216.4, and pay all fees charged pursuant to Government Code §4216, et seq.

4.10.13. Utility Services

4.10.13.1. General. All utilities, including but not limited to electricity, water, gas, internet, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on Site where utility is necessary to carry on the work. When it is necessary to interrupt any existing utility service to make connections, a minimum of forty-eight (48) hours advance notice shall be given to the District, the College Director of Facilities and Architect. Interruptions in utility services shall be of the shortest possible duration for the work at hand and shall be subject to limitations, restrictions or other requirements established by the District. In the event any utility service is interrupted without the required forty-eight (48) hour advance notice, the Contractor shall be liable

for all costs, losses or damages as a result thereof. The District may deduct such costs, losses or damages from payment due the Contractor. Upon completion of Work, Contractor shall remove all temporary distribution systems.

4.10.13.2. Use of Existing Utilities. Contractor may, with advance written consent of the District, use District's existing utilities as needed for construction operations, and Owner Representative, IOR and General Contractor's Office Trailers at no charge. The Contractor's use of District existing utilities shall be subject to such limitations, restrictions or other requirements established by the District.

4.10.14. Unknown Conditions. Save and except as hereinafter provided, Contractor agrees at Contractor's Own Expense to assume the risk and costs of Extra Work and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Conditions.

4.10.14.1. Differing Site Conditions. Differing Site Conditions are those conditions located at the Site or in Existing Conditions and not otherwise ascertainable by Contractor in the performance of its obligations that constitute: (i) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Laws; (ii) subsurface or concealed conditions at the Site or concealed conditions in Existing Conditions which differ materially from those indicated by the Contract Documents or other information available to Contractor prior to the Award of Contract; or (iii) unknown physical conditions at the Site or concealed conditions in Existing Conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

4.10.14.2. Notice of Change and Investigation. If Contractor encounters conditions it believes constitute Differing Site Conditions, then Contractor shall, before such conditions are disturbed, submit a Notice of Change to the Architect and District which conforms to the requirements for a Notice of Change pursuant to these General Conditions, and which includes a detailed description and precise location of the conditions encountered. Upon receipt of notice from Contractor, District shall promptly investigate Contractor's report of Differing Site Conditions.

4.10.14.3. Differing Site Conditions Proposal Request. If upon review of a Notice of Change relating to a Differing Site Condition, the District determines that a Differing Site Condition exists to support potential Contract adjustment of the Contract Time or the Contract Price, the Contractor shall on request of the District or Architect, submit a Proposal Request.

4.10.14.4. Waiver by Contractor. Failure by Contractor to strictly comply with these requirements concerning the timing and content of any notice or request for contract adjustment based on Differing Site Conditions shall constitute a waiver by Contractor of the right to further recourse or recovery upon such claim.

4.10.14.5. Final Completion. No claim by Contractor for additional compensation for Differing Site Conditions shall be allowed if asserted after final payment.

4.11. Submittals and Shop Drawings

4.11.1. Not Contract Documents. Shop Drawings, Product Data, Samples and other Submittals are not Contract Documents. Submittals are for the Contractor to demonstrate, for those portions of the Work for which Submittals are required, the materials, equipment, construction means, methods and other details the Contractor proposes to provide for such portions of the Work are in conformity with Contract Documents requirements.

4.11.2. No Performance of Work Without Reviewed Submittal. 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" or "MAKE CORRECTIONS NOTED" 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.

- 4.11.3. Direct Communications.** The Contractor may, by written notice to the Architect and District, authorize a Material or Supplier or Subcontractor to directly communicate with the Architect with regard to a Submittal, provided that no such communications shall relieve or limit the Contractor's obligations relating to such Submittal.
- 4.11.4. Contractor Submission of Submittals.**
- 4.11.4.1. Submittal Transmittal Form.** All Submittals required by the Contract Documents shall be submitted to the Architect for review on the form of a transmittal, with all data and certifications completed. Any Submittal which is not accompanied by a transmittal or an incomplete transmittal may be returned for re-submittal without review. Transmittals shall be numbered sequentially; re-submission of Submittals shall be noted as a re-submission and not a separate/new Submittal.
- 4.11.4.2. Submittal Transmittal Scope.** A separate Transmittal shall be used for each specific item or class of material or equipment for which a Submittal is required. Transmission of Submittals of various items using a single Transmittal will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. All attachments to the Transmittal shall be marked with: (i) Project name; (ii) Contractor name; (ii) Submittal number; and (iii) Drawings sheets Drawings and/or Specifications sections affected by the Submittal. Except where the preparation of a Submittal is dependent upon the approval of a prior Submittal, all Submittals pertaining to the same class or portion of the Work shall be submitted simultaneously.
- 4.11.4.3. Substantiating, Supporting, Reference Materials.** Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other similar data/items necessary to describe the system, product or item. Submittals shall show in detail the size, sections and dimensions of all members, the arrangement and construction of all connections, joints and other pertinent details, and all holes, straps and other fittings for attaching the Work. When required by the Contract Documents, engineering computations shall be submitted. When required by the nature of the engineering computations furnished, the engineering computations shall be prepared and stamped by a California registered engineer.
- 4.11.4.4. Contractor Verification and Representation.** The Contractor's submission of a Submittal constitutes a representation that the Contractor has reviewed the Submittal and verified that the information and data provided in the Submittal conforms to requirements of the Contract Documents.
- 4.11.5. Timely Submission.** Submittals shall be submitted in a timely manner to provide the Architect adequate time for review and response. The time for the Contractor's submission of Submittals shall be: (i) in accordance with all specific requirements established in the Contract Documents; (ii) in accordance with the Progress Schedule; and (iii) in a manner to avoid delay, disruption, hindrance or other impact to achieving Substantial Completion of the Work within the Contract Time. Failure of the Contractor to submit Submittals in a timely manner is an Event of Contractor Default. In addition to, and not in lieu of, all other rights or remedies of the District resulting therefrom, Contractor is liable for all fees and costs incurred by District to expedite review of untimely submitted Submittals; the District may deduct such fees or costs from any the Contract Price then or thereafter due the Contractor.
- 4.11.6. Information Submittal; Submittal Not Required by Contract Documents.** Information Submittals (i.e., Submittals for which no response is required or expected) may be required and if set forth in other portions of the Contract Documents. Submittals which are not required by the Contract Documents will be returned to the Contractor without review or action.
- 4.11.7. Contractor Responsibility for the Work.** 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.

4.12. Samples

4.12.1. General. Contractor shall furnish for the Architect's acceptance, within thirty-five (35) calendar days following Notice to Proceed, all Samples required in Specifications together with product catalogs and supporting data required by Architect. This provision shall not authorize any extension of time for performance of the work. Architect shall review such Samples for conformity to the design concept of the Work and for compliance with requirements of the Project Documents. The Architect will notify the Contractor of acceptance, rejection or other action relating to such Samples within ten (10) working days from receipt of same unless the nature of the Sample requires more than ten (10) working days to complete review.

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

4.12.3. Test Approval before Installation. Samples shall, upon demand of Architect or District, be submitted for tests or examinations and considered before incorporation of same into the work. Samples submitted for testing shall not be incorporated into the Work; the Contractor is solely responsible for disposition of Samples submitted for testing. The Contractor shall be solely responsible for delays due to Samples not being submitted in time to allow for tests. The Work shall be completed in accordance with the Architect accepted Samples.

4.13. Deferred Approval Items. For all Work designated in the Contract Documents as a "Deferred Approval", the Contractor shall be solely and exclusively responsible for the preparation of designs, calculations and other materials for each Deferred Approval item ("Deferred Approval Design").

4.13.1. Contractor Completion of Deferred Approval Design. Where required by Applicable Laws or the nature of a Deferred Approval, the Deferred Approval Design shall be completed and stamped by a California licensed architect or California registered engineer. The Deferred Approval Design shall: (i) incorporate all requirements of the Deferred Approval as set forth in the Contract Documents; (ii) be coordinated with other portions of the Work; (iii) be completed in a timely manner so as not to delay, disrupt or interfere with completion of the Work within the Contract Time; and (iv) be completed in accordance with the applicable professional standard of care.

4.13.2. Architect Review of Deferred Approval Design. The Contractor shall submit each completed Deferred Approval Design to the Architect for review and acceptance. The Contractor shall modify each Deferred Approval Design as necessary to obtain the Architect's acceptance of the entirety thereof.

4.13.3. DSA Review and Approval. Upon the Architect's acceptance of a Deferred Approval Design, the Contractor shall be responsible for: (i) submittal of the Deferred Approval Design to DSA for review and approval; (ii) modifications to the Deferred Approval Design as necessary to obtain DSA approval; and (iii) payment of fees or charges imposed by DSA for review and approval of a Deferred Approval Design without adjustment of the Contract Price. Notwithstanding review and acceptance of a Deferred Approval Design by the Architect or DSA issuance of approval to construct pursuant to the Contractor's Deferred Approval Design, the Contractor remains liable to the District for all losses, damages, costs, or other consequences of the failure of any Contractor's Deferred Approval Design to: (i) conform to the applicable design professional standard of care; (ii) conform to design intent and/or aesthetic requirements established in the Contract Documents; or (iii) perform and function in accordance with requirements established in the Contract Documents.

4.13.4. Timely Submittal. The Contractor's Deferred Approval Design shall be submitted at a time sufficiently early to allow review of same by the Division of State Architect (DSA) and the Architect so that the progress of the work is not hindered, interrupted or delayed. Contractor is responsible for the Architect's fees in order to expedite review of the Contractor's Deferred Approval Design which are not submitted in a timely fashion. The District may deduct such fees from the Contract Price then or thereafter due the Contractor.

4.14. Sanitary Facilities.

4.14.1. Temporary Toilet Facilities. The Contractor shall provide sanitary temporary toilet and wash facilities in no fewer numbers than required by law,. The toilet facilities shall be maintained in a sanitary condition at

all times and shall be left at the Site until Final Completion. Use of toilet and wash facilities in the Work under construction shall not be permitted. Use of existing or permanent toilet facilities shall not be permitted except by advance written consent of District, which may be granted, conditioned or denied in the sole discretion of the District.

4.14.2. Personal Protective Equipment (“PPE”); Personal Hygiene Products. The Contractor shall provide personnel at the Site with PPE and other personal hygiene products in such quantities and of such types as required by applicable law, code, regulation or order. The costs of all PPE and other personal hygiene products required for personnel at the Site as of the date of the Notice to Proceed are included in the Contract Price.

4.15. Safety. Notwithstanding any action by the District, Project Inspector or Architect, the Contractor shall be solely responsible for initiating, maintaining, supervising and enforcing all safety programs required by the Applicable Laws in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor’s safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). 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. Prior to commencement of Work at the Site, the Contractor shall provide the Construction Manager and the District with the Contractor’s proposed safety program for the Work for review. Such review by the Construction Manager and/or the District shall not operate to relieve, impair or otherwise limit the Contractor’s responsibility for initiating, maintaining, supervising and enforcing safety programs. Without adjustment of the Contract Price or the Contract Time, the Contractor shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the Construction Manager. The Construction Manager is authorized to monitor the Contractor’s obligation to implement the Contractor’s safety program.

4.16. Contractor Safety Plan. Prior to commencement of Work at the Site, the Contractor shall submit to the District a Safety Plan, which shall identify and connect the Contractor’s activities and operations to hazards, as well as determine how best to control the identified hazards on, about, or adjacent to the work site. The Safety Plan shall also include elements of an Injury & Illness Prevention Program (IIPP) and shall include, at a minimum, guidelines, requirements and procedures for the following: safety policy; emergency response plan; illness and injury prevention procedures; safety meetings; accident investigation, including identification of causes resulting in accidents; safety inspection checklist; fire prevention and control; safety report forms; COVID-19 disinfection plan, and employee safety manual and procedures for achieving compliance with safety requirements of insurers. A copy of the Safety Plan shall be maintained at the Work Site at all times and provided to the District upon request. Contractor shall designate and maintain a safety coordinator who will be solely responsible for monitoring activities at the Site and adjacent to the Site for compliance with the Safety Plan and for the enforcement thereof.

