

**PROCUREMENT AND CONTRACTING PROVISIONS
(PART 2)**

GENERAL AND SUPPLEMENTARY CONDITIONS

FOR THE

**RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT
FOR**

BID NO. 1485

VL107 RECONFIGURATION PROJECT AT SANTA ANA COLLEGE

PROJECT ID NO.

FMR24-119

DSA No. 04-124525

**SANTA ANA COLLEGE
LOCATED AT
1530 WEST 17TH STREET, SANTA ANA, CA 92706**

**RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT
FACILITY PLANNING, CONSTRUCTION & DISTRICT SUPPORT SERVICES
2323 NORTH BROADWAY, SUITE 112
SANTA ANA, CA 92706**

DECEMBER 10, 2025

GENERAL CONDITIONS

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1. ESCROW OF BID DOCUMENTATION

1.1 Requirement to Escrow Bid Documentation

- 1.1.1 Contractor shall submit, within five (5) Working Days after the date of the Notice of Intent to Award, one copy of all documentary information received or generated by Contractor in preparation of bid prices for this Contract. This material is referred to as "Escrow Bid Documentation." The Escrow Bid Documentation will be held in escrow by the District for the duration of the Contract.
- 1.1.2 Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documentation constitutes ALL written information used in the preparation of their Bid, and that no other written Bid preparation information shall be considered in resolving disputes or claims. Contractor also agrees that nothing in the Escrow Bid Documentation shall change or modify the terms or conditions of the Contract Documents.
- 1.1.3 The Escrow Bid Documentation will not be opened by the District except as indicated herein. The Escrow Bid Documentation will be used only to assist in the negotiation of price adjustments and change orders or the settlement of disputes or claims.
- 1.1.4 Contractor's submission of the Escrow Bid Documentation, as with the bonds and insurance documents required, is considered an essential part of the Contract award. Should the Contractor fail to make the submission within the allowed time specified above, the District may deem the Contractor to have failed to enter into the Contract and be deemed non-responsive, and the Contractor shall forfeit the amount of their Bid security, accompanying the Contractor's Bid, and the District may award the Contract to the next lowest responsive responsible Bidder.
- 1.1.5 No Payments will be made, nor will the District accept proposed change orders until the Escrow Bid Documentation is submitted and approved.
- 1.1.6 The Escrow Bid Documentation shall be submitted in person by an authorized representative of the Contractor to the District.

1.2 Ownership of Escrow Bid Documentation

- 1.2.1 The Escrow Bid Documentation is, and shall always remain, the property of Contractor, subject to review by the District, as provided herein.
- 1.2.2 As trade secrets, the Escrow Bid Documentation is proprietary and confidential to the extent allowed by law. Escrow Bid Documentation constitute trade secrets, not known outside Contractor's business, known only to a limited extent and only by a limited number of employees of Contractor, safeguarded while in Contractor's possession, extremely valuable to Contractor, and could be extremely valuable to Contractor's competitors by virtue of it reflecting Contractor's contemplated techniques of construction. Subject to the provisions herein, the District agrees to safeguard the Escrow Bid Documentation, and all information contained therein, against disclosure to the fullest extent permitted by law.

1.3 Format and Contents of Escrow Bid Documentation

- 1.3.1 Contractor may submit Escrow Bid Documentation in its usual cost-estimating format; a standard format is not required.

- 1.3.2 Escrow Bid Documentation must clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule, separating bid items into sub-items as required to present a detailed cost estimate and allow a detailed cost review.
- 1.3.3 Subcontractors. The Escrow Bid Documentation shall include all subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the bid proposal.
- 1.3.4 Estimated costs should be broken down into Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's allocation of indirect costs, contingencies, markup, and other items to each bid item shall be identified.
- 1.3.5 All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- 1.3.6 Bid Documentation provided by the District should not be included in the Escrow Bid Documentation unless needed to comply with the following requirements.

1.4 Submittal of Escrow Bid Documentation

- 1.4.1 The Escrow Bid Documentation shall be submitted by the Contractor in a sealed container/envelope within five (5) Working Days after the date of the Notice of Award. The container/envelope shall be clearly marked on the outside with the Contractor's name, date of submittal, project name and the words "Escrow Bid Documentation – To be opened only after written notice to Contractor and the District."
- 1.4.2 By submitting Escrow Bid Documentation, Contractor represents that the material in the Escrow Bid Documentation constitutes of all the documentary information used in preparation of the Bid and that the Contractor has personally examined the contents of the Escrow Bid Documentation container and has found that the documents in the container are complete.
- 1.4.3 Subcontractors. If Contractor's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds five percent (5%) of the total contract price proposed by Contractor, shall provide separate escrow documents to be included with those of Contractor. Those documents shall be opened and examined in the same manner and at the same time as the examination described above for Contractor. Each Subcontractor's documents can be sealed within Contractor's Escrow Bid Documentation and will only be opened if the change order or dispute at issue relates to that subcontractor(s)' scope of work.
- 1.4.4 If Contractor wishes to subcontract any portion of the Work after award of the Contract, the District retains the right to require Contractor to submit escrow documents for the Subcontractor before the subcontract is approved.

1.5 Storage, Examination and Final Disposition of Escrow Bid Documentation

- 1.5.1 The Escrow Bid Documentation will be placed in escrow, for the term of the Contract, at the District offices.
- 1.5.2 The Escrow Bid Documentation may be examined by the District, by the Contractor, and/or by both parties, upon five (5) Working Days written notice from the party noticing the examination to the other party.
- 1.5.3 An examination is permissible at any time that one party reasonably believes that an examination of the Escrow Bid Documentation is necessary to assist in the negotiation of price adjustments and change orders or the settlement of disputes or claims. In the case of legal proceedings, Escrow Bid Documentation may be subject to the terms of an appropriate protective order, if requested via motion by Contractor and ordered by a court of competent jurisdiction.
- 1.5.4 If the Contractor or the District fails to designate a representative or fails to appear for the noticed examination, then the Contractor or the District representative may examine the Escrow Bid Documents alone if a representative of the Contractor or the District does not appear at the time set.
- 1.5.5 Subcontractor. If a Subcontractor has submitted sealed information that is included in the Escrow Bid Documentation and that subcontractor is reasonably involved in the negotiation of price adjustments and change orders or the settlement of disputes or claims, then the party requesting examination (the Contractor or the District) is required to also notify that Subcontractor with the same five (5) Working Days written notice that the requesting party sends to the other party.
- 1.5.6 The Escrow Bid Documentation will be returned to Contractor when the District accepts Project Completion, when all of Contractor's claims (if any) have been resolved to the District's and Contractor's satisfaction, and when the Contractor certifies that it has no further claims against the District.

2. TITLE 24 RESPONSIBILITIES

Contractor accepts the contractual relationship established between it and District by Contract Documents, including these General Condition Provisions, and Contractor covenants with District to furnish reasonable skill and judgment in constructing the Project as set forth in the Contract Documents. Contractor agrees to furnish efficient business administration, coordination review of the plans and specifications, coordination of the work of the subcontractors and vendors and superintendence to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistently with the General Condition Provisions and the Contract Documents as defined in Article 14.

- 2.1 **Title 24 Responsibilities.** The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work in conformance with the Contract Documents. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:
 - 2.1.1 ***Responsibilities.*** It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Plans and Specifications. The Contractor in

no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector, or DSA in the performance of their duties.

- 2.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Plans and Specifications and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved plans and specifications, the Contractor shall correct the Work immediately.
- 2.1.3 *Inconsistencies.* All inconsistencies or timing or sequences which appear to be in error in the Plans and Specifications shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, Construction Change Documents, and as required by law. (See Title 24 Section 4-343)
- 2.1.4 *Verified Reports.* The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Closeout of the Project (see Article 13.16), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.
- 2.1.5 *Reporting Requirements.* Contractor shall fully comply with any and all reporting requirements of Education Code Sections 81147, et seq., in the manner prescribed by Title 24, as applicable.
- 2.1.6 *Contractor Responsibility.* The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.
- 2.1.7 *All Work is performed Under the Direction of Inspector.* Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)
- 2.1.8 *Contractor to Establish Timing and Protocol with Inspector.* Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically gives the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.
- 2.1.9 *Conformance with Approved Submittals.* This conformance includes performing all Work only in conformance with approved Submittals, Shop Drawings, and Samples or the Inspector may be required to issue a DSA Form 154 Notice of Deviation from approved DSA Contract Documents.
- 2.1.10 *Incremental Assemblies.* For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13.