The Contractor shall modify their Safety Plan as necessary to ensure conformance with applicable laws, conditions at or about the Site, the nature of work, and shall 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.

4.16.1. Safety Precautions. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions on the Site in connection with the preparation, performance, observation, and inspection of the Work, including all necessary precautions for the safety of, and protection to prevent damage, injury, or loss:

- 4.16.1.1.** employees on the Site and other persons who may be affected thereby;
- 4.16.1.2.** persons in and around the Site as well as their personal property and vehicles;
- 4.16.1.3.** the Work, materials and equipment to be incorporated therein under care, custody, or control of the Contractor, its subcontractors, or subconsultants, of any Tier, whether in storage on or off the Site, including, without limitation, the provision of temperature control, covering and

enclosures necessary to prevent losses due to adverse weather conditions;

- 4.16.1.4. other property or items in, on, about or adjacent to the Site, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
 - 4.16.1.5. construction and operation by the District;
 - 4.16.1.6. protect the work and all building materials, equipment, temporary field offices, storage sheds, and other public and private real and personal property that might be affected, directly or indirectly, by Contractor's activities associated with performance of the Work;
 - 4.16.1.7. shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, utility easements, adjoining property, and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto;
 - 4.16.1.8. when use of explosives or other hazardous materials or equipment or other hazardous construction methods are necessary, the Contractor shall give the District, Project Inspector and Construction Manager reasonable advance written notice. Explosives shall be handled and used in accordance with Applicable Laws. Explosives shall not be stored at any time on any District premises. Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel;
 - 4.16.1.9. contractor shall take all necessary precautions to guard against and eliminate possible fire hazards;
 - 4.16.1.10. at all times, the Contractor shall provide an adequate number of fire extinguishers or other approved fire/life-safety devices during Work at the Site. Each fire extinguisher shall be conspicuously displayed and clearly marked with instructions for use. Without adjustment of the Contract Price or the Contract Time, the Contractor shall repair, replace, or restore any damage or destruction of the foregoing items, as a result of performance or installation of the Work;
 - 4.16.1.11. Contractor shall be responsible for coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load or store or permit any part of the Work or the Site to be loaded or stored so as to endanger the safety of persons or property
- 4.16.2. Safeguards, Warnings, and Disabled Access.** Contractor shall furnish, erect and maintain, as required by existing conditions and performance of the Work, all necessary safeguards for safety and protection, including, without limitation, safety devices, belts, nets, barriers, safety rails, canopies, danger signs, fire protection, no smoking prohibitions, warnings against hazards, safety regulations, postings, and notifications of danger signs and safety regulations to owners and users of adjacent sites and utilities, as required by Applicable Laws. Contractor shall make provisions for access and provide assistive devices to, persons with disabilities, including, without limitation, providing safe pathways of travel around areas where construction is being performed so that staff, students, visitors, the public and others on the Site with disabilities are afforded reasonably direct and barrier-free access to areas of the Site and Existing Conditions
- 4.16.3. Safety Notices.** The Contractor shall post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 4.16.4. Safety Coordinator.** The Contractor shall designate a responsible member of the Contractor's organization at the Site as the "Safety Coordinator", this person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the District. The name of the person so designated shall be reported to the District by Contractor prior to the commencement of any of the Work on the Site. The Safety Coordinator's duties shall be the prevention of accidents and the implementation and maintenance of safety precautions and programs, including, but not limited to providing safety instructions, accident prevention training and overall job site safety (as well as posting of

information and other notices regarding safety that are required under occupational safety and health laws and compliance with reporting and other occupational safety requirements pertaining to the protection of the life, safety and health of the workers).

- 4.16.5. Emergencies; First Aid.** Contractor shall maintain emergency first aid treatment for all workers and other persons on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., §§651, et seq.) and all other Applicable Laws. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury, or loss. The Contractor shall maintain stocked emergency first aid kits at the Site which comply with the Laws.
- 4.16.6. Unsafe Conditions.** Contractor shall immediately correct any condition that exists on the Site, or that District, in its reasonable judgment, determines to exist on the Site, that is unsafe or potentially unsafe or hazardous to persons or property. If, in the sole and absolute discretion of District, the condition is potentially life-threatening, the District may, with or without notice to Contractor, take whatever immediate action is necessary to correct the life-threatening condition, and the cost thereof, including, without limitation, and additional service fees or costs to the District, Design Consultant, Inspectors of Record, District Consultants or others to whom District may be liable, shall be reimbursed to District by Contractor at Contractor's own expense. Nothing set forth in this paragraph shall be interpreted as an assumption of any obligation on the part of the District, Inspectors of Record, Design Consultant, District Consultants or other persons or entities other than Contractor and its subcontractors and subconsultants, to report such conditions to Contractor nor as relieving Contractor of any of its responsibilities under the Contract Documents.
- 4.16.7. Responsibility for Loss.** Contractor shall promptly remedy loss to any property or person caused in whole or in part by the Failure of Contractor and its subcontractor or subconsultants, of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable to fully comply with the requirements of the Contract Documents, including the violation of Applicable Laws. The foregoing obligations of Contractor are in addition to and not a limitation upon contractor's indemnity obligations under these General Conditions.
- 4.16.8. Emergency.** In an emergency involving safety or protection of persons or property, Contractor shall immediately, at District's direction, or as otherwise necessary under the circumstances, to prevent any loss. In such cases, Contractor shall immediately notify District, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation of the occurrence of such emergency and Contractor's reaction in response thereto.
- 4.16.8.1.** If, in the sole discretion of District, the condition is immediately threatening life or property, District may, with or without notice to Contractor, take whatever immediate action is necessary to correct the life-threatening condition, and the costs thereof, including, without limitation, any additional services, fees, or costs of District, Inspector of Record, District Consultant or other to whom District may be liable, shall be borne by Contractor at the Contractor's own expense.
- 4.16.8.2.** Nothing set forth in this Article nor elsewhere in the Contract Documents shall be interpreted as an assumption of any responsibility on the part of the District, District Inspectors of Record, Design Consultant or other persons or entities other than the Contractor and the Subcontractors or Subconsultants to report such conditions to Contractor nor as relieving Contractor of any of its responsibilities under the Contract Documents.
- 4.16.9. Separate Contractors.** With respect to work of separate contractor(s) being performed with an area of the Site that is under the responsibility or control of the Contractor, Contractor shall (1) provide copies of the Safety Plan to the separate contractor(s); (2) protect the Separate contractor's work and workers from losses due to the actions or inactions of Contractor and its Subcontractors' and (3) notify the separate contractor and District of any observed violation by the separate contractor of the Safety Plan or any violations by the separate contractor of Applicable Laws governing safety on the Site. Nothing herein shall be interpreted as relieving the separate contractor(s) from their obligations under its contracts with the District or Applicable Laws or as obligating Contractor to directly supervise or enforce the obligations of the separate contractor(s) to comply with the requirements of the Safety Plan or Applicable Laws relating to safety.

4.17. Wage Rates; Employment of Labor

4.17.1. General. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work at the Site for each craft, classification or type of worker necessary to complete the Work shall be as established by the Department of Industrial Relations and are available for inspection and review at <https://www.dir.ca.gov/OPRL/dprevagedetermination.htm>. In lieu of the District maintaining copies of prevailing wage rate schedules at the District's principal office pursuant to Labor Code §1773.2, access to prevailing wage rate schedules is pursuant to the Department of Industrial Relations web page link. The Contractor shall post prevailing wage rate schedules at the Site in accordance with Labor Code §1773.2.

4.17.2. Holiday and Overtime. Holiday and overtime work, when permitted by Applicable Law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed.

4.17.3. Not Less than Prevailing Rate. Contractor and Subcontractors shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

4.17.4. Penalty. If the Contractor or Subcontractors fail to comply with prevailing wage rate obligations, the Contractor shall, as a penalty, forfeit such amount determined and assessed in accordance with the standards established pursuant to Labor Code §1775(a)(2) for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for 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). Mistake, inadvertence or neglect of the Contractor or a Subcontractor to make payment of prevailing wage rates shall not excuse or limit responsibility for payment of prevailing wage rates or liability for penalty assessments for failure to comply with prevailing wage rate obligations. 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.

4.17.5. Closest Corresponding Trade. Any worker employed to perform Work, which work is not covered by a prevailing rate for a specific craft or classification shall be paid not less than the prevailing wage rate for the craft or classification which most nearly corresponds to work performed.

4.17.6. Prevailing Wage Rate Monitoring and Enforcement. During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations shall monitor and enforce the obligation of the Contractor and all Subcontractors to pay laborers performing any portion of the Work the Prevailing Wage Rate established for the classification of work/labor performed.

4.17.7. Hours of Work.

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

4.17.7.2. Penalty. Pursuant to Labor Code Section 1813, the Contractor shall pay to the District a penalty of Twenty-Five Dollars (\$25) for each worker employed in the execution of the Work by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

4.17.7.3. No Additional Cost to District. Any Work performed by workers necessary to be performed after regular working hours or on Saturdays, Sundays, Contractor recognized holidays, or District Holiday days 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.

4.17.7.4. Hours of Construction Activity. Construction activities shall be restricted to the permissible hours set forth in the local noise ordinances. Any changes to the permissible hours shall require prior District approval.

4.17.8. Certified Payroll Records; General. 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.

4.17.8.1. 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. The frequency of Certified Payroll Records submittal to the Labor Commissioner shall be pursuant to Labor Code §1771.4.

4.17.8.2. 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 or 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.

4.17.8.3. Compliance. It shall be the responsibility of the Contractor to ensure compliance (by the Contractor and Subcontractors) with the provisions of this Article and the provisions of Labor Code §1776.

4.17.8.4. Condition of Payment. Compliance by the Contractor with the requirements of the provisions of this Article and the provisions of Labor Code Section 1776 shall be a condition to the Contractor's right to payment under its Applications for Payment. Without limitation to the foregoing, payments to the Contractor shall not be made when payroll records are delinquent or inadequate.

4.17.9.Apprentices

4.17.9.1. Apprentices; 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.

4.17.9.2. 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 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.

4.17.9.3. Contract Award Information; DAS-140. 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 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.

4.17.9.4. 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 prime 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.

- 4.17.9.5. 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.
- 4.17.9.6. 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. DLSE 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.
- 4.17.9.7. 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. 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:

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

4.18.2. 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.

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

4.18.4. 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.

4.18.5. 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.

4.18.6. 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.

4.19. DSA Verified Reports. 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. The Contractor shall provide the District, the Project Inspector and Architect 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 Project Inspector and the District concurrently with the Contractor's submission thereof to DSA. 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 withholdings 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 Project Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Project Documents (including termination provisions of the Contract Documents) and which obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Project Documents the Contractor assumes toward the District, the Project Inspector, DSA and the Architect. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract 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, subject to the prior rights of the Surety obligated** under a bond relating to the Contract.

5.2. Substitution of Listed Subcontractor.

5.2.1. Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with this Section and Public Contract Code §4107. All costs incurred by the District, including without limitation, costs of the Project Inspector, the Architect or attorneys' 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 the Contractor.

5.2.2. Responsibilities of Contractor Upon Substitution of Subcontractor. The District's consent to the 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 the 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. If the Architect determines that revised or additional Submittals are required of the newly 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 the newly substituted Subcontractor in less than thirty (30) days, the Architect shall so state in its written notice to the Contractor. The Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Architect and/or any design consultant to the Architect or the District and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant the foregoing; 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 the foregoing, such requirement shall not result in an increase to the Contract Time or the Contract Price.

5.3. 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 be built 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 Shop Drawings 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.

5.4. Licensed Subcontractor. In accordance with Business and Professions Code §7059, if Contractor is designated as a "specialty Contractor" (as defined in Business & Professions Code §7058), all of the work to be performed outside of the Contractor's license specialty shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100, et seq.

5.5. Delivery of Subcontracts to District. The Contractor shall deliver a copy of each Subcontract or Purchase Order between the Contractor and a Subcontractor to the District prior to the Subcontractor's start of work. During performance of the Work, the Contractor shall, from time to time, as and when requested by the District or Architect provide the District with all modifications to such Subcontracts or Purchase Order. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the preceding constitutes the Contractor's default of a material term of the Contract Documents.

5.6. Subcontractor Requirements.

5.6.1. No Ineligible Subcontractors. The Contractor may not permit a Subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code to perform or provide any Work.

5.6.2. Subcontractor Contractors' License. Each Subcontractor shall, at all times during performance of any Work, be a California licensed Contractor in the classification(s) required for performance of the scope of Work to be completed by the Subcontractor.

5.6.3. Subcontractor DIR Contractor Registration. Each Subcontractor must be 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. An on-going obligation of the Contractor is the Contractor's verification that all Subcontractors are at all times 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 prior verification that the Subcontractor is in full and strict compliance with DIR Contractor Registration requirements. The Contractor and Subcontractors are subject to all penalties and assessments for failure to comply to DIR Contractor Registration requirements.

5.6.4. Subcontractor Insurance. No Subcontractor will be permitted to provide Work until Certificates of Insurance evidencing that the Subcontractor has obtained all required policies of insurance in the minimum coverage limits required by the Contract Documents have been delivered to the District. No payment will be made for any Work completed by a Subcontractor without delivery of Certificates of Insurance for such Subcontractor.

5.7. Performance Bond and Payment Bond. Concurrently with delivery of the executed Agreement to the District, the Contractor shall deliver to District a Labor and Materials Payment Bond ("Payment Bond") and a Performance Bond ("Performance Bond"), each of which shall be in the form and content included in the Contract Documents.

5.7.1. Payment Bond and Performance Bond Penal Sum. The penal sum of the Performance Bond and Payment Bond shall be one hundred percent (100%) of the Contract Price. If Change Orders are authorized by the District or Unilateral Change Orders are issued by the District which increase the Contract Price, the penal sum of the Performance Bond and the Payment Bond are deemed adjusted by such increases to the Contract Price.

5.7.2. Replacement Bond. If the A.M. Best rating of the Surety issuing the Performance Bond or the Payment Bond at any time during the Work falls below the A.M. Best rating required by the Contract Documents, the District may in the sole discretion of the District require the Contractor an alternative Performance Bond and/or Payment Bond issued by a Surety who meets the A.M. Best rating required by the Contract Documents.

5.7.3. Duration. The Payment Bond shall remain in effect until expiration of the time established by the Applicable Laws for a claimant to file an action to enforce the Payment Bond. The Performance Bond shall remain in effect until the Contractor has completed all obligations of the Contractor under the Contract Documents, including warranty obligations.

5.7.4. Premiums. The premium charges for the Performance Bond and Payment Bond are included in the Contract Price.

5.7.5. No Limitation on Surety Liability by Change Orders. The obligations of the Surety under the Performance Bond and Payment Bond shall not be affected, released, limited, modified or exonerated by Change Orders, Unilateral Change Orders, Field Orders or other amendments to the Contract Documents. The Surety

waives notice of such Change Orders, Unilateral Change Order, Field Orders or other amendments to the Contract Documents.

- 5.7.6. No Limitation on Contractor Obligations.** The Contractor's obligation to obtain a Payment Bond shall not affect, release, limit, modify or excuse the Contractor's obligations under Applicable Laws and the Contract Documents to make payments when due to subcontractors, Material Suppliers, Workers or other providing or performing any portion of the Work. The Contractor's obligation to obtain a Performance Bond shall not affect, release, limit, modify or excuse the Contractor's obligations under Applicable Laws and the Contract Documents to perform in accordance with the Contract Documents and Applicable Laws.
- 5.7.7. Bonds as Condition to Payment Disbursement.** No portion of the Contract Price or any other payment shall be disbursed to the Contractor until the Contractor has strictly complied with requirements relating to Bonds.
- 5.7.8. Surety Qualifications.** Bonds must be issued by a California Admitted Surety Insurer with a current A.M. Best rating of A:VIII or better. A Bond issued by a Surety which does not meet the foregoing qualifications requirements will be rejected; in such event, the Contractor shall immediately submit a replacement Bond issued by a Surety meeting the foregoing qualifications requirements.
- 5.7.9. District Communications to Surety.** District shall have the right, but not the obligation, to communicate with Surety with respect to matters that relate to the Work, the Contractor's performance of the Work, Bond obligations and other similar matters.
- 5.7.10. Subcontractor Bonds.** Each performance bond, if any, furnished by a first-Tier Subcontractor shall include a provision whereby the Surety consents to contingent assignment of Contractor's rights under such bond to District as provided in this section.
- 5.8. Patents, Royalties.** The Contractor shall hold and save the District and its governing board, officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Agreement, including its use by the District, unless otherwise specifically provided in the Project Documents.

ARTICLE 6. PROGRESS SCHEDULE

6.1. Contractor Progress Schedule.

- 6.1.1. Preliminary Progress Schedule.** Within five (5) days after the District's Notice to Proceed to the Contractor, the Contractor shall submit a Preliminary Progress Schedule that describes the Work sequence planned in the first 30 days of the Contract Time.
- 6.1.2. Progress Schedule.** Within twenty-one (21) days after the District's Notice to Proceed to the Contractor, the Contractor shall submit the Progress Schedule for the Work to the District and Architect for review and acceptance. The Progress Schedule must be in the format and incorporate requirements set forth herein.
- 6.1.3. Format.** The Progress Schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a plan for performance of the Work within the Contract Time. It shall indicate the beginning and completion dates of all phases of construction, using Primavera P6 version 12.1 or later version, as a time-scaled bar chart. Alternate scheduling software may not be used without prior written District consent, which may be granted, conditioned or denied in the sole reasonable discretion of the District. The Progress Schedule shall show:
- 6.1.3.1. Flow and Activities.** Continuous flow from left to right and activities and milestones that are critical to completion of the Work.
- 6.1.3.2. Float.** Identification of "float", techniques or methods designed to suppress depiction of available float are strictly prohibited.
- 6.1.3.3. Critical Path.** A clearly highlighted critical path, no more than ten percent (10%) of the activities shall be shown as critical.
- 6.1.3.4. Early/Late Start/Finish Dates.** Durations and specific calendar days shall be clearly and

- legibly shown for the early and late start and finish of each activity.
- 6.1.3.5. Activity Duration Limitations.** With the exception of District review periods and governmental authority review periods, any activity having a duration of more than fifteen (15) Days will be segmented into fifteen (15) Day increments.
 - 6.1.3.6. Cost-Weighted Activities.** The weighted cost value expressed as a percentage of the total cost of the Work for each activity.
 - 6.1.3.7. Labor Force Curves.** The final labor force curves by trade.
 - 6.1.3.8. Shop Fabrication Special Inspections.** Anticipated duration for shop fabrication requiring special inspections.
 - 6.1.3.9. Materials and Equipment Procurement.** The anticipated purchase and delivery of major materials and equipment (procurement schedule).
 - 6.1.3.10. District Occupancy.** The District's occupancy requirements with an item with duration for District furnished Furniture, Fixture and Equipment procurement and installation.
- 6.1.4. Monthly Updated Progress Schedule.** The Contractor shall monitor and update the Accepted Progress Schedule on a monthly basis ("Updated Progress Schedule") and provide four-week rolling schedules on a weekly basis or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. Updated Project Schedules shall indicate progress achieved and activities commenced or completed in the monthly period between the prior Updated Project Schedule and the then current Updated Project Schedule. If the progress of the Work is behind the progress indicated in the Accepted Project Schedule, the Contractor shall indicate what measures will be taken to place the Work back on schedule. 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 Accepted Project Schedule, Updated Progress Schedules 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 Project Documents.
 - 6.1.5. Schedule Comparison Report.** Contractor will provide a Schedule Comparison Report with each schedule submittal.
 - 6.1.6. Revised Progress Schedule due to Completion Jeopardy.** The Contractor shall also, if requested by the Architect or District, provide revised Progress Schedules within ten (10) calendar days if, at any time, the Architect or District reasonably conclude that then current rate will not result in completion of work within the Contract Time. The revised Progress Schedules shall measures showing how the Contractor will complete the work within the Contract Time. The form and method employed by the Contractor shall be the same as for the original Progress Schedule. The Contractor shall modify any portions of the schedule that become infeasible because of "activities behind schedule" or for any other valid reason. Contractor will provide documents and justification for any schedule changes. An activity that cannot be completed by its original completion date shall be deemed to be behind schedule.
 - 6.1.7. Float Ownership.** If the Progress Schedules incorporate therein any "float" time, such float shall be deemed to belong to and owned by the District. 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 Progress Schedule. The Project Schedules prepared by the Contractor shall not sequester float time through float suppression techniques such as extending activity durations, using preferential logic, and other similar techniques.
 - 6.1.8. Progress Schedule and Completion of Work Before Expiration of Contract Time.** If the Contractor submits a Progress Schedule or any update thereto depicting completion of the Work in a duration shorter than the Contract Time, such Progress Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time in such a Progress Schedule, nor shall such Progress Schedule be the basis for any extension of the Contract Time, the Contractor's entitlement to any extension of the Contract Time shall be based upon the Contract Time and not on any shorter duration which may be depicted in any Progress Schedule. Failure or inability

of the Contractor to maintain progress of work indicated in a Progress Schedule which reflects completion of the Work prior to expiration of the Contract Time shall not be a basis for the Contractor's delay, disruption or hindrance claims for adjustment of the Contract Price or the Contract Time.

- 6.1.9. Condition of Payment.** Compliance by Contractor with the requirements of this Article and the other provisions of the Contract Documents pertaining to preparing, submitting, and updating the Progress Schedule and other documents relating to the Progress Schedule is an express condition precedent to District's obligation to make payment to Contractor. Recognizing that the Contractor's Progress Schedule obligations are continuing, cumulative and recurring, failure by District to assert a right to withhold payment under this Article for the Contractor's failure to comply with Progress Schedule obligations shall not waive or diminish the District's right to withhold payments for the Contractor's failure to comply with Progress Schedule obligations.