2.1.11 *Coordination with Outside Contractors.* If any of the Work for the Project is known to include Work performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

3. [RESERVED]

4. DEFINITIONS

- 4.1 Action of the Governing Board is a vote of a majority of the District's Board of Trustees.
- 4.2 Allowance(s) means budgets established for specific scopes of the Work that cannot be clearly defined at the time of Bid, but that are set, not-to-exceed amounts at the time that the Bid is established. Contractor shall only use Allowance(s) with the District's prior, written approval. All unused Allowance(s) shall be kept by the District at the end of the Project.
- 4.3 Approval means written authorization through Action of the Governing Board. The Governing board has delegated to the Vice Chancellor the authority to approve certain modifications, Change Orders or Immediate Change Directives (Subject to the limits of the Delegation of Authority provided by the Board). In no case shall the Vice Chancellor have authority to approve total change orders or modifications to the Project exceeding 10% of the Contract Price.
- 4.4 As-Builts are a set of Plans and Specifications maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Closeout. See Article 13.14 and 13.16.
- 4.5 Architect means the architect, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project. Also see Article 11.
- 4.6 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy and its intended use. Basic requirements are the building is safe, at Substantial Completion, and all life safety is operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if life safety items are not operational. Taking occupancy on a structure that is under a fire watch is not considered beneficial occupancy. Further, taking of Beneficial Occupancy is not a point in time when retention is due unless the Project is Completed and Notice of Completion has been recorded.
- 4.7 Claims. A Claim is as defined in the "Claims Resolution" Provisions herein.
- 4.8 Closeout means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is complete for DSA (See DSA Certification Guide). See Article 13.16.
- 4.9 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved plans and specifications. There are two types of Construction Change Documents. 1) DSA approved CCD Category A (DSA Form 140) for work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and 2) CCD Category B (DSA Form 141) for work NOT affecting Structural

Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required). See Article 17.

4.10 Construction or Construction Services means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Contract Documents.

4.11 Construction Costs means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' overhead and supervision at the Project site, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Contractor's home office overhead and field office overhead (which both shall be part of the Contractor's General Conditions) and Contractor's profit and fee. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Contract Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Bid Proposal. The Contractor shall order and obtain materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to ensure against price escalations or delays. All materials and equipment shall be stored on-Site and secured by Contractor unless otherwise approved in writing by the District.

4.12 Construction Manager or CM means the individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If there is a Construction Manager, they may assist in various aspects of the Project including, but not limited to monitoring the progress of the construction, reviewing and monitoring the schedule, progress of work, monitoring pay requests, facilitating communications, advising the District and its Board of Trustees on various aspects of the construction and Project related processes. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

4.13 Contract Documents (Sometimes referred to as Construction Documents) consist of the Construction Services Agreement between the District and the Contractor (hereinafter the Contract or Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to bid, instructions to bidders, notice to bidders, and the requirements contained in the Bid Documents, other documents listed in the Contract, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect. The Contract Documents collectively form the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. The Architect shall,

however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. (See Article 14).

- 4.14 Contract Time is the time period between the Notice to Proceed and Final Completion.
- 4.15 Day means a calendar day unless specifically designated as a business day.
- 4.16 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.
- 4.17 Due Diligence is the review and analysis of As Builts, title documents, prior design documents, geotechnical reports, prior design reports, surveys, and site investigations provided by the District and synthesizing of information utilized to determine the components of the Bid Proposal. Requirements for Due Diligence are further addressed at Article 5.
- 4.18 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a bid for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved plans, specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the District pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.
- 4.19 Final Completion (or "Completion") means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, the Project has been Closed-Out, and all Work has ceased on the Project. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy or Substantial Completion does not mean the Work is at Final Completion. The Parties shall determine the "Date of Final Completion" which shall be as indicated in the Construction Schedule and which shall also be the "Completion Date."
- 4.20 Float is the total number of days an activity may be extended or delayed without delaying the Substantial Completion Date shown in the schedule. See Article 9.2. Note that the Substantial Completion Date indicated in the Construction Schedule includes and incorporates all Float as noted in Article 9.3 and as otherwise specifically noted in Article 9.
- 4.21 General Conditions or General Conditions Provisions (including General Requirements and all Overhead (Home Office and Field Office and Supplementary Conditions). The fixed amount to be paid for all costs for labor, equipment, materials, supervision, transportation, and overhead for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for insurance covered by OCIP), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions may be increased or reduced accordingly.

4.22 **Immediate Change Directive (ICD)**. A written order prepared by the Architect or the District and signed by the District and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Price or Contract Time, or both. See Article 17.

4.23 **Inspector of Record (IOR) or Project Inspector (PI)** is the individual retained by the District in accordance with Title 24 of the California Code of Regulations who will be assigned to the Project.

4.24 **Notice of Non-Compliance (DSA Form 154)** is a document issued by the Project Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 17.3.

4.25 **Notice to Proceed**. After execution of the Contract between the parties, the District shall issue a notice to the Contractor to proceed with the Project (“Notice to Proceed”). Notice to Proceed shall include the date upon which commencement for the Project shall commence.

4.26 **Payment Application** (also referred to as Application for Payment) means any payment required to be made by the District pursuant to the Contract Documents.

4.27 **Project** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in the Contract Documents.

4.28 **Provide** when used throughout these General Construction Provisions, shall incorporate the phrases “provide complete in place,” and “furnish and install complete.”

4.29 **Punch List** is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Project Inspector and Architect of Work required in order to reach Final Completion and ensure compliance with the DSA Approved Plans so the Project may be Closed-Out. See Article 13.16.

4.30 **Request for Information (RFI)** is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

4.31 **Schedule** is the Contractor’s view of the practical way in which the Work will be accomplished. In the Contract Documents there is a requirement for a Construction Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 9.

4.32 **Schedule of Values** is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the District. This Schedule of Values shall adequately detail the price for the Work so Payment Applications can be meaningfully reviewed by the Project Inspector, Construction Manager, Architect of Record, Engineer of Record, and District. See Article 13.12.

4.33 **Separate Contracts** are Contracts that the District may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor’s Schedule. See Article 32.

4.34 Site refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

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

4.36 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference.

4.37 Stop Work Order, or an Order to Comply is issued when either 1) the Work proceeds without DSA approval; 2) the Work proceeds without a DSA Inspector of Record; or 3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code Section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order

4.38 Subcontractor means any person or entity, including trade contractors, who have a contract with Contractor to perform any work or supply materials for the Project.

4.39 Substantial Completion means when each of the following three (3) conditions have been met: 1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 13.16); 2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; and 3) the Project is fit for occupancy and its intended use. The “Date of Substantial Completion” shall be as indicated in the Supplemental Conditions.

4.40 Substitution is a change in product, material, equipment, or method of construction from those required by the Contract Documents proposed by the Contractor. Specific requirements for substitutions are set forth in Article 16.

4.41 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include extension of Contractor's obligations to subcontractor to perform Subcontractor Due Diligence including, but not limited to, visiting the Site of the proposed Work (a continuing obligation after the commencement of the Work), fully acquainting and familiarizing itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents.

4.42 Workers include laborers, workers, and mechanics.

5. DUE DILIGENCE

5.1 Documents Reviewed. Contractor has visited the site, entered and evaluated the structures on the site, reviewed all As-Builts, environmental reports, Asbestos Hazard Emergency Response

Rancho Santiago Community College District

GENERAL CONDITIONS

Bid #1485 VL107 Reconfiguration Project at Santa Ana College

Project ID#FMR24-119, DSA#04-124524

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Act of 1986 reports applicable to the Project, lead reports, reports on any other hazardous substances, reviewed environmental impact reports, reviewed applicable mitigation measures for the Project, and verified to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action, to assure Contractor of the current site conditions, reviewed available records from City and/or County Records on the Project.

5.2 Review of Existing Conditions. Contractor must have performed basic confirmation of the As-Builts that exist as part of the Due Diligence process. This basic confirmation shall include:

- 5.2.1 *Confirmation of overall dimensions* of major column lines, location of elements where coordination of new construction to existing construction is to occur, confirmation that the rooms noted are located on the drawings, review and confirmation that rooms have not been reconfigured.
- 5.2.2 *Confirmation of location for utilities and supporting infrastructure.* Contractor shall review the utilities and confirm that the infrastructure from the As-Builts and Contract Documents are consistent.
- 5.2.3 *Confirmation that fire/life safety elements are consistent with expectations of the Contract Documents.* Specifically, confirmation of the integrity of one-hour corridors, fire separations, working fire sprinklers, working fire alarms, communications systems, EMS systems, and other systems that are to remain in use and relied upon as part of the anticipated Project.
- 5.2.4 *Confirmation of Working hours and specific conditions which will affect the ability to work.* Contractor shall check requirements for the local city and county and confirm working hours and days, testing schedules at the District for days when work shall not occur, other critical days when work cannot occur, mitigation measures in the EIR or Negative Declaration that may affect the ability to Work on the Project. This review shall help Contractor build a working schedule for the Project.