6.2. Contract Time

- 6.2.1. Notice to Proceed.** The District will issue a written Notice to Proceed Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.
- 6.2.2. Contract Time Start Date.** Start date for Contract Time shall be on the date indicated in the Notice to Proceed. If no date is indicated, the Contract Time shall be the 5th calendar day after the date of the Notice to Proceed. The Contractor shall commence work on such day, and shall prosecute the Work diligently to completion thereafter within the Contract Time. The foregoing notwithstanding, no Work shall commence before the required Performance Bond, Payment Bond and Certificates of Insurance submitted by the Contractor to the District are accepted by the District as being in compliance with requirements of the Project Documents. The Contract Time will commence as of the date set forth in the Notice to Proceed notwithstanding the Contractor's delayed submittal of the Performance Bond, Payment Bond or Certificates of Insurance.
- 6.2.3. Notice of Delay.** Adjustment of the Contract Time for delays will be considered by the District only if the Contractor submits a written Notice of Delay to the District and Architect within fourteen (14) calendar days of the occurrence of an event or condition that the Contractor believes justifies adjustment of the Contract Time ("Delay Event"). The Notice of Delay is not an application or request for extension of time; it is only for the purpose of providing the District and Architect of notice of Delay Event and the anticipated effect to the progress of work on the critical path along with the Contractor's estimate of additional time required together with full recital of causes of unavoidable delays resulting in such a Delay Event. Failure of the Contractor to submit the written Notice of Delay within fourteen (14) calendar days of a Delay Event constitutes the Contractor's waiver of any right to adjustment of the Contract Time on account of such Delay Event.
- 6.2.3.1. Request for Contract Time Adjustment.** With respect to any matter that may involve or require an adjustment extending the Contract Time, the Contractor shall, within fourteen (14) days after submitting a Notice of Delay, submit to District a written Request for Contract Time Adjustment relating to the Delay Events forming the basis for the Notice of Delay in the form of a Time Impact Analysis as specified in Division 01 General Requirements. If the Contractor's Request for Time Adjustment does not conform with these provisions, the Contractor is deemed to have waived any right to an adjustment of the Contract Time.
- 6.2.3.2. Waiver of Contract Time and Contract Price Adjustments.** No time extensions shall be granted for delays for which Contractor fails to give timely notice and Contractor hereby waives any and all damages for delay for which timely notice is not given. Contractor recognizes and acknowledges that timely submission of the Notice of Delay and Request for Extension, whether or not the circumstances of a delay may be known to District or available to District through other means, are not mere formalities but are material obligations of the Contractor so the District can promptly identify, prioritize, evaluate and mitigate the potential effects of delay. Any other forms of informal notice, whether verbal or written (including, without limitation, statements at project meetings or entries in monthly reports, daily logs, job meeting minutes, updated Progress Schedules or Look-Ahead schedules), that

- do not strictly comply with the Notice of Delay and Request for Extension requirements herein, shall be deemed insufficient to satisfy the notice requirements hereof or to adjust the Contract Time.
- 6.2.3.3. Contractor Statement.** Any request for adjustment of the Contract Time shall be accompanied by the Contractor's written statement that the adjustment requested is the entire adjustment to which the Contractor is entitled to as a result of the Delay Event forming the basis for such Notice of Delay. No Notice of Delay will be valid or considered unless submitted with the Contractor's written statement.
- 6.2.3.4. Contractor Obligation to Perform in Accordance with Progress Schedule.** Notwithstanding the Contractor's submittal of a Notice of Delay or Request for Time Adjustment, the Contractor shall continue to perform Work in accordance with the then most current Updated Progress Schedule. The Contractor's failure to perform in accordance with the Progress Schedule shall not be excused because the Contractor has submitted a Notice of Delay or Request for Time Adjustment, unless the Contract Time is adjusted by the District.
- 6.2.4. Contract Time Adjustment.** The Contract Time may only be adjusted by Change Order authorized by the District.
- 6.2.4.1. Contract Time Adjustments.** The Contract Time will be adjusted due to:
- 6.2.4.1.1. Changes.** Changes in the Work ordered by District which directly affect Work on the Critical Path of the then current Updated Progress Schedule.
- 6.2.4.1.2. District Neglect.** Acts or neglect by District's consultants or acts or neglect of utility service providers which directly affect Work on the Critical Path of the then current Updated Progress Schedule, provided Contractor has fully and completely performed its responsibilities under the Contract Documents, including but not limited to, its cooperation and coordination responsibilities required by the Contract Documents.
- 6.2.4.1.3. Force Majeure Events.** To the extent a force majeure event as defined in the Construction Services Agreement directly affects Work on the Critical Path of the then current Updated Progress Schedule provided damage resulting from same is not the result of Contractor's failure to properly protect the Work as required by the Contract Documents. Adjustment of the Contract Times for unusually severe weather conditions will be limited to the difference between the unusually severe weather condition and average climatic range (including rainfall) prevailing in the locality of the Site. Adjustment of the Contract Time due to unusually severe weather conditions will not be allowed for weather conditions which do not directly impact the performance of the critical path of the then current Updated Progress Schedule. Should the Contractor be in the midst of critical path activity which is directly impacted by unusually severe weather conditions beyond the stipulated seasonally weather delays as identified in the Division 01 documents, the Contractor shall immediately notify the District in writing of the potential delay to such activity.
- 6.2.4.2. Non-compensable Contract Time Adjustments.** Where Contractor is prevented from completing any part of the Work within the Contract Time by Force Majeure Events, adjustment of the Contract Time by the time equal to the time loss due to such Force Majeure Events shall be the Contractor's sole and exclusive remedy for such delay. District shall not be liable to Contractor, Subcontractors, Material Suppliers, or any other person or organization, or to any surety for or employee or agent of any of them, for damages, costs, losses or any other liabilities arising out of or resulting from (i) delays caused by or within the control of Contractor, (ii) delays caused by Force Majeure Events; or (iii) delays caused by a utility service provider.
- 6.2.4.3. Concurrent Delay.** The Contract Time will be adjusted due to Concurrent Delay. If delays acceptable for evaluation 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 acceptable delays

for evaluation, the maximum extension of the Contract Time shall be the number of days, if any, by which the duration of a delay exceeds the inexcusable delay. The duration of concurrence is non-compensable.

6.2.4.4. Expiration of Contract Time. Delay in completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed as acceptable for evaluation are considered inexcusable delays and shall not entitle the Contractor to an extension of the Contract Time or an adjustment of the Contract Price. The Contractor shall be liable for Liquidated Damages for failure to complete the Work within the Contract Time.

6.2.5. Calculating Changes Involving Time. Contract Adjustments to the Contract Price or Contract Time that are based on an extension of the Contract Time for compensable delay or a shortening of the contract time due to deleted Work shall be calculated as stated below, with no allowable markup thereon for Contractor. Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by District in writing to overcome a compensable delay for which the Contractor is entitled to an extension of the contract time that has been properly requested and is not granted by District due to a District decision to accelerate rather than extend the contract time shall be calculated as stated below:

6.2.5.1. Extensions. Provided that Contractor has complied with the contract provisions (including, without limitation, the requirements pertaining to timely delivery of a Notice of Delay and Request for Extension), if, as a result of excusable delay or compensable delay to the actual, as-built critical path of activities leading to achievement Completion, Contractor is unable to achieve Completion of the Work within the Contract Time, then the Contract Time for completion of work shall be extended, either by Change Order or Unilateral Change Order, for the length of the proven, resulting delay to Contractor's ability to complete the construction Work within the contract time. The contract time shall not be adjusted for unexcused delays.

6.2.5.2. Deductive Changes and Contract Time Adjustment. Contractor shall within ten (10) Days after receiving notice of deleted Work prepare and deliver to District a Time Impact Analysis of the impact of the deleted work upon the critical path of the then current Progress Schedule to determine the extent of adjustment of the Contract Time on account of the deleted work. If the District and Contractor are unable to agree the Contract Time adjustment for deleted work, then District shall make a good faith determination of the extent of such adjustment; the good faith determination of the District is binding on the Contractor.

6.2.6. Prescribed Calculations.

6.2.6.1. Work Day Lost Calculations. Contractor may claim an excusable delay or a compensable delay for a full Day only if all Work on a critical path activity of the then current Progress Schedule is stopped for more than six (6) hours of a normal eight (8) hour work Day and for a half-Day only if all Work on a critical path activity is stopped for three (3) to six (6) hours of such a normal Work Day. No excusable delay or compensable delay may be claimed if all Work on a critical path activity of the then current Progress Schedule is stopped for less than three (3) hours of such a normal work Day. Similarly, where deleted Work results in the projected avoidance of the need to perform more than six (6), or between three (3) and six (6) hours of all Work on a critical path activity on such a normal work Day, the Contract Time shall be reduced by a full Day or half Day, respectively.

6.2.6.2. Dry Out Time Calculations. Adjustment of the Contract Time based upon unusual severe weather conditions resulting from, in addition to the number of Days of excusable delay to which Contractor is entitled due to a cessation of Work that occurs at the Site during the unusually severe weather conditions, an additional extension for the delay to the critical path of activities affecting Completion that is the result of Contractor being unable, after cessation of the unusually severe weather conditions, to proceed with performance of Work due to wet or muddy conditions at the Site (hereinafter referred to as "dry out" time); provided, however, that the amount of dry out time for which Contractor is entitled to an extension of

time in any given calendar month shall not exceed the number of Days that is the product derived by multiplying (a) the number of Days of excusable delay to which Contractor is entitled due to a cessation of Work that occurs at the Site while such unusual precipitation is occurring, by (b) a fraction, the (i) numerator of which is the number of Days of excusable delay due to measurable unusual precipitation occurring at the Site during such calendar month, and (ii) the denominator of which is the total number of Days of measurable precipitation occurring at the Site during said calendar month (including both the number of Days comprising the normal, 10-year monthly average of measurable precipitation recorded by NOAA and the excess, or unusual precipitation.

6.2.7. District Response to Contract Time Adjustment Request. All requests for adjustment of the Contract Time shall be determined by District and shall be in accordance with the requirements set forth herein and in the section on Changes and Extra Work.

6.2.7.1. District Review and Response. After receipt of a timely and complete Request for Contract Time Adjustment, District shall investigate the facts concerning the cause and extent of such delay and, depending on whether the request for extension is justified, will notify Contractor of its approval or disapproval in writing of all or a portion of Contractor's request.

6.2.7.2. Limits on Contract Time Extension. Extensions of the Contract Time approved by District shall apply only to that portion of the Work affected by the delay, and shall not apply to other portions of Work not so affected.

6.2.7.3. District Right to Direct Acceleration. District shall have the right, exercised in its sole and absolute discretion, in lieu of granting a contract adjustment to the contract time for compensable delay, to direct in writing the acceleration of the Work by Contractor in order to recapture time lost due to such compensable delay. The District and Contractor shall endeavor prior to commencement of such acceleration to mutually agree upon the amount of compensation to be paid therefor. District shall have the right, in the absence of such an agreement, to direct in writing that Contractor accelerate and the Contractor shall comply with such directive. Contractor's right to adjustment of the Contract Time on account of such acceleration shall be limited to (i) the premium time portion of any overtime paid for labor provided by Contractor or any subcontractor, plus (ii) additional supervision costs for additional shifts of supervision provided at the Site by Contractor only (not by Subcontractors or Subconsultants), plus (iii) allowable markup thereon. Except as directed by District in writing, no statements, conduct or actions by District will be construed as creating an obligation on the part of District to adjust the Contract Price on account of any cost of overtime or other costs associated with an acceleration of the Work to recapture time lost due to compensable delay.

6.2.7.4. No Damage for Contractor Caused Delay. Contractor shall not be entitled to any Contract Price adjustment including but not limited to extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other costs for any delays caused in whole or in part by Contractor's failure to perform its obligations under this Contract, or during periods of delay concurrently caused by Contractor and either District or others. Contractor shall not be entitled to damages for delay to the Work caused by the following reasons: (i) the District's enforcement of government act or regulation, or the provisions of the Contract Documents; or Contractor requests for clarifications to Construction Documents; or (ii) Contractor's extensive requests for clarifications to the Construction Documents or modifications to contract,, provided such clarifications or modifications are processed by District or its consultants in a reasonable time commensurate with provisions of Contract requirements.

6.2.8. No Waiver of District Rights by Contract Time Adjustment. Granting of an adjustment of the Contract Time for any reason shall in no way operate as waiver on part of District, of right to recover Liquidated Damages for other delays or of right to recover other damages or exercise other rights of the District arising under the Project Documents or by operation of the Applicable Laws.

6.3. Completion. Contractor shall achieve Completion of the Work, or such portion of the Work as may be designated at any time by District for separate delivery, in accordance with the requirements of the Contract Time and other provisions of the Contract Documents. However, the District, at its sole option, may accept completion of the Project and have the Notice of Completion recorded when the entire work including individual portions of the Work shall have been completed to the satisfaction of the District, except for minor corrective items, as distinguished from incomplete items.

6.4. Request for Inspection; Punchlist Walk. A walk-through of the Project to determine Completion (“Punchlist Walk”) shall occur only upon the Contractor’s written notice to the Architect and the District of Substantial Completion, except for minor corrective items. If the District determines that the Work is not complete at the time the Contractor requests a Punchlist Walk, costs of the District and fees of the Architect for the Punchlist Walk shall be at Contractor’s sole cost and expense and District shall make adjustments to the contract price by reducing the Contract Price. Minor corrective items shall be identified in the walk through of the Project.

6.4.1. Punch List. At the conclusion of such inspection, District or Architect shall prepare and give to Contractor a Punch List of items, if any, to be completed or corrected to achieve Final Completion. If Contractor disputes any of the items included, it may note its objection on the Punch List, but the Contractor must complete the Punch List item notwithstanding its objection. Contractor shall proceed within forty-eight (48) hours after preparation of the Punch List to commence correction and completion of the items on the Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Contractor before the Work will be considered as Complete. The omission of an item on the Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Completion that, for any reason, have been omitted from the Punch List shall be added to the Punch List and shall be promptly completed by Contractor upon request by District, or Architect, made at any time prior to Final Payment.

6.4.2. Re-Inspection. Contractor shall notify District when the items of Work shown on the Punch List are completed. District, Project Inspector, Architect and such others as District deems necessary or appropriate will then make a further inspection to determine whether such Work is Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Punch List, which must be completed or corrected before Completion, Contractor shall, as a condition of Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Complete. Contractor shall reimburse District, or District may at its option withhold from Contractor payments, amounts incurred by District, Project Inspector, Architect, District Consultants or others whose services, for reasons within the control or responsibility of Contractor or the Subcontractors, are necessary for more than two (2) such re-inspections to determine Completion.

6.5. Liquidated Damages

6.5.1. General. The Contractor and District hereby agree that the exact amount of damages for failure to complete the work within the time specified is extremely difficult or impossible to determine. Contractor shall be assessed liquidated damages for each and every day the work required under the Project Documents remains unfinished past the time for completion, as set forth in the Agreement, and any extensions of time granted by the District to the Contractor under the terms of the Project Documents. The Contractor will pay to the District or District may retain from amounts otherwise payable to the Contractor, said amount for each day after failure to meet the requirements of the contract completion as scheduled in the Agreement. Government Code Section 53069.85 for purposes of this article, the work shall be considered “complete” in accordance with the provisions of the Article 4, except that the work may be considered complete without formal Acceptance by the District Governing Board so long as the Governing Board, at its next regularly scheduled meeting, accepts the work.

6.5.2. Exemptions. Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work which are not the fault or negligence of Contractor, including but not restricted to Force Majeure events. Contractor shall within fourteen (14) calendar days of beginning of any such delay, notify District in writing of causes of delay. Contractor shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the

findings of fact justify such an extension. The District's finding of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected.

ARTICLE 7. Contract Price.

7.1. General. Unless otherwise specified in writing, each month within thirty (30) days after receipt by the District of the monthly progress schedule and the Contractor's submittal of an undisputed, properly submitted payment request on such form in such format as designated by the District ("Payment Application") ninety five percent (95%) of the sum certified for payment by the Architect as the value of work performed and materials delivered to the Site (which have been inspected and approved by the Project Inspector and subject to or under the control of the District and unused up to the last day of the previous month), less aggregate previous payments will be paid to the Contractor. Values for payments requested shall be based on the accepted Schedule of Values; Payment Applications shall be submitted to the District and Architect before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or Surety from any damages arising from such work or from enforcing each and every provision of this Agreement, and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment for work performed so long as any lawful or proper direction concerning work, or any portion thereof, given by the District or Architect shall remain not complied with by the Contractor.

7.2. Schedule of Values. Contractor shall prepare and submit a Schedule of Values of the Contract Price on form(s) approved by District:

7.2.1. Contractor Preparation. Within ten (10) calendar days of Notice to Proceed a detailed schedule of values prepared in a form and incorporating a level of detail satisfactory to District, that allocates the Contract Price to various portions of the Work, giving complete breakdown of contract price for each component of the Project or Site which shall include all subcontractor/supplier agreements showing dollar amounts of these agreements to justify the schedule of values. The Schedule of Values prepared by the Contractor shall be submitted to the District and Architect for review and acceptance. If upon review of the Schedule of Values, the District or Architect note revisions necessary for acceptance, the Contractor shall revise and re-submit the Schedule of Values until the District and Architect have accepted the entirety of the Schedule of Values. Notwithstanding the progress of Work, no portion of the Contract Price is due or payable to the Contractor until the District and Architect have accepted the entire Schedule of Values ("Accepted Schedule of Values"). The Accepted Schedule of Values shall be used only for determining basis of partial payments and will not be considered as fixing a basis for adjustments to the Contract Price.

7.2.2. Balanced Allocation. The Schedule of Values shall be balanced, reflecting in each line item Contractor's estimated or actual cost commitments for the category of Work included in the line item and a proportionate share of Contractor's overhead and profit. Techniques, such as "front-end loading", designed to create an imbalanced cash flow are strictly prohibited. If the Contract Time is increased and the allocation of the Contractor's overhead, profit, general conditions costs, and other similar items/costs in the Accepted Schedule of Values is based on the original Contract Time duration, the Accepted Schedule of Values shall be subject to adjustment to reflect a balanced allocation of the costs for such items and the adjusted Contract Time. The District may make adjustments to the Accepted Schedule of Values pursuant to the foregoing without consent or approval of the Contractor; all such adjustments are binding on the Contractor unless manifestly unreasonable under the circumstances.

7.2.3. Updating. The Schedule of Values shall be updated by Contractor each month as necessary to reflect the Contractor's actual progress in the Work. An updated Schedule of Values shall be attached to each Application for Payment. Contractor updates to the Schedule of Values shall not modify values allocated to portions of the Work as reflected in the Accepted Schedule of Values.

7.2.4. Substantiation. Contractor shall provide such data as District may reasonably require to substantiate that the Schedule of Values has been prepared in conformance with the requirements of the Contract Documents and based on reasonable assessment of the value or costs of the various portions of the Work identified in the Schedule of Values. Failure to provide such substantiation shall be a basis for rejecting acceptance of the Schedule of Values.

- 7.2.5. Corrections.** If corrections are required in order to make the Schedule of Values comply with the requirements of the Contract Documents, such corrections shall be made as a condition of the Contractor's Application for Payment being considered properly prepared, submitted and complete.
- 7.2.6. Changes to Work.** Costs involved in the performance of Work covered by change orders, unilateral change orders or field orders shall be separately scheduled.
- 7.2.7. Payment Applications.** The Accepted Schedule of Values shall be used as a basis for District's review and approval or disapproval of Payment Applications.

7.3. Payment Application

- 7.3.1. Support Documents.** Express conditions to a proper Payment Application are: (i) verification of the submittal of certified payroll covering the period of the prior Application for Payment by the Contractor and all Subcontractors receiving a portion of the payment requested by the Payment Application; (ii) unconditional waivers and releases of the Contractor and Subcontractors for which payment was requested and made under the prior Payment Application; (iii) receipts or bills of sale for materials, rentals, and other similar items/services for which payment is requested; and (iv) all other materials, documents or actions required by the Project Documents as a condition of payment to the Contractor. The Contractor's submittal of all documents and materials required by the foregoing are conditions to a "properly submitted" Payment Application for purposes of Public Contract Code §20105.50.
- 7.3.2. Architect Review.** Before payment is made hereunder, a certificate in writing shall be obtained from the Architect stating that the Work subject to the Payment Application has been performed in accordance with the terms of the Project Documents and that the amount stated in Payment Application is due under the terms of the Project Documents, which certificate shall be attached to and made a part of the Payment Application submitted to the District.
- 7.3.3. District Review.** Upon receipt of Contractor's payment request, District shall review the payment request as soon as practicable after receipt for the purpose of determining that the payment request is proper. Any payment request determined not to be proper shall be returned to the Contractor as soon as practicable but not later than seven (7) days after receipt and shall be accompanied by a document setting forth in writing the reasons(s) why the payment request was not proper. Public Contract Code Section 20104.50.
- 7.3.4. No Waiver by District.** Neither approval by District, failure by District to exercise its right of nullification with respect to, nor payment by District upon, an Application for Payment or any portion thereof shall be interpreted as or constitute a waiver or release of any of District's rights to require Contractor's full compliance with the Contract Documents.
- 7.3.5. Changes in Work.** Applications for Payment may include requests for payment on account of Compensable Changes in the Work which have been properly authorized by Change Order or Unilateral Change Order.
- 7.3.6. Percentage Completion.** Progress Payments shall indicate the Contractor's estimated percentage of completion of each line item listed in the Schedule of Values as of the end of the period covered by the Application for Payment.
- 7.3.7. Disagreements.** In the event of a disagreement between District and Contractor over the accuracy or reasonableness of the Contractor's percentage estimates, the District shall make a good faith determination, which percentage shall then be inserted by Contractor and the Application for Payment submitted, or resubmitted, incorporating such revision.
- 7.3.8. Certification by Contractor.** Each Payment Application shall be signed by Contractor with a certification that: (1) the data, information and representations incorporated into the Payment Application are true, complete and accurate and the Work has progressed to the point indicated; (2) to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents; (3) Contractor is entitled to payment in the amount certified; and (4) all sums previously applied for by Contractor on account of the Work performed by the Subcontractors that have been paid by District have been paid by the Contractor to the Subcontractors performing such Work.

- 7.4. Stored Materials.** District may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in Contractor's Payment Application the cost of materials to be incorporated but not yet incorporated in the Work which are delivered and suitably stored either at the Site or at a bonded warehouse location acceptable and within proximity for verification by the District. As part of any request for such approval, Contractor shall furnish evidence satisfactory to District: (1) of the cost of such materials; (2) that such materials are under the exclusive control of Contractor, or if not, that title to the materials is in the District's name, free of any lien or encumbrance; (3) with respect to materials stored off-Site, that the materials are safely and suitably stored with appropriate insurance coverage satisfactory to District; and (4) that notwithstanding the Contractor's responsibility for loss, damage or destruction of such materials until incorporated into the Work, title (without encumbrances of any type or nature) to such materials shall pass to the District upon payment therefor. No payment or approval by District shall (a) be construed as an inspection or acceptance of the materials; (b) relieve Contractor of its continuing and sole responsibility for the care and protection of, and sole responsibility for any loss, damage or destruction of such materials, from any cause whatsoever; or (c) operate as a waiver of rights by District.
- 7.5. Title.** Contractor warrants that title to all the Work covered by Payment Application will pass to District no later than the time of payment. Contractor further warrants that upon submittal of a Payment Application, all Work for which approval for payment has been previously issued by District shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, the Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, equipment and services for the Work.
- 7.6. Summary of Claims.** Unless otherwise provided, on or before making request for final payment of the undisputed amount due under the Agreement, Contractor shall submit to District, in writing a summary of all claims for compensation under or arising out of this Agreement which were timely filed. The acceptance by Contractor of the payment of the final amount shall constitute a waiver of all claims against District under or arising out of this Agreement, except those previously made, in a timely manner and in writing, and identified by Contractor as unsettled at the time of Contractor's final request for payment.