5.3 Pre-Construction Review of Contract Documents.

- 5.3.1 Prior to proceeding with the Work, the Contractor shall complete a careful and detailed review of all Contract Documents in order to: i) determine and confirm all materials, labor, services and other things of any nature required to fully complete the Work in accordance with the Contract Documents; ii) determine whether the Contractor perceives any errors, inconsistencies, conflicts, ambiguities, omissions, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; iii) determine whether the requirements of the Drawings, Specifications and other Contract Documents conform with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work, including, without limitation, Title 21 and Title 24 of the CCR, applicable building codes, and utility-company requirements. Neither the requirements of this Section, nor any delay by the Contractor in complying with such requirements, shall be deemed to relieve the Contractor from complying with requirements for commencing and/or completing the Work, and Contractor shall schedule and complete its pre-construction activities to accommodate the review required pursuant to this Section.
- 5.3.2 *Notice After Pre-Construction Review.* If, as a result of this review, the Contractor perceives: i) any error, inconsistency, conflict, ambiguity, omission, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; or ii) that any of the Drawings, Specifications or other Contract Documents do not conform in

all respects with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work; then, prior to commencing any portion of the Work, affected or implicated by Contractor's review, the Contractor shall prepare and submit a Request(s) for Information (RFI) to the District and Architect. The Architect will issue an RFI Response and, if required, a Construction Change Directive or other written directive to the Contractor setting forth a correction or clarification of the matters specified in the RFI.

5.4 **Ongoing Review of Contract Documents.** The Contractor shall maintain on an ongoing basis such knowledge and understanding of the Contract Documents as necessary for full and timely compliance therewith. At any time during the course of the Work, if the Contractor perceives any error, inconsistency, conflict, ambiguity, omission, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents, or any non-conformance of the Drawings, Specifications or other Contract Documents with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work, then the Contractor shall submit an RFI to the District and Architect. The Contractor shall submit such RFI promptly after discovering any discrepancy with the Contract Documents, so that the matter may be addressed without any resulting delay in the Work or Work by Others. Within a reasonable time after receipt of an RFI, and to the extent necessary and appropriate, the Architect will issue a response to the RFI to the Contractor. The response may be in the form of a Construction Change Directive Category A or B or other written directive to the Contractor setting forth a correction or clarification of the matters specified in the notice.

5.5 **Price Fluctuations.** As part of Contractor's due diligence responsibilities, Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays. Contractor understands that this is a multi-year contract and that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor Vendors or by other means. Contractor further understands and incorporates into Contractor's bid cost any wage rate increases during the Project for the Contractor's labor force as well as all other subcontractor and vendor labor forces. Contractor also understands the length of the Project schedule and has incorporated an appropriate budget to include labor, material, and equipment escalation costs into the Bid Proposal. At no time will the District accept any costs associated with these increases. District shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the District.

5.5.1 If Contractor asserts a request for additional compensation due to a price fluctuation for escalation of materials costs, then this provision exclusively governs those request(s) by Contractor and the following are **all** conditions precedent to Contractor's submission of a Change Order Request or Claim for additional compensation for escalation of materials costs.

5.5.2 Contractor shall not be entitled to submit a request for compensation for escalation of materials unless the actual increase in the cost of the materials in question exceeds ten percent (10%) of the **total** material costs on the Project at the time of bid.

5.5.2.1 The cost escalation is the result of unusual and unforeseeable market conditions not reasonably foreseeable at the time of award of the Contract and was not an escalated cost resulting from any action or inaction of the Contractor.

5.5.2.2 Contractor timely ordered and/or purchased the materials at issue, based on (1) Contractor's constructive knowledge of the supply chain for required materials and (2) Contractor's request to utilize the provisions in the Contract Documents related to the District's payment for materials and equipment purchased and stored on Site or offsite.

5.5.2.2.1 Contractor's material costs were reasonable at the time of Contractor's bid for the Project.

5.5.2.2.2 Contractor demonstrates an actual increase in the cost of materials in its Contract Price at the time of award of the Contract and/or as reflected in Contractor's escrowed bid documents compared to Contractor's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.

5.5.2.2.3 An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.

5.5.2.3 The writing shall be accompanied by all documents substantiating Contractor's position regarding the proposed change order.

5.5.2.4 A request for additional compensation for price escalation that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

5.5.2.5 Contractor agrees that it shall not base its damages, its calculations or its proposed change order on a "total cost" approach, a "modified total cost" approach or a "jury verdict method" approach.

5.5.3 **Certification.** Contractor's proposed change order shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this proposed change order are true and correct, substantiated and of merit.***" The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits proposed change orders that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its request for a proposed change order or a Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the proposed change order from Subcontractor(s) or others who are asserting cost or time increases by and through Subcontractors and/or the Contractor.

6. SUBCONTRACTORS

6.1 **DVBE.** Participation in Disabled Veteran Business Enterprise (DVBE) contracting goals is required under the Contract Documents. In accordance with Education Code section 71028 the District has a DVBE participation goal of 3% per year of the overall dollar amount expended each year by the District. The Contractor shall make good faith efforts to achieve the DVBE participation goal under the Contract Documents. The Contractor must require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Their efforts shall be documented on the DVBE Statement of Intent to Meet DVBE Goals attached to Construction Documents. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. Contractor must retain documentation of its good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) contact was made with the District regarding the identification of DVBEs; b) contact was made with other state agencies and with DVBE organizations to identify DVBEs; c) advertising was published in trade papers and papers focusing on DVBEs; d) invitations to bid were submitted to potential DVBE contractors; and e) available DVBEs were considered.

6.2 The Contractor shall provide the District with information for all Subcontracts as required in the Contractor's Submittals and Schedules Section.

6.3 No contractual relationship exists between the District and any Subcontractor, supplier, or Sub-subcontractor by reason of the Contract.

6.4 The Contractor agrees to bind every Subcontractor by terms of the Contract as far as those terms are applicable to Subcontractor's work. If the Contractor shall subcontract any part of the Contract, the Contractor shall be as fully responsible to the District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by the Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

6.5 The District's consent to, or approval of, or failure to object to, any Subcontractor under the Contract shall not in any way relieve the Contractor of any obligations under the Contract and no such consent shall be deemed to waive any provisions of the Contract.

6.6 The Contractor is directed to familiarize themselves with sections 4100 through 4114 of the Public Contract Code of the State of California, as regards subletting and subcontracting, and to comply with all applicable requirements therein. In addition, the Contractor is directed to familiarize themselves with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

6.7 No Contractor whose Bid is accepted shall, without consent of the awarding authority and in full compliance with section 4100, et seq, of the Public Contract Code, including, without limitation, sections 4107, 4107.5, and 4109 of the Public Contract Code, either:

- 6.7.1 Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or
- 6.7.2 Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the original Subcontractor listed in the Bid; or
- 6.7.3 Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of the Contractor's total bid as to which his original bid did not designate a Subcontractor.

6.8 **Subcontractor Coordination.** The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project. The Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

6.9 **Contingent Assignment of Subcontracts and Other Contracts.** Each subcontract, purchase order, vendor contract or agreement for any portion of the Work is hereby assigned by the Contractor to the District provided that:

- 6.9.1 Such assignment is effective only after Termination of this Contract with the Contractor by the District as provided under Article 14 and only for those subcontracts and other contracts and agreements that the District accepts by notifying the Subcontractor or Materialman (as may be applicable) in writing; and
- 6.9.2 Such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.
- 6.9.3 The Contractor shall include adequate provisions for this contingent assignment of subcontracts and other contracts and agreements in each such document.

6.10 **Subcontractor Licenses and Registration with DIR.** All Subcontractors shall be properly licensed by the California State Licensing Board at the time Bids are opened by the District. All Subcontractors shall comply with the DIR registration requirements. The Contractor shall be solely responsible for ensuring their Subcontractors comply with all applicable DIR requirements throughout the term of the Project, shall provide evidence of such compliance upon request from the District, and shall indemnify the District in the event any claim, damage, or costs arise from the Contractors or their Subcontractors failure to comply with the DIR regulations.

6.11 **Substitution of Subcontractor.** Substitution of Subcontractors shall be permitted only as authorized under Public Contract Code §§ 4107 et seq. Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the completion of the Project. All applicable DIR regulations shall apply to any and all Subcontractors substituted onto the Project.

7. PROJECT MANAGEMENT SOFTWARE

7.1 {RESERVED}

8. LIQUIDATED DAMAGES

8.1 Liquidated Damages: Time is of the essence for all work Contractor must perform on the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District sum(s) as liquidated damages ("Liquidated Damages") as indicated in the Supplementary Conditions.

8.1.1 Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if both milestones are passed on any given day, the Contractor forfeits and must pay both applicable liquidated damage amounts as indicated here.

8.1.2 It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount nor any portion of the Liquidated Damage amount are penalties.

8.1.3 In the event any portion of the liquidated damages are not paid to the District, the District may deduct that amount from any money due or that may become due to the Contractor. The District's right to assess liquidated damages is as indicated herein. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.

8.1.4 The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Substantial Completion Date and/or the Final Completion Date for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions .

8.1.5 If the District's determination that the Contractor has substantially completed the Project is later determined by the District to be incorrect due to a later-discovered condition such that the District would not have initially determined the Project to be substantially complete, the District may assess all applicable Liquidated Damages for the days until the Project is actually substantially complete.

9. SCHEUDLE

9.1 Contract Time: Contractor shall perform and reach the Substantial Completion Date and the Final Completion Date within the time specified in Supplementary Conditions. The time period between the Notice to Proceed and Final Completion shall be the total Contract time ("Contract Time"). Moreover, Contractor shall proceed on a properly developed and approved Critical Path Method ("CPM") baseline Construction Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished.

9.2 Float: Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of the Project, as determined by the District. Float is owned by the Project and may be utilized as necessary for critical path delays once the days become available for consumption (i.e. a Rain Day arrives and is not utilized since rain did not occur or Work was performed on the interior of a building).

9.2.1 Governmental Delay. Days shall be set aside in the approved construction schedule as Governmental Delay to be utilized on critical path delays as further described in the Supplemental Conditions. Governmental Delay shall include, in the District's sole and

absolute discretion, delays associated with other governmental agencies that have jurisdiction over the Project, District or campus “black-out” days, testing days, or other non-contractor related delays as deemed necessary by the District. Refer to the Supplementary Conditions for the total number of days the District has allocated to the project.

9.2.2 *Inclement Weather (or “Rain Day(s)”).*

9.2.3 *Granting of Days.* The District shall grant a Rain Day only if the weather or impacts of recent weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day’s current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof. The District will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available Rain Day Float for the calendar year. Further, days to clean-up or dry out shall be included for operations that are likely to require a cleanup or dry out period. Government Delay Float and Increment Weather, if granted by the District, shall be distributed to the Project as approved by the District. Any Rain Days that exceed the above-identified Rain Days may extend the Contract Time, but only if the impact is as indicated here and pursuant to Article 18.6.

9.2.4 *Project Float.* The Contractor may determine some activities require a lesser duration than allocated and may set aside Float in the Project Schedule. There shall be no early completion. Instead, to the extent float is either addressed at the end of the Project or throughout each category of critical path work, Project Float may be used as necessary during the course of the Project and allocated on a first, come first serve basis. However, the use of Float does not extend to Governmental Delay, which shall only be used as indicated above.

9.2.5. *Unused Governmental Delay and Inclement Weather Delay.* Any unutilized Governmental Delay and Inclement Weather Delay may be reallocated back to Project Float as deemed appropriate solely by the District, without any additional compensation to the Contractor.

9.2.6. Any unused weather days and governmental delays shall be credited back to the District at the approved daily general conditions rate.

9.3 **Inclusions in Construction Schedule.** In addition to Scheduling requirements set forth at Article 9, Contractor is specifically directed to include in Contractor’s Construction Schedule and all Schedule updates that provide for the following items required pursuant to these General Condition Provisions, including but not limited to:

9.3.1 **Minimum Required Elements.** The Contractor shall refer to Division 1 of the Specifications for all required elements. The Contractor must specify at least the following elements in the Construction Schedule: i) a single critical path of activities for the Work and any Work by Others; ii) all milestones for “critical” and “constraining” or “controlling” factors as determined by the District, the Architect or the Contractor; iii) a duration of not more than twenty days for any one activity; iv) earliest and latest dates for commencement of each activity; v) earliest and latest dates for completion of each activity; vi) “float” time, if any, for each activity and for the Project overall; vii) order deadlines for long-lead-time items; viii) delivery dates for critical or special equipment and/or materials; ix) dates for providing all submittals to the Architect; x) dates by which each of

the Deferred Approvals must be obtained; and (xi) portions of the Work to be performed by any Subcontractor that must be completed prior to commencement of any portions of the Work by any other Subcontractor.

- 9.3.2 Rain Day Float under Article 9.2.2.
- 9.3.3 Governmental Delay under Article 9.2.1.
- 9.3.4 Submittal Schedule under Article 9.7 and 15.6.
- 9.3.5 Deferred Approvals under Article 15.3 and 15.6
- 9.3.6 Time for separate contractors, including furniture installation and start up activities, under Article 32.
- 9.3.7 Coordination and timing of any drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project.
- 9.3.8 Testing, special events, or District activities.

9.4 Schedule Updates. Contractor shall update the schedule each month to address actual start dates and durations, the percent complete on activities, actual Substantial Completion Date and Final Completion Date, estimated remaining duration for the Work in progress, estimated start dates for Work scheduled to start at future times and changes in duration of Work items

- 9.4.1 *Listing of Items Causing Delays.* Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating “District Delay” or “Architect Delay” shall be an inadequate listing.
- 9.4.2 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, shall take the steps necessary to improve Contractor’s progress and demonstrate to the District and Architect that the Contractor has seriously considered how the lost time, the Substantial Completion Date and the Final Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall provide a Recovery Schedule showing how Milestones and the Substantial Completion Date and the Final Completion Date will be met.
 - a. If Contractor fails to provide a recovery schedule, Contractor shall be subject to the assessment of Liquidated Damages for failure to meet the Substantial Completion Date and the Final Completion Date.

9.5 Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Contract, the Contractor confirms that the Substantial Completion Date and the Final Completion Date are reasonable periods for performing the Work.

9.6 Commencement and Diligent Performance of Work. The Contractor must commence performance of the Work upon the issuance of notice(s) to proceed and, thereafter, must diligently perform all acts and cause to be done all other things necessary to complete the Project within the time period(s) specified in the Construction Schedule, including, without limitation: (i) performing all required Work; (ii) obtaining all required services; (iii) providing an adequate workforce at all times; and (iv) providing sufficient quantities of equipment,

materials and supplies when needed. If the performance of the Work falls behind schedule, the Contractor must provide to the District and the Architect a proposed revision to the Construction Schedule that clearly specifies how the Contractor will bring the Work back into conformance with the time for completion required pursuant to the Contract Documents (“Recovery Schedule”). Each Recovery Schedule is subject to approval by the District. Upon approval of the Recovery Schedule, it shall be incorporated into a Revised Baseline Construction Schedule and the Contractor must, at its cost, accelerate and/or do all other things as necessary to complete the Project within the time specified in the revised Construction Schedule.

9.7 **Time for Preparing Submittals Must Be Incorporated in Schedule:** Contractor shall include Submittals as line items in the Construction Schedule. Time for preparing and coordinating Submittals shall not delay the Work, Milestones, or the Substantial Completion Date and the Final Completion Date and shall be in conformance with Article 15.

9.7.1 Failure to provide the submittals by the listed timelines will subject the Contractor to the assessment of Liquidated Damages for failure to meet the Contract timelines.

9.8 **Force Majeure:** A party shall be excused from the performance of any obligation imposed in the Contract Documents for only for period and only to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of unforeseen delays caused by, a governmental restriction, law, or other order by a governmental agency or governmental entity preventing performance of the Work, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts. Any such interference with the performance of the Work under this Article, shall not, be a default hereunder or a grounds for termination. Any delay to the Work associated with COVID-19, or any derivative or similar strain thereof, or any governmentally declared pandemic or similar public pestilence declared by any federal, state, or local order relating thereto, shall not be considered a Force Majeure event unless it renders Contractor's performance impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

10. INSPECTION OF WORK / PROJECT INSPECTOR AND ARCHITECT

10.1 **Inspection of Work/Project Inspector.** The District shall hire its own Division of State Architect Project Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

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

10.1.2 *Project Inspector's Duties and DSA Noted Timelines for Inspection.* All Work shall be under the observation of the Project Inspector. Contractor shall establish a protocol for requesting inspection with Project Inspector so as to not delay the Work and provide adequate time for the Project Inspector to perform inspection. If such a protocol is not established ahead of time, Project Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Project Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Project Inspector such information as may be necessary to keep the Project Inspector fully informed regarding progress and manner of Work and character of

materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Project Inspector is not authorized to make changes in the drawings or specifications nor shall the Project Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

- 10.1.3 *Electronic Posting.* Project Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.
- 10.1.4 *Incremental Approvals under PR-13.* Project Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Project Inspector shall work with Contractor to present incremental approval proposals to DSA.
- 10.1.5 *Project Inspector's Authority to Reject or Stop Work.* The Project Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Project Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.
- 10.1.6 *Testing Times.* The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be established pursuant to this Article 10. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Project Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor pursuant to Article 10.3.
- 10.1.7 *Contractor Is Required to Coordinate Testing and Inspections.* It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Project Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (Laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (Geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. Failure to plan and pay (if applicable) for quicker delivery of Special Inspections may be counted as Float, but is not considered Governmental Delay under Article 9.2.1.