7.7. Contractor Payments

7.7.1. General.

7.7.2. Retention Release. Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received within seven (7) days from the time that all or any portion of the retention are received by the Contractor subject to any limitations set forth in Public Contract Code Section 7107(e).

7.7.3. Joint Payment. District shall have the right, if deemed necessary in its sole and absolute discretion, to issue joint checks made payable to Contractor and any of the Subcontractors of any Tier or material suppliers. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create: (1) any contract between District and any of the Subcontractors of any Tier; (2) any obligation from District to any of the Subcontractors; or (3) any third-party rights against District.

7.7.4. Release of Stop Payment Notices. If any Stop Payment Notice Claim, whether invalid or valid, is served upon the District, Contractor shall within five (5) Days after written notice by the District procure and deliver to the District a Stop Payment Claim Release Bond conforming to requirements of the Applicable Laws for review and acceptance by the District. All costs of such actions by Contractor shall be paid for by the Contractor. Unless the District accepts the Contractor's Stop Payment Notice Release Bond, the District shall withhold from any portion of the Contract Price then or thereafter due to Contractor an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy the Stop Payment Notice claim. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop notice or claim and any action or proceeding thereon, then Contractor shall be liable for the difference and upon demand shall immediately deposit the same with the District. These provisions are in addition to such other rights as the District may have against Contractor under the Contract Documents or Applicable Laws.

7.7.5. No District Obligation. District shall have no obligation to pay or to see to the payment of money to any of the Subcontractors except as may otherwise be required by Applicable Laws.

7.8. General. Contractor shall pay:

7.8.1. Transportation and Utilities. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered.

7.8.2. Materials and Equipment. For all materials, tools, and other expendable equipment, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at Site.

7.8.3. Subcontractors. Progress Payments with the time allowed by Applicable laws and Retention within seven (7) days from the time that all or any portion of the Retention is received by Contractor from District, to each of its subcontractors from whom Retention has been withheld, each subcontractor's share of the retention received. However, if a Retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the Retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract. Contractor may withhold from a Subcontractor its portion of the retentions if a bona fide dispute exists between the subcontractor and the Contractor. The amount withheld from the Retention shall not exceed one hundred fifty percent (150%) of the estimated value of the disputed amount.

7.9. Application for Final Payment. Upon issuance by District of the Notice of Final Completion, Contractor shall submit to District its Application for Payment requesting Final Payment. District will review and approve or disapprove of the Application for Payment requesting Final Payment.

7.9.1. Conditions to Final Payment. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to District's approval, of Contractor's Payment Application requesting Final Payment:

7.9.1.1. Insurance. Submission of a certificate evidencing that the insurance required by the Contract Documents is in force.

7.9.1.2. Civil Code Waivers and Releases. Submission of conditional or unconditional releases and waivers of stop notice and bond rights upon final payment in the form required by the Civil Code §8132 executed by Contractor and by all Subcontractors.

7.9.1.3. Close-Out Materials. submission of all Close-Out Documents including, without limitation, complete, accurate As-Built Drawings and Specifications certified by Contractor.

7.9.1.4. Certified Payroll Records. Verification of submission of all complete certified payroll records as required by the Contract Documents and the Applicable Laws all Work and if required by the District, the Contractor's written certification that the Contractor and all Subcontractors have fully complied with all applicable requirements and made all necessary payments required by the Applicable Laws to any person completing the Work, including without limitation prevailing wage rates, overtime pay, employee benefits/contributions.

7.9.1.5. Contract Documents Requirements. Submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion

7.9.1.6. DSA Contractor Verified Report. If the Work is subject to DSA jurisdiction, verification of the Contractor's completion of all actions necessary or required of the Contractor for DSA issuance of a Certificate of Compliance for the Work. The foregoing includes without limitation, completion and filing of the DSA 6-C Contractor Verified Report.

7.9.2. Disputed Amounts. Pursuant to California Public Contract Code §7107, District may deduct and withhold from Final Payment an amount of up to one hundred fifty percent (150%) of any disputed amounts, including, without limitation, amounts to protect District against any loss caused or threatened as a result of Contractor's failing to fully satisfy the conditions of Final Completion and Final Payment.

7.9.3. Waiver by Contractor. Acceptance of Final Payment by Contractor shall constitute a waiver of all rights of

the Contractor against District for recovery of any loss, excepting only those Claims that have been submitted by Contractor prior to or at the time of Contractor's submission of its Payment Application requesting Final Payment.

7.9.4. Retention Release. Retention withheld from Progress Payments will be disbursed with the Final Payment.

7.10. Securities in Lieu of Retention.

7.10.1. Substitute Securities for Retention. Pursuant to Public Contract Code §22300, eligible and equivalent securities may be substituted for Retention withheld from Progress Payments at the request and expense of the Contractor and in conformity with the provisions of Public Contract Code §22300.

7.10.2. Escrowed Retention. As an alternative to the Contractor's substitution of securities for Retention withheld from Progress Payments, the Contractor, may pursuant to Public Contract Code §22300 and at the Contractor's expense, request District deposit Retention withheld from Progress Payments with an Escrow. If the Contractor elects to have Retention funds escrowed pursuant to Public Contract Code §22300, the Contractor shall secure the of an Escrow and deliver to the District the form of Escrow Agreement for Securities Deposits in Lieu of Retention included with the Contract Documents duly executed by the Contractor and Escrow.

7.10.3. Request to Substitute Securities for Retention or for Escrowed Retention. The Contractor must request the District's consent to substitute securities for Retention or to deposit Retention funds with an Escrow at or prior to the Contractor's submission of the first Payment Application. Failure of the Contractor to make such request at or prior to submission of the first Payment Application is deemed the Contractor's waiver of rights under Public Contract Code §22300.

7.11. Contract Price Withholdings. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge the Contractor to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work that is 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 or material suppliers for materials or labor; (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 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, including without limitation Liquidated Damages assessed pursuant to the terms of the Contract Documents; (viii) violations of the obligations of the Contractor or any Subcontractor relating to the employment of labor in connection with the Work; or (ix) the Contractor's failure to perform any of its obligations under the Contract Documents, including without limitation, 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 Application for Progress Payment or 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 Construction Manager, 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. In lieu of making payment of withheld amounts to the Contractor, the District may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of the Contractor relating to the Work. Pursuant to Articles 4.21.2 and 8.5.3 of these General Conditions, the Contractor shall not be entitled to receipt or payment of any portion of such withholdings and the District is not obligated to disburse such withholdings to the Contractor. The District shall not be liable to the Contractor or others for its good faith decision to make or not make payment(s) of amounts withheld from the Contractor pursuant to the foregoing. If the District elects to make payments to other of amounts withheld from the Contractor, the District may do so without prior judicial determination; the District will render the Contractor a complete and accurate accounting of amounts withheld and paid to others on behalf of the Contractor.

7.12. Payments on Behalf of the Contractor. District may apply such withheld amount or amounts to payment of such

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

7.13. Taxes

7.13.1. General. Contractor will pay all applicable federal, state and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Project Documents.

7.13.2. Documents. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute documents necessary to show (i) that the District is a political subdivision of the State for the purposes of such exemption and (ii) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price.

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

7.15. District Nullification. District reserves the right to nullify any prior approval of a Payment Application that is later found to have not complied with the requirements of the Contract Documents, whether or not such noncompliance was observed or apparent on the face of the Payment Application, and based on such nullification District may take either of the following actions, as applicable: (i) if the Payment Application has not yet been paid by District, disapprove of that portion of the Payment Application that is not in compliance and withhold payment of that sum until the noncompliance is fully rectified, or (ii) if the Payment Application has been paid by District, nullify the prior approval and withhold payment of such disputed amounts in response to future Applications for Payment; provided, however, that in either case the amount of the District's nullification shall be limited to that portion of the amount requested in the Payment Application that is in dispute and the amount of its withholding from the current or any future Payment Application shall be limited to the amount nullified plus any additional withholding permitted to protect District from loss or threatened loss.

ARTICLE 8. CHANGES AND EXTRA WORK

8.1. General. District may, as provided by law and without affecting the validity of this Agreement, order changes, modifications, deletions and Extra Work by issuance of written change orders from time to time during the progress of the Project, contract sum being adjusted accordingly. All such work shall be executed under conditions of the Contract Documents. The District has discretion to order changes on a "time and material" basis with adjustments to time made after Contractor has justified through documentation the impact on the critical path of the Project.

8.2. Procedures.

8.2.1. Notice of Change. Contractor shall submit a written Notice of Change to District if the Contractor believes any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes a compensable change, deleted work, compensable delay or other matter that may involve or require adjustment of the Contract Price (additive or deductive) or Contract Time. Such notice shall be provided prior to commencement of performance of the Work affected and no later than three (3) working days after the discovery date of such circumstance. Notices of Change shall be provided by the Contractor to the District in a written form that complies with the following requirements: (i) a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related field order); (ii) a reasonable order of magnitude estimates by Contractor of any related Contract Adjustments (additive and deductive) to the Contract Price; and (iii) if such circumstances involve a right to adjustment of the Contract Time due to compensable delay or excusable delay that has not been waived, Contractor shall include, if not previously provided, a complete and timely Notice of Delay.

8.2.1.1. Waiver by Contractor. Failure by Contractor to provide a complete and timely Notice of Change under circumstances where a Notice of Change involving a change is required shall

constitute a waiver by Contractor of the right to a Contract Adjustment on account of such circumstances and a waiver of any right to further recourse or recovery by reason or related to such change by means of the claims dispute resolution process or by any other legal process otherwise provided for under Applicable Laws.

8.2.1.2. Deductive Adjustments. Failure by Contractor to submit a timely or proper Notice of Change under circumstances in which a Notice of Change is required shall in no way affect District's right to a deductive Contract Adjustment on account of such circumstances.

8.2.2. Request Proposal. If the District determines that work required to be done constitutes Extra Work outside the scope of the Project Documents, including Work reasonably inferred from those documents, the District or Architect shall send a request for a detailed proposal to the Contractor in the form of an Architect's Bulleting or a request for proposal for Extra Work. Contractor will respond with a detailed proposal within five (5) calendar days of receipt of the Request for Proposal which shall include a complete itemized cost breakdown of all labor and materials showing actual quantities, hours, unit prices, and the wage rates required for the change. If the Proposal Request involves potential adjustment of the Contract Time, a request for the time change shall accompany the change order cost breakdown. Any request for adjustment to the Contract Time shall be specified by Contractor as either "work days" or "calendar days". Any request for time received with only the designation of "days" shall be considered calendar days. The term "work days" as used in this paragraph shall mean Monday through Friday, excluding Saturdays, Sundays and federal/State of California observed holidays. If the work is to be performed by a Subcontractor, Contractor must include a bid from the subcontractor containing the same detailed information as required for Contractor. No extensions of time will be granted for change orders that, in the opinion of the District, do not affect the critical path of the Project.

8.3. Unilateral Change Order. 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 for circumstances constituting a change to the Work.

8.3.1. Good Faith Determination. The District's estimate in a Unilateral Change Order of a Contract Adjustment shall be based upon a good faith determination by District of the Contract Adjustment to the Contract Price and/or Contract Time that is appropriate under the circumstances and consistent with the terms of the Contract Documents.