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

10.2 **STOP WORK ORDER.** DSA may issue a Stop Work Order, or an Order to Comply, when either 1) the Work proceeds without DSA approval; 2) the Work proceeds without a DSA Project Inspector, or 3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code Section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the District is the basis for the issuance of the Stop Work Order.

10.3 **RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES**

10.3.1 If at any time prior to the Final Completion Date, the District is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the District may seek a Deductive Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next Payment Application. A Deductive Change Order shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. District will develop a tracking mechanism to track the deductive CORs required for the items identified in this Section. Contractor will be advised of the associated costs and will be given proper notification and reporting of the potential deductive change order amounts. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:

- a) Services made necessary by the default of the Contractor (Article 12.2 or Article 9).
- b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- c) Preparation of a CCD or ICD to correct a Contractor Deficiency or Contractor Caused Notice of Non-Compliance (Article 17.2)
- d) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.

- e) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 16)
- f) Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order process.
- g) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of the applicable Substantial Completion Date and/or Final Completion Date.
- h) Services in conjunction with the testing, adjusting, balancing, and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- i) Services in conjunction with more than one (1) re-review of submittals of shop drawings, product data, samples, RFI's, etc.

11. ARCHITECT

- 11.1 **Architect's Status.** In general, and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Project Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Contract Documents. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of the Contract Documents.
- 11.2 **Architect's Decisions.** Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.
- 11.3 **Architect's Site Visits.** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the District, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
- 11.4 **Communications Facilitating Contract Administration.** Except where a CM is on the Project, or as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the District and the Contractor shall communicate through the Architect. In the cases where a CM is hired for the project, all communication shall be through the CM (unless otherwise directed) with copies to the District and Architect. Where

direct communication is necessary between the District and the Contractor, the District's communication shall be through the District's authorized designated person. Architect and/or District Representative shall be the main point of contact and promptly informed and shall receive copies of all written communications. The Contractor shall not rely upon any communications from the District that is not from the District's authorized designee. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

11.5 **Rejection of Work.** In addition to the rights, duties, and obligations of the Inspector under this Agreement, the Architect and/or District Representative may reject Work which does not conform to the Contract Documents. Whenever the Architect and/or District Representative considers it necessary to achieve the intent of the Contract Documents, an additional inspection or testing of the Work may be required in accordance with whether or not such Work is fabricated, installed, or completed. The District may have non-conforming Work removed and replaced. However, neither this authority of the Architect and/or the District Representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect and/or District Representative to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

12. DISTRICT RESPONSIBILITIES

12.1 **District Site Representations.** District warrants and represents that, District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied itself as to the conditions under which the work is to be performed.

12.2 **Partial Default: District's Right to Take Over Work (Two (2) Day Notice to Cure and Correct).** If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the District may provide a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay) Contractor's Partial Default in a specific segregated area of work. The District's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:

- a) Failure to supply adequate workers on the entire Project or any part thereof;
- b) Failure to supply a sufficient quantity of materials;
- c) Failure to perform any provision of this Contract;

- d) Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
- e) Cases of bona fide emergency;
- f) Failure to order materials in a timely manner;
- g) Failure to prepare deferred-approval items or Shop Drawings in a timely manner;
- h) Failure to comply with the Construction Schedule or Update Schedule, meet critical Milestones which would result in a Delay to the Critical Path, or Delay the Substantial Completion Date and the Final Completion Date;
- i) Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.;
- j) Failure to meet the requirements of the American's with Disabilities Act;
- k) Failure to complete Punch List work;
- l) Failure to proceed on an Immediate Change Directive; and
- m) Failure to correct a Notice of Deviation.

12.2.1 If during the two (2) business day period, the Contractor fails to cure and correct the deficiency noted in the notice of Partial Default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including a Termination for Cause as set forth in Article 19.

12.2.2 *Service of Notice of Partial Default with Right to Cure.* A written notice of Partial Default and right to cure under Article 12.2 shall be served by e-mail to the e-mail address provided on the Bid submitted and copied to the Project Superintendent.

12.2.3 *Shortened Time for Partial Default in the Case of Emergencies.* In an Emergency situation, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to cure, if any.

12.2.4 *Shortened Time for Partial Default in the Case of Critical Path Delay.* In the case of critical path delay, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies providing service of written notice of Critical Path Delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the Critical Path and prescribe the length of shortened time to cure, if any.

12.2.5 *Written Notice of Partial Default to be Deducted by Deductive Change Order.* The District shall have the right to determine the reasonable value of the Article 12.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 17.7.

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

13. CONTRACTOR RESPONSIBILITIES.

13.1 Full Time Supervision. Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District representative (including CM in the cases where the District has a CM representative). All Requests for Information shall be reviewed and signed by the Superintendent and Project Manager and responses thereto shall be given to the Superintendent and Project Manager. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent ceases to be in Contractor's employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.

13.2 Replacement or Changing Project Manager. Project Manager shall not be changed except with written consent of District, unless a Project Manager ceases to be in Contractor's employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement Project Manager approved by the District prior to performing additional work. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.

13.3 Contractor's Staff.

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

13.3.2 District reserves the right to assess a one-time fee equal to 25% of the annual, burdened full-time employee salary for any Superintendent or Project Manager that (1) remains Contractor's employee and (2) Contractor removes from the Project without the District's prior written consent.

13.4 Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Contract Documents.

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

13.6 **Discipline.** The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this Article 13, or who creates safety hazards which jeopardize other persons and/or property.

13.7 **Labor and Materials**

13.7.1 ***Contractor to Provide.*** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and Final Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

13.7.2 ***Quality.*** Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other public construction.

13.7.3 ***Replacement.*** Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.

13.8 ***Requests for Information Regarding the Work or the Contract Documents.***

13.8.1 ***Submittal to District and Architect.*** The Contractor may submit to the District and the Architect a written request for information regarding the Work or the Contract Documents (each an "RFI") at any time the Contractor reasonably: i) does not understand any requirement of the Contract Documents relating to the performance of the Work; ii) is not sure or believes that the Contract Documents do not sufficiently detail or describe a portion of the Work; or iii) believes that information or an interpretation of the Contract Documents otherwise is necessary to permit the Contractor to proceed with the Work. The Contractor must provide copies of each RFI to the Project Inspector. The Contractor must submit an RFI sufficiently in advance as will avoid and/or prevent any delays in the Work or any Work by Others. Therefore, the Contractor must review and understand the requirements for each of the various portions of the Work sufficiently in advance of undertaking such portions of the Work so that, if necessary, the Contractor can timely submit an RFI. Each RFI must: i) be in writing on the "Request for Information" form provided by and/or approved in advance by the District"; ii) sufficiently identify the specific portion of the Contract Documents that is the subject of the RFI, including, without limitation, Drawing and detail number, Specification section, page number, *etc.*; iii) describe in reasonable detail what the Contractor does not understand, what the Contractor believes is not sufficiently detailed or provided for, or other matter that is the

subject of the RFI; and iv) describe the Contractor's interpretation or suggested resolution of the matter that is the subject of the RFI.

13.8.2 *Each RFI Must be Submitted Timely and in Good Faith.* The Contractor must submit each RFI in good faith, and must not abuse the RFI process, including, without limitation, by requesting that the District and the Architect provide information that is equally available to the Contractor. The Contractor shall be responsible and liable for any and all costs and/or delays, including, without limitation, costs of additional professional services incurred by the District, arising from any failure by the Contractor to comply with the requirements of submitting RFIs.

13.8.3 *Review and Response to RFI.* The District and/or the Architect may return an RFI to the Contractor for clarification or additional information if the RFI does not set forth information reasonably sufficient for the District and the Architect to fully understand the Contractor's question or issue. The District and/or the Architect will respond in writing to each sufficiently-detailed RFI. The District and/or the Architect will provide copies of the response to an RFI to the Project Inspector. If the response indicates that a change in the Work is required, the change shall be implemented by means of Record of Change.

13.8.4 *Prior to submitting the RFI.* The Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. The Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

13.9 Noise Control. The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. The Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities as well as CEQA mitigation measures further defined in Division 1. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If class is in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, the Contractor shall schedule the performance of all such Work around normal campus hours or make other arrangements so that the Work does not cause such disruption or disturbance. There are specific periods of testing at operational colleges and it is critical that the Contractor control noise during periods of testing. In no event shall the Contractor have a right to receive additional compensation or an extension to the Contract time as a result of any such rescheduling or the making of such arrangements. These controls shall be implemented during site preparation and construction.

13.10 Taxes. The Contractor's Contract Price shall include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable. The Contractor shall pay all applicable Federal, State, local taxes, and any other tax codes that may be applicable on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. The District is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

13.11 Progress Reports. The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the

entire Project, showing percentages of completion and the number and amounts of proposed Work Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District

13.12 Schedule of Values.

- 13.12.1 *Break Down of Schedule of Values.* A detailed Schedule of Values shall be submitted, in accordance with the Contract Documents. The Schedule of Values shall be broken down by Project, site, building, milestone, or other meaningful method to measure the level of Project Completion as determined by the District. The Schedule of Values shall include, but not be limited, to General Conditions, the Subcontractor Costs, the costs for the Submittals, Punch Lists (maximum of 2% of total cost of the work), Commissioning and Start-Up, and Closeout Submittals/As-Builts (minimum of 2% of total cost of the work).
- 13.12.2 *Based on Contractor Bid Costs.* The Schedule of Values shall be based on the costs from Contractor's bid to the District. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.
- 13.12.3 *Largest Dollar Value for Each Line Item.* Identify subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half (1/2) of one percent (1%) of their Contract Price, whichever is less.
- 13.12.4 *Allowances.* Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.
- 13.12.5 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the District.
- 13.12.6 *District Approval Required.* The District shall review all submissions of Schedule of Values received pursuant to this Article 13 in a timely manner. All submissions must be approved by the District before becoming the basis of any payment, including increasing the "Largest Dollar Value for Each Line Item" herein above, at the District's discretion.
- 13.12.7 *General Conditions Daily Rate.* The daily rate shall be calculated by dividing the total general conditions fees by the total contract duration.
- 13.13 Scheduling. Contractor shall reach Substantial Completion and Final Completion pursuant to the CPM Construction as required under Article 9.
- 13.14 As Builts. Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the

allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly. When requested by the District during the Project, Contractor shall provide an electronic copy of the updated as-builts for District use. Refer to Article 13.16 for additional requirements.

- 13.14.1 *Updates.* Contractor shall update As-Built Drawings with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered.
- 13.14.2 *Storage.* The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold Payment Applications pursuant to Article 29.3.
- 13.14.3 *As-Builts at Completion of Work.* Prior to Final Completion of the Work, and prior to and as a condition precedent to Application for Final Payment, the Contractor shall provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the District. Contractor shall certify the As-Builts as a complete and accurate reflection of the actual construction conditions of the Work by affixing a Stamp indicating the Drawings are As-Builts and Certifying Accuracy on the final set of As-Builts. Contractor shall also scan the As-Builts in color and provide a complete PDF copy on a flash drive to the Architect and the District.
- 13.14.4 *Log of Control and Survey Documentation.* Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Builts.
- 13.14.5 *Record Coordinates for Key Items.* Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.
- 13.14.6 *BIM As-Built Drawings.* If BIM is utilized for the Project, then an electronic version of such As-Built Drawings and Annotated Specifications shall be delivered to District (in an acceptable format to District).

13.15 Miscellaneous Obligations of Contractor

- 13.15.1 *District Permit and Other Obligations.* It is expressly understood that the District shall pay for the Project Inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the Bid Proposal is established and not reasonably anticipated at the time the Bid Proposal is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA. (Offsite costs and additional inspection costs)

13.15.2 *Contractor Permit Obligations.* Contractor shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of the Project. Contractor shall also be responsible for arranging and overseeing all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees by District at least one (1) week in advance of when the payment is due. Contractor may either request reimbursement from District for such fees (at direct cost only), or obtain the funds from District prior to paying such fees.

13.15.3 *Protection.* The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.

13.15.4 *Nuisance Abatement.* The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.

13.15.5 *Underground Conditions.* Contractor shall be required to undertake Work at its sole cost for items identified in the Due Diligence Documents provided to Contractor. If Due Diligence documents and information provided to Contractor does not provide notice of the underground condition(s) then the costs for such work shall be added as an Extra pursuant to Article 17.

13.15.6 *Utilities.* The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities, unless noted otherwise in the Contract Documents. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

13.15.7 *Layout and Field Engineering.* All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense, in accordance with the Contract Documents. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

13.15.8 *Cutting and Patching.* Contractor shall do all cutting, fitting, or patching 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 showing upon, or reasonably implied by, the drawings and specifications for the completed structure. All cost caused by defective or ill-timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Architect.

13.15.9 *Documents on the Project Site.* Contractor shall keep a minimum of one copy of all Contract Documents, including addenda, Record of Changes, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a

part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.

- 13.15.10 *Contractor to Bind Subcontractors to the Provisions of this Contract.* Contractor shall ensure that Subcontractors are bound to the same extent as Contractor is bound to District.
- 13.15.11 *Contractor Responsible for Means and Methods.* Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- 13.15.12 *Contractor Responsible for Acts and Omissions of Employees.* Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its subcontractors.
- 13.15.13 *General DSA Compliance.* During the term of Contract, Contractor shall coordinate its services with the District, Architect, Project Inspector, and other parties to ensure that all requirements set forth in the DSA's Inspection Card (Form 152) and any subsequent revisions or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements. Contractor shall take all action necessary as to not delay progress in meeting any DSA requirements. Contractor shall meet any applicable requirements set forth in DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by DSA. Any references to DSA requirements for the Project shall be deemed to include and incorporate any revisions or updates thereto.

13.16 Closeout

- 13.16.1 *All DSA Closeout requirements (See DSA Certification Guide).* Contractor is also specifically directed to Item 3.2 in the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* If any of the conditions noted in Substantial Completion are not met, the Project Inspector, Architect or the District may reject the Contractor's request for Substantial Completion. Rejected, incomplete, or Work for which the District provided Contractor notice was nonconforming are not considered punch list items. The Project Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to reach Final Completion and ensure compliance with the DSA Approved Plans so the Project may reach Final Completion by the Contractor and a final DSA Closeout is

approved. When all Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.

13.16.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List on Project. During the Punch List period Contractor Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within five (5) days after the date the Punch List time ends. If Contractor does not issue such a list, the Owner or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.

13.16.4 *As-Builts Up to Date and Complete.* The intent of this procedure is to obtain an exact “As-Built” record of the Work upon Final Completion of the project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built drawings

- a. The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts
- b. Contractor is liable and responsible for inaccuracies in As-Built drawings, even though they become evident at some future date.
- c. Upon Final Completion of the Work, Contractor shall obtain the Project Inspector’s approval of the “As-Built” information. When completed, Contractor shall deliver corrected sepia and/or a Diskette with an electronic file in a format acceptable to the District.
- d. District may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As-Built Drawing.
- e. Any Work not installed as originally indicated on drawings.

13.16.5 *Submission of Form 6-C.* Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the Construction by Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract Documents.

13.16.6 *Contractor shall be Responsible for All Costs to Certify the Project.* The District may Certify the Project complies with Approved Plans and Specifications by utilizing the procedures under the Project Certification Guide (Located at the DSA website at http://www.documents.dgs.ca.gov/dsa/plan_review_process/project_certification_guide_updated_03-15-13.pdf). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor’s responsibility and the District reserves its right to institute legal action against the Contractor and Contractor’s Surety for all costs to Certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.

13.16.7 *ADA Work that must be corrected to receive DSA certification.* See Article 41.

13.16.8 *Maintenance Manuals.* Submit manuals in accordance with the Contract Documents.

13.17 *Correction of Work: Warranty.* Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under the Contract Documents will be free of faulty materials, equipment, or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning from the date of the Notice to Proceed and ending two (2) years after the date of Final Completion of the Project, as defined in Article 18 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said two (2) year warranty period. This provision does not, in any way, shorten or limit any other warranty(ies) or guarantee(s) that are otherwise provided by manufacture(s) or supplier(s).