8.3.2. Claim by Contractor. If Contractor disputes any portion of the District's good faith determination of the Contract Adjustment that is set forth in a Unilateral Change Order, Contractor shall file within thirty (30) Days after issuance of the Unilateral Change Order by District a claim. The amount of the Contract Adjustment requested in the claim shall not exceed the difference between the amount (either in terms of dollar amount or duration of time extension) of the Contract Adjustment requested by Contractor and the amount (either in terms of dollar amount or duration of time extension) of the Contract Adjustment granted in the Unilateral Change Order. Contractor shall have no reserved right, and hereby waives any such right that may exist under Applicable Law, to seek in such claim a Contract Adjustment or recovery that is based upon any amount (either in terms of dollar amount or duration of time extension) that is in excess of such difference. The Contractor's claim objecting to a Unilateral Change Order shall be accompanied by materials substantiating the Contractor's claim.

8.3.3. Waiver by Contractor. Failure by Contractor to submit a claim within thirty (30) days after issuance of a Unilateral Change Order by District shall constitute a waiver by Contractor of the right to object to the Unilateral Change Order or the adjustment of the Contract Time/Contract Price set forth therein. In such event, the Contract Adjustment of the Contract Time/Contract Price set forth in the Unilateral Change Order is final, binding and conclusive on the Contractor and the District.

8.4. Value Determination. The value of Extra Work, whether deductive or additive shall be determined at the discretion of District in one or more of the following ways:

8.4.1. Mutual Agreement. By mutual written acceptance of a lump sum proposal from Contractor properly itemized and supported by sufficient substantiating data to permit evaluation by District and Architect. Substantiating data provide by the Contractor shall be listed and outlines as per the basis of establishing

costs below.

8.4.2. Unit Prices. By unit prices contained in Contractor's original bid and incorporated in the Project Documents or fixed by subsequent agreement between District and Contractor.

8.4.3. Labor and Materials. By the cost of material and labor and percentage for overhead and profit ("time and material"). If the value is determined by this method the following requirements shall apply:

8.4.3.1. Daily Reports by Contractor. The Contractor shall maintain detailed daily reports of time and materials.

8.4.3.2. Basis for Establishing Costs.

8.4.3.2.1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft classification or type of workers at the time the Extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of labor classification which would increase the Extra Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

8.4.3.2.2. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the work Site in the quantities involved, plus sales tax, freight and delivery. The District reserves the right to approve materials and sources of supply, or to supply materials to the Contractor if necessary, for the progress of the work. No markup shall be applied to any material provided by the District.

8.4.3.2.3. Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$500 or less or where an invoice is not provided. Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental source, or distributors, at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Necessary loading and transportation costs for equipment used on the Extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the District than holding it at the work Site, it shall be returned, unless the Contractor elects to keep it at the work Site at no expense to the District.

8.4.3.2.4. Other Items. The District may authorize other items which may be required on the Extra Work. Such items include labor, services, material and equipment which are different in their nature from those required by the work and which are of a type not ordinarily available from the Contractor or any of the subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.

8.4.3.2.5. Invoices. Vendors' invoices for material, equipment rental, and other expenditures, shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the District may establish the cost of the item involved at the lowest price which was current at the time of the report.

8.4.3.2.6. Excluded Items. The cost for Extra Work shall not include any of the following:

- Supervision
- Superintendent(s)
- Assistant Superintendent(s)
- Project Engineer(s)

- Project Manager(s)
- Scheduler(s)
- Estimator(s)
- Vehicles used by personnel listed above
- Small tools (replacement value under \$500)
- Office expenses including staff, materials, and supplies
- On-site or off-site trailer and storage rental and expenses
- Site fencing
- Utilities including gas, electric, sewer, telephone, facsimile, copier equipment
- Data processing personnel and equipment
- Federal, state, or local business income or franchise taxes
- Overhead and Profit
- Costs and expenses of any kind or item not specifically and expressly included in this section.

8.4.3.2.7. Contractor Fee. The term “Contractor Fee” shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to the Contractor for its own work and the Work of Subcontractors of any Tier, for all costs and expenses not included in the value of the Extra Work, whether or not such costs and expenses are specifically referenced in this section. The Contractor Fee shall not be compounded.

The Contractor Fee shall be computed as follows:

- a) Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the prime contractor with its own forces.
- b) Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the prime contractor. Total combined Contractor and Subcontractor fee shall not exceed 20%
- c) Fifteen percent (15%) of the cost of that portion of the Work to be performed by any sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the prime contractor, Total combined Contractor, Subcontractor and all sub-contractors fee shall not exceed 25%.

8.4.3.3. Changes Costs. It is expressly understood that the value of such Extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of Contractor’s costs and expenses, both direct and indirect, resulting from additional time required on the project, or resulting from delays to the Project. Any costs or expenses not included are deemed waived. For purposes of determining the cost, if any, of any Extra Work, change, addition or omission hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor, and Contractor shall ensure that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor’s cost in determining the actual cost of construction for purposes of any Extra Work, change, addition or omissions in the work as provided herein.

8.5. Entire Compensation. Notwithstanding any other provision in the Project Documents, the adjustment in the Contract Price, if any, and the adjustment in the Contract Time, if any, set out in a Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by the change order unless otherwise provided in the change order. The entire compensation shall not include any additional or delay damages (due to processing of a change order, refusal to sign a change order) indirect, consequential, and incidental costs including any project management costs, extended home office and field office overhead, administrative costs and profit other than those amounts authorized by the Contract Documents.

8.6. No Written Authorization. Without limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at Contractor’s own expense, any change performed by Contractor pursuant to any direction other than a duly authorized and executed Change Order or Unilateral Change Order shall be paid

for by Contractor at Contractor's own expense.

- 8.7. Change Order; Contractor Modification of Change Order Prohibited.** If the District approves a Contract Adjustment, a written Change Order prepared by the District shall be forwarded to the Contractor describing the Change and setting forth the Contract Adjustment to the Contract Time/Contract Price, 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 documents (i.e. Requests for Information, Architect's Supplemental Instructions, Bulletins, Field Orders, Construction Change Directives, Requests for Proposals, Contractor's Proposal preparation, etc.) and other similar materials; 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/or ratifying such Change Order.
- 8.8. Disputed Changes.** If any dispute or disagreement between the Contractor and the District regarding the characterization of any item as a Change 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, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The foregoing is a material obligation of the Contract; in addition to any other Event of Default described in the Contract Documents, the Contractor's failure or refusal to proceed with performance of a disputed Change is an Event of Default.
- 8.9. Addition or Deletion of Alternate Bid Item(s).** If the Bid Proposal for the Work includes proposal(s) for Alternate Bid Item(s), during performance of the Work, the District may elect, 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 they 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 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.
- 8.10. Architect Authority.** In giving instructions, Architect shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with purposes of the Project. Otherwise, except in an emergency endangering life or property, no Extra Work or change shall be made unless in pursuance of a written order from District, authorized by action of the governing board, and no claim for addition to contract sum shall be valid unless so ordered.

ARTICLE 9. TESTS AND INSPECTIONS

- 9.1. Code Compliance.** Tests and inspections of materials incorporated into the work will comply with California Code of Regulation, Applicable Law or orders of public authorities having jurisdiction over the Project.
- 9.2. Contractor's Notice.** If the Contract Documents, Applicable Law or any public authority with jurisdiction over the Work require the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least three (3) working days prior to the time for the conducting 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.

- 9.3. Cost of Tests and Inspections.** The District will pay for fees, costs and expenses for the initial tests/inspections of materials/equipment which are: (i) conducted at the Site or locations within Orange County, California; (ii) on Mondays-Fridays, between 7:00 AM and 4:00 PM. The costs of tests or inspections conducted at any location or any other days/times shall be borne by the Contractor; costs will be inclusive of any or all of the following: labor, travel costs, per diem, materials, equipment, etc. with no established daily minimum hours. The District may deduct such fees and costs from the Contract Price then or thereafter due the Contractor. All fees, costs or expenses for subsequent tests/inspections or for re-conducting tests/inspections due to failure of the initial test/inspection result to comply with requirements of the Project Documents shall be borne solely and exclusively by the Contractor; the District may deduct such fees and costs from the Contract Price then or thereafter due the Contractor.
- 9.4. 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 or Applicable Law. Tests and inspections required of the Work shall be as set forth in the Contract Documents and as required by Applicable Law, including without limitation, Title 24 of the California Code of Regulations. Test/inspection standards shall be as set forth in the Contract Documents or established by Applicable Law. 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 or Architect and not by the Contractor.
- 9.5. Additional Tests, Inspections and Approvals.** If the Architect, Project Inspector or public authorities having jurisdiction over any portion of the Work require additional testing, inspection or approval, the Architect or Project Inspector will 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 Project Inspector of when and where tests and inspections are to be made so the Project Inspector and 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 costs of the services, the Architect or its consultants, the Project Inspector in connection therewith.
- 9.6. Delivery of Certificates.** Required certificates of materials testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect and Project Inspector.
- 9.7. 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. The Contractor shall be liable for delays to completion of the Work if the Contractor fails to coordinate and timely schedule required tests, inspections or observations of the Work.

ARTICLE 10. CORRECTION OF WORK

- 10.1. Warranty.** Contractor warrants that the Work and all materials, equipment and workmanship incorporated therein shall: (i) be free from defects and faults; (ii) be free from defects in any design performed by Contractor; (iii) be new, of good quality, of the most suitable/required grade and conform to performance, quality, workmanship and other similar requirements of the Project Documents; (iv) conform to applicable industry standards; and (v) be fit for use for intended purposes. The Contractor's warranty obligations pursuant to the foregoing and other warranty/guarantee obligations set forth in the Project Documents are in addition to, and not in lieu of any warranty obligations of the Contractor arising by operation of Applicable Laws.
- 10.2. Assignment of Warranties.** Contractor does hereby unconditionally and irrevocably assign to District all warranties and guarantees of any Subcontractor, material supplier/fabricator/distributor and equipment manufacturer/distributor. Such assignment shall not relieve Contractor of, or otherwise limit, any of its obligations contained in the Project Documents, including, without limitation, the general responsibility and liability of Contractor for a breach by a Subcontractor (including, without limitation, any manufacturer, supplier and distributor) of a warranty or guarantee given by such Subcontractor in connection with the Work.
- 10.3. Warranty Period.** The warranty period for discovery of Defective Work shall commence upon acceptance of Substantial Completion and continue for the longer of the period set forth in the Specifications or for one year thereafter. If Defective Work subject to warranty obligations renders the Work unsuitable or unavailable for the

intended use of the Work, the warranty period shall be suspended for the duration of unsuitability or unavailability for intended use. In such event, the Warranty Period shall re-commence upon full correction or replacement of the Defective Work.

10.4. Repairs. District shall give Contractor prompt written notice after discovery of any Defective Work. Contractor shall correct any such Defective Work, as well as any damage to any other part of the Work resulting from such Defective Work, and provide repair, replacement, or reimbursement, at the Contractor's sole expense, in a manner approved by the District and with due diligence and dispatch as required to make the Work ready for use by District, ordinary wear and tear, unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design (unless of District's design), removal, repair, replacement or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of work shall be performed at a time and in such a manner so as to minimize the disruption to District's use of the work.

10.5. District Right to Repair. In the event of failure of Contractor or Surety to commence and pursue with diligence repairs or replacements of Defective Work within ten (10) calendar days the District's written notice of Defective Work, the District may thereafter proceed to repair or replace such Defective Work at the costs and expense of the Contractor and Surety. The Contractor and Surety are jointly and severally liable to the District for such costs and expenses; payment of which shall be made to the District upon demand therefor.

10.6. Dangerous Condition. If, in the opinion of the District, Defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District will attempt to give the written notice required by this Article. If the Contractor or Surety cannot be contacted or neither complies with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article, proceed to repair or replace such Defective Work. The Contractor and Surety are jointly and severally liable to the District for such costs and expenses, payment of which shall be made to the District upon demand therefor. Such action of the District is in addition to, and not in lieu, of any other right or remedy arising out of the Project Documents or by operation of law relating to such Defective Work.