13.17.1 *Assignment of Subcontracts.* Upon the end of the Warranty period, Contractor shall assign to the District all subcontracts with subcontractors, material suppliers or other vendors that provided Work for the Project. This assignment shall include all purchase orders and any change orders or addenda that were executed with the assigned subcontractor.

a. *Documents to be Provided to District.* Contractor shall provide the following documents to the District as part of Closeout of the project:

- i. *Subcontractor Warranty.* Contractor shall provide any warranty documents, including warranties consistent with the requirements of this Contract and the Contract Documents. Contractor shall utilize the District's standard form.
- ii. *Contracts.* Contractor shall provide copies of all subcontracts, amendments, change orders and other documents associated with the subcontractor's scope of work and price for work on the Project.
- iii. *Subcontractors Bound to the Same Extent as Contractor.* The Subcontractors shall be bound to the same extent as the Contractor is bound by these General Construction Provisions and Subcontractors shall be required to include assignment of their contracts to the District.

- iv. *Bonds Assignable.* Contractor shall ensure that subcontractor performance and payment bonds are assignable and can be assigned to the District.
- v. *Unconditional Releases.* Contractor shall provide, Unconditional Releases in accordance with the Contract Documents for each Subcontractor and Material supplier that provided Work for the Project.
- vi. *Project Files.* Contractor shall provide the District a copy of the entire subcontractor file, including any submittals or shop drawings that were provided by subcontractor.
- vii. *District Reserves the Right to Assume Subcontractor Contracts Prior to the End of the Warranty Period.* District reserves the right to take assignment of subcontractor contracts prior to the end of the warranty period.

13.18 **Assignment of Anti-Trust Claims.** The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 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 purchase of goods, services, or materials pursuant to the Contract.

13.19 **Submission of Daily Reports.**

13.19.1 **General.** Within twenty-four (24) hours on the following business day, the Contractor shall submit a Daily Report to the Project Inspector and copy the Architect and/or District Representative for the previous day's Work. If there is a Construction Manager, the original daily report is to be provided to the Construction Manager and copies sent to the Architect and/or District Representative and the Project Inspector. Daily Reports shall be prepared on forms approved by the District, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day. The District reserves the right to note inconsistencies or inaccuracies in the daily reports. In such cases, pertinent notes shall be entered by each party to explain points which cannot be resolved that day. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor. The reports shall indicate the following, at a minimum:

- a. A brief description of all Work performed on that day.
- b. A summary of all other pertinent events and/or occurrences on that day.
- c. The weather conditions on that day.
- d. A list of all Subcontractor(s) working on that day,
- e. A list of each Contractor employee and classification on that day and the total hours worked for each employee.
- f. A complete list of all equipment on Site that day, whether in use or not.

- g. A complete list of all materials, supplies, and equipment delivered on that day
- h. A complete list of all inspections and tests performed on that day.

13.19.2 **Failure to Submit Daily Report.** If the Contractor does not submit its Daily Report within twenty-four (24) hours of the close of the prior business day, the Inspector of Record may prepare a Daily Report addressing each of the above items. The cost for the Inspector's services to prepare the Daily Report shall be addressed through a Deductive Change Order.

14. CONTRACT DOCUMENTS AND INTERPRETATIONS

- 14.1 The Contract Documents shall be executed, and/or initialed as appropriate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services, and materials reasonably necessary for the proper execution of the work.
- 14.2 It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.
- 14.3 Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.
- 14.4 Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these General Construction Provisions shall control over the Contract, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

15. SUBMITTALS

15.1 Definitions

- 15.1.1 ***Deferred Approvals.*** Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants deferred approval to the design and detailing of certain elements of the Project at the

request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to access floors; bleachers; elevator guide rails and related elevator systems; exterior wall systems - precast concrete, glass fiber reinforced concrete, etc.; skylights; curtain wall systems; stage rigging; and other systems as noted in the Contract Documents. (Also see Article 15.3 and 15.6).

15.1.2 *Manufactured* applies to standard units usually mass-produced, and "Fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

15.1.3 *Product Data* are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

15.1.4 *Samples* are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

15.1.5 *Shop Drawings* are drawings, diagrams, equipment or product schedules, and other data, specifically prepared for the Work by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work. and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.

15.1.6 *Submittals* is a general term that includes, without limitation, Shop Drawings, Product Data, Schedules and Samples. A Submittal related to a physical item may include a manufacturer's product information and product data including description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.

15.2 Shop Drawings.

15.2.1 *When Shop Drawings Are Required.* Shop drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In some cases, each subcontractor or trade will provide Shop Drawings in a format agreed upon by District.

15.2.2 *Purpose for Shop Drawings.* Shop drawings are the Contractor's manufacturer, subcontractor, supplier, vendor or the Contractor's detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect's design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor's subcontractor's plan for installation or assembly based on the design in the specifications and Contract Documents. The shop drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator's version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer's material specifications, "catalog cut sheets," and other manufacturer's information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect's and Engineer's approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.

15.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all product data from equipment manufacturers.

15.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The shop drawing are not a reproduction of the architectural or engineering drawings. Instead, they must show more detail than the Contract Documents and detail the fabrication and/or installation of the items to the manufacturer's production crew or Contractor's installation crews.

15.2.5 *Shop Drawings Engineering Requirements:* Some shop drawings require an engineer stamp to be affixed on the drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.

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

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

applicable agencies or by the Architect or Architect's consultants shall be Contractor's responsibility. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 9

15.3.1 *DSA Approvals Required Prior to Work.* No work on a deferred approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor's Schedule as required pursuant to Article 9.

15.4 Product Data, Shop Drawings and Samples ("Submittals")

15.4.1 *Information Required with Submittals:* Manufacturer, trade name, model or type number, and quantities. Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the specification and addenda.

15.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.

15.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.

15.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The Contractor should confirm that finish requirements in the specification are being met by the product.

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

15.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the District is utilizing items Standardized or pre-selected by District, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate.

15.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.

15.4.8 *Architect's Review.* The Architect will review the submittals for conformance and return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures.

15.5 Submittal Submission Procedure

15.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements.

15.5.2 *Corrections.* The Contractor shall make all corrections required by Architect, District or CM and shall resubmit, as required by Architect or CM, corrected copies of Submittals until approved. Contractor shall direct specific attention in writing or on resubmitted Submittals to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals are subject to charge to the Contractor pursuant to Article 10.3.

15.5.3 *Approval Prior to Commencement of Work.* No portion of the Work requiring a Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.

15.5.4 *District's Property.* All Submittals, Shop Drawings, computer disks, clash check results, constructability reviews, schedules, annotated specifications, samples and other Submittals shall become the District's property upon receipt by the District or Architect.

15.6 Submittal Schedule / Schedule Requirements for Submittals. Contractor shall provide to the District for review a draft Submittal Schedule, in accordance with the Contract Documents. The Submittal Schedule shall indicate the dates Contractor will provide to the District all Submittals required by the Contract Documents. Once the District approves a Submittal Schedule, that shall be the Submittal Schedule for the Project and Contractor shall comply with all dates therein. In addition, Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor and in compliance with the Contract Documents and the Construction Schedule (see Supplementary Conditions). No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Submittals submitted in accordance with this Article 15 and the Schedule. Each Subcontractor shall submit all Submittals for the review of the District, the Contractor, and the Architect through the Contractor. Failure to provide the submittals by the listed timelines will subject the Contractor to the assessment of Liquidated Damages for failure to meet the Contract

timelines, unless a written extension is requested and approved per section 15.6.1.2. Contractor shall order materials and ensure prices are honored and secured for the Project.

15.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.

15.6.2 It is specifically agreed that submissions of structural steel Submittals shall not be piecemealed (unless some portion is requested separately by the District or Architect), shall provide complete designs, shall be stamped by the Structural Steel subcontractor, Contractor, and Structural Steel Subcontractor's structural engineer at time of submission and as further addressed in this Article 15.

- a. In no case shall the submission of Structural Steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone
- b. Piecemeal Submissions of Submittals. Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete.

15.7 General Submittal Requirements

15.7.1 *Contractor Submittal Representations.* By submitting Shop Drawings, Product Data, Samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

15.7.2 *Contractor Coordination.* By submitting Shop Drawings, Product Data, Samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Submittal:

“[Contractor] has reviewed and approved the field dimensions and the construction criteria and has also made written notation regarding any information in Submittal that does not conform to the Contract Documents. This Submittal has been coordinated with all other Submittals received to date by me as Contractor and this duty of coordination has not been delegated to subcontractors, material suppliers, the Architect, or the Engineers on this Project.