10.7. General. Contractor shall promptly remove all Defective Work, whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with Project Documents without additional expense to District and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

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

10.9. Not a Limitation. This Article does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period

10.10. Attorneys' Fees. The District may collect its legal expenses, costs and fees, including attorneys' fees incurred to enforce the District's rights under this Article.

ARTICLE 11. TERMINATION AND SUSPENSION

11.1. Termination for Cause. The District may terminate the Contract upon occurrence of any of event of Contractor Default.

11.1.1. Events of Contractor Default. Events of Contractor Default include:

11.1.1.1. Failure to Prosecute Work. Contractor refusal or failure to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the Contract Time and authorized adjustments thereto.

11.1.1.2. Failure to Achieve Substantial Completion Within Contract Time. Contractor failure to achieve Substantial Completion of the Work within the Contract Time and authorized

adjustments thereto.

- 11.1.1.3. Inadequate Resources.** Contractor failure or refusal to supply properly skilled Workers or materials, equipment, construction equipment or tools at such times in such quantities and with such quality necessary to complete the Work in accordance with requirements of the Contract Documents and within the Contract Time and authorized adjustments thereto.
- 11.1.1.4. Failure to Make Prompt Payments.** Contractor failure to make prompt payment to subcontractors, material suppliers or others for materials, equipment, construction equipment or for labor furnished to the Contractor or incorporated into the Work.
- 11.1.1.5. Failure of Compliance with Applicable Laws; Directives.** Contractor failure of compliance with or disregard of: (i) Applicable Laws; (ii) requirements of any Governmental Authority having jurisdiction over the Work or any portion thereof; or (iii) directives of the Architect, Project Inspector or District.
- 11.1.1.6. Failure to Remedy Defective Work.** Contractor failure or refusal to correct, repair or replace Defective Work within the time established for completion of such corrective, repair or replacement work.
- 11.1.1.7. Default of Contract Documents Obligations.** Contractor failure or refusal to timely and fully perform obligations of the Contractor under the Contract Documents or the Applicable Laws.
- 11.1.1.8. Bankruptcy; Insolvency.** If the Contractor becomes bankrupt or insolvent by: (i) the filing of a petition to reorganize or for protection under any bankruptcy or similar laws by the Contractor or a third party; (ii) a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency; or (iii) if Contractor makes a general assignment for the benefit of creditors.

11.1.2. Termination For Contractor Default. Upon the occurrence of an Event of Contractor Default, the District may terminate the Contract for cause by written notice to the Contractor ("Termination Notice"). Termination of the Contract shall be effective as of the date set forth in the Termination Notice. The District shall have the sole discretion to permit the Contractor to remedy the Contractor Default without waiving the District's default termination rights or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or Applicable Laws arising out of an Event of Contractor Default.

11.1.3. Completion by the Surety. If the Contract is terminated for Contractor Default, the District may demand that the Performance Bond Surety take over and complete the Work. The District may require that in so doing, the Performance Bond Surety not utilize the Contractor to complete 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.

11.1.4. District's Rights Upon Termination for Contractor Default. If the Surety does not assume the Contractor's obligations within twenty (20) days after termination of the Contractor for Default, 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 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 stored at 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 Work to completion, 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.

11.1.5. Assignment and Assumption of Subcontracts. Upon termination of the Contract for cause, 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.

11.1.6. Costs of Completion. In the event of termination for cause, 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 for cause exceeds the District's direct and indirect costs and expenses to complete 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 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 the Performance Bond Surety are jointly and severally liable to the District for the difference between costs and expenses to complete the Work and the unpaid Contract Price as of the date of termination for cause.

11.1.7. Contractor and Surety Responsibility for Damages. The Contractor and the Performance Bond Surety shall be jointly and severally liable to the District for all losses, damages or costs sustained by the District resulting from, in any manner, the termination of Contract for cause, including without limitation, attorneys' fees, additional professional and consultant services, and the District's administrative costs and all other costs necessary to complete the Work which exceed the Contract Price.

11.1.8. Conversion to Termination for Convenience. If the Contract is terminated for cause, and it is determined, for any reason, that an Event of Contractor Default had not occurred, 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 the Termination for Convenience provisions hereof.

11.1.9. District's Rights Cumulative. If the Contract is terminated for Contractor Default, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Performance Surety. The rights and remedies of the District hereunder are in addition to, and not in lieu of, any other rights and remedies provided by Applicable Laws or under the Project Documents.

11.2. Termination for District 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 expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the Site (as directed or authorized by the District) but not yet incorporated into the Work, provided that such payments 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 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 the termination for convenience of the District. The District may, in its sole discretion, elect to have Subcontracts assigned pursuant to this section after exercising the right hereunder to terminate for the District's convenience.

11.2.1. District Right to Suspend. The District may, without terminating the Contract, order the Contractor, in writing, to suspend 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.

11.2.2. Contract Price Adjustment. If the District directs suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work, actually caused by suspension ordered by the District. The term "direct cost of performance of the Work" as used in the preceding sentence shall be limited to: (i) increased costs of materials or equipment incorporated into the Work or required to complete the Work; and (ii) the costs of general conditions items/services (excluding project management/supervision) during the period of District directed suspension of the Work which are proximately caused by the District directed suspension of Work. The term "direct cost of performance of the Work" shall exclude costs (including home office costs) arising out of or related to delay, hindrance, disruption of Work, loss of productivity, inefficiencies or other similar consequences of District directed

suspension. Adjustment of the Contract Price for District directed suspension of work shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit. The foregoing notwithstanding, if the District directs suspension of Work as a result of a Force Majeure Event, the Contract Price shall not be subject to adjustment, it being understood that the Contractor and District will each bear their own respective costs and expenses arising out of a Force Majeure Event and that neither the Contractor or District are responsible to the other for costs or expenses resulting from or required by any actions arising out of a Force Majeure Event.

11.2.3. Contract Time Adjustment. If the District directs suspension of the Work, the Contract Time shall be equitably adjusted to reflect the effect of the District's directive to suspend work on the Contract Time.

ARTICLE 12. CLAIMS AND DISPUTES

12.1. Claims If the Contractor shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Contractor shall, within five (5) calendar days after sustaining such damage, provide a written statement to the District detailing all of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained the Contractor shall file with the District an itemized statement of the details and amount of such damage, and unless such statement shall be made as thus required, Contractor's claims for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage.

12.2. Disputes Decisions and Resolution.

12.2.1. Initial Analysis. The District shall, within a reasonable time, make decisions on all matters relating to the Contractor's execution and progress of the work.

12.2.2. Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Project Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Project Documents, the Contractor shall proceed diligently with performance of the Work, pending any final binding determination or decision regarding any such claim, dispute or disagreement. The foregoing is a material obligation of the Contractor. If the dispute is not resolved, Contractor agrees it will neither rescind the Agreement nor stop the progress of the Work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of the State of California, in Orange County, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

12.3. 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. The term "Claim" shall be as defined in Section 9204.

12.3.1. 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.

12.3.2. 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.

12.3.3.Meet and Confer.

12.3.3.1. 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.

12.3.3.2. 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.

12.3.4.Non-Binding Mediation.

12.3.4.1. 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; (ii) by registered mail or certified mail, return receipt requested; (iii) 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.

12.3.4.2. 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.

12.3.4.3. 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.

12.3.4.4. 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.

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

12.3.4.6. 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.

12.3.5. 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.

12.3.6. Subcontractor Claims.

12.3.6.1. 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.

12.3.6.2. 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; (ii) 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.

12.3.6.3. 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.

12.3.6.4. 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.

12.4. 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.

12.5. Section 20104.4 Dispute Resolution Procedures; Claims Less Than \$375,000. Any Claim, or portion thereof, in dispute after completion of the Section 9204 non-binding dispute resolution procedures and the Government Code Claims Process which is equal to or less \$375,000 shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Section 9204 procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

12.6. Binding Arbitration of Claims Exceeding \$375,000.

12.6.1. JAMS Arbitration. Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process which exceeds \$375,000 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.

12.6.2. 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(s).

12.6.3. 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.

12.6.4. Arbitration Award. The award rendered by the Arbitrator(s) (“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 that 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 either 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.

12.6.5. Arbitration Fees and Expenses. The expenses and fees of the Arbitrator(s) 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(s) may award arbitration

costs, including Arbitrators' 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".

12.6.6. Limitation on Arbitrator. The Superior Court for the State of California for the County in which the Project Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Contractor has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

ARTICLE 13. MISCELLANEOUS

13.1. Governing Law. The laws of the State of California shall govern the Project and the Agreement.

13.2. Compliance with Applicable Laws, Policies, Procedures, Rules & Regulations. Contractor shall comply with District's policies, procedures, rules, regulations and/or guidelines that include but are not limited to a smoke, alcohol, and controlled substances free campus, conflict of interest, workplace violence, code of conduct, harassment and discrimination prevention and drug-free environment.

Contractor agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now and may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in Services covered by this Agreement or accruing out of the performance of such Services. Additionally, Contractor shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

Compliance with Economic Sanctions Imposed in Response to Russia's Invasion of Ukraine. Contractor shall comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal Executive Order 14065 and the sanctions identified on the U.S. Department of the Treasury website. Contractor shall comply with any sanctions imposed under state law, including with respect to, but not limited to, Executive Order N-6-22 from the State of California's Executive Department: <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>

13.3. State Audit. Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of the District, the Contractor, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the costs of administration of the Agreement, shall be subject to the examination and audit of the State Auditor at the request of the District or as part of any audit of the District for a period of three (3) years after final payment is made under this Agreement.

13.4. Non-discriminatory Practices. The Contractor shall not engage in, nor permit any Subcontractor to engage in, discriminatory employment practices based on race, color, ancestry, national origin, religious creed, gender, gender orientation, age, marital status or other legally protected classification. The Contractor and all Subcontractors shall comply with all Applicable Laws pertaining to prohibitions on workplace discriminatory practices. The foregoing shall apply to all active and prospective employees of the Contractor and Subcontractors.

13.5. No Assignment. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof. If the Contractor shall assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Agreement may, at the option of the District, be terminated, revoked and

annulled, and the District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the Contractor, and to its purported assignee or transferee.

- 13.6. No Waiver.** The failure of the District in any one or more instances to insist upon strict performance of any of the terms of this Agreement or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
- 13.7. Severability.** Should any part, term, portion or provision of the Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.
- 13.8. No Third-Party Rights.** Nothing contained in the Contract Documents is intended to make any person or entity who is not a signatory to this Contract a third-party beneficiary of any right of Contractor (including, without limitation, any right of Contractor to a benefit derived from, or to the enforcement of, an obligation assumed by District) that is expressly or impliedly created by the terms of the Contract Documents or by operation of Applicable Laws.
- 13.9. 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.
- 13.10. Notices General.** Any notice from one party to the other or otherwise under the Agreement shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners: (i) by personal delivery, or (ii) by depositing same in United States mail, enclosed in a sealed envelope and sent by registered or certified mail with postage prepaid;
- 13.11. Entire Agreement.** The Contract Documents represent the full and complete understanding of every kind or nature between the parties and all preliminary negotiations and prior representations, proposals and contracts, of whatever kind or nature, are merged herein and superseded hereby. No verbal agreement or implied covenant shall be held to vary the provisions of the Contract Documents. Any modification the Contract Documents will be effective only by written instrument signed by both District and Contractor and shall, if required by Applicable Laws, be formally approved or ratified by the Board of Trustees.