Signature of Contractor and date

15.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, Product Data, Samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent, which is specifically outlined in Contract Documents, except as authorized by the Architect or through an accepted substitution pursuant to Article 16. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Submittal. However, Submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 16, "Substitutions."

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

15.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor.

15.7.6 *Submittals Shall Not Be Used as a Method to Make a Substitution.* Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Submittal, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved plans and specifications, the Contractor is still responsible for the change and the Architect or the District may require the Submittal be revised to properly reflect the approved Contract Documents. The Architect or District may also require that the Contractor bear all costs under Article 10.3 and consequential damages associated with a CCD to revise plans and specifications to accommodate the deviation from approved plans and specifications.

15.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, Product Data, Samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in Submittals or schedules, for proper fitting of the Work, coordination of the differing subcontractor trades and Shop Drawings and Work which is not indicated on the Submittal at the time of. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

16. REQUEST FOR SUBSTITUTIONS

16.1 Whenever in the Contract Documents any designated material, product, thing or service is indicated by specific brand or trade name, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, request a substitution for any

designated material, product, thing or service that shall be substantially equal or better in every respect to designated material, product, thing or service, but Contractor must do so pursuant to the requirements herein and in the Contract Documents. If the material, product, thing or service proposed by Contractor is not, in the opinion of the Architect, substantially equal or better in every respect to that specified, then Contractor shall furnish the designated material, product, thing or service in the Contract Documents without any adjustment to the Contract Price or Contract Time. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Contractor shall not be entitled to request a substitution with respect to such designated materials, products, things or services.

16.2 Request for Substitution Prior to Bid Proposal. District must receive any request for substitution a minimum of five (5) calendar days prior to the date bid proposals are due. Requests received after this time will not be considered. Substitutions shall be submitted in writing only to the District utilizing the form included in the bidding documents. Clearly define and describe proposed substitute product including following items:

- 16.2.1 Fully completed Pre-Bid Substitution Request Form.
- 16.2.2 Manufacturer's printed information supporting claim that proposed product meets specified requirements. Provide following as applicable:
 - a. Literature Specifications Drawings Cut Sheets Performance data
 - b. List of reference projects of similar size, value and complexity Model numbers Other information necessary to completely describe item.
 - c. Provide a point by point comparison between key features of specified Basis of Design item and proposed substitution.
 - d. Provide submitted materials marked with Article and Paragraph references from Specification using highlighter, marker and flags on pages to facilitate review and show that substitution meets specified requirements.
 - e. Provide a letter indicating requestor has reviewed Contract Documents and examined site (if needed) and that proposed substitution meets specified requirements.
 - f. All variations of the proposed substitution from the material specified including, but not limited to, principles of operation, performance criteria, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances, and/or aesthetics if material, product or thing will be exposed.
 - g. Available maintenance, repair or replacement services.
 - h. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs.
 - i. Whether or not acceptance of the substitution will require revisions to the Contract Documents or other changes in the Work (or in work performed by the District or others under Contract with the District).

- j. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitution.

16.2.3 Architect is not obligated to state reasons for rejecting substitution.

16.2.4 Substitute products shall:

- a. Be available in same range of colors, textures, dimensions, gauges, types, and finishes as specified product.
- b. Be equal to specified item in strength, durability, efficiency, serviceability, ease and cost of maintenance.
- c. Be compatible with building design.
- d. Not necessitate design modifications.
- e. Not impose additional work or require changes in work of Prime Contractor, or other Subcontractor, vendor, or materials supplier.
- f. Not add cost to Owner.
- g. Be similar in essential fabrication features.

16.2.5 Reference Standards for Products:

- a. When references to Federal Specification, ASTM Standard, American National Standards Institute (ANSI) or similar association standards are listed for product quality, provide an acceptable affidavit certifying that proposed substitution for this Project meets with same standard.
- b. Submit supporting test data to substantiate compliance.

16.2.6 Contractor, supplier or manufacturer providing accepted substitute product shall bear cost of required modifications to spaces, services, utilities and other features as result of accepting substitute products, including but not limited to:

- a. Larger capacity mechanical or electrical service, devices or utilities resulting from acceptance of product for bidding purposes.
- b. Modification to pipes, conduits, ducts, and controls for conveying, distributing, and controlling those services or utilities.
- c. Modification to insulation, wrappings, coatings, or other integral features of lines or items conveying those lines.
- d. Compatibility of Substitutions: Investigate and document compatibility of proposed substitution with related products and materials. Engage a qualified testing agency to perform compatibility tests recommended by manufacturers.

16.3 Request for Substitution after Award. Refer to Specification Section 016000 Product Requirements and Substitution Procedures for additional information.

16.3.1 If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in an Immediate Change Directive or other applicable Contract modification process. Contractor shall not be entitled to any increase in the Contract Price or Contract Time. The District may, however, require that Contractor execute a deductive change order for any cost and/or time savings.

16.4 No substitutions shall be incorporated into the Project unless and until the requested substitution is approved, in writing, by the Architect and issued via Addendum. The burden of proof as to equality of any material, product, thing or service shall rest solely with the Contractor. The Contractor warrants that if a request for substitution is approved:

- 16.4.1 The proposed substitution is equal or superior in all respects to that specified, and that such proposed substitution is suitable and fit for the intended purpose and will meet or exceed the function, performance and results called for by the designated material, product, thing or service and general design in the Contract Documents;
- 16.4.2 The manufacturer for the substituted material, product, thing or service provides the same warranties and guarantees for the substitution that is provided for the designated material, product, thing or service;
- 16.4.3 The Contractor shall be fully responsible for the installation of the substitution and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitution, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without adjustment to the Contract Price or Contract Time;
- 16.4.4 The Contractor shall be responsible for any re-design costs necessarily incurred by District's acceptance and/or approval of any substitution; and
- 16.4.5 The Contractor shall, in the event that a substitution is less expensive than designated material, product, thing or service, execute a deductive change order crediting the District an amount equal to one hundred percent (100%) of the net difference between the substituted and the originally specified material, product or service.

16.5 In the event Contractor furnishes a material, product, thing or service that is more expensive than that specified, the difference in the cost of that material, product, thing or service so furnished shall be borne solely by Contractor.

16.6 In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay, including without limitation, delay in the: (1) evaluation of any proposed substitution; or (2) acceptance or rejection of any proposed substitution; or (3) ordering, installation, construction or performance of any proposed substitution.

17. WORK MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS)

17.1 No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, Construction Change Document, or order by the Architect for a minor change in the Work as herein provided ("Record of Change"). The Contractor may provide notice to the District, the Architect and the Construction Manager if the Contractor: (i) reasonably believes that the implementation of any Construction Change Document, or Clarification will require an adjustment to the Contract Price and/or Contract Time that is not set forth in a corresponding Change Order or ICD; (ii) reasonably believes that it is entitled to

an adjustment of the Contract Price and/or Contract Time on account of a change required pursuant to a CCD or RFI response; or (iii) reasonably disagrees with the adjustment to the Contract Price and/or the Contract Time, if any set forth in a unilateral Change Order or ICD. Any such notice must set forth in reasonable detail all bases asserted by the Contractor in support of its position that it is entitled to an adjustment of the Contract Price and/or Contract Time, or that any specified adjustment of the Contract Price and/or Contract Time is not adequate. THE CONTRACTOR MUST PROVIDE SUCH NOTICE PRIOR TO COMMENCING ANY WORK OR OTHERWISE IMPLEMENTING THE CCD, RFI RESPONSE, OR ICD, OR WITHIN THREE (3) DAYS OF THE ISSUANCE OF SUCH DOCUMENT, WHICHEVER IS SOONER.

17.2 Consequences of Failure to provide Notice. The purpose of the written notice required pursuant to Article 17.1 is to permit the District to evaluate the Contractor's basis for believing that it is entitled to an adjustment, or a further adjustment, to the Contract Price and/or Contract Time and, as appropriate: (i) order any such adjustment or further adjustment to the Contract Price and/or Contract Time; (ii) order the Contractor to proceed without any adjustment or further adjustment to the Contract Price and/or Contract Time; (iii) modify the Work and/or Project to resolve the matter; or (iv) forego a change in the Work and/or the Project. Therefore, if the Contractor fails to provide such notice prior to commencing any work or otherwise implementing any change pursuant to an applicable Interpretation, Clarification, CCD, unilateral Change Order, or ICD, or fails to provide such notice within three (3) days of the issuance of the Interpretation, Clarification, CCD, unilateral Change Order, or ICD, whichever is sooner, the Contractor shall be deemed and construed to have waived any and all rights to any adjustment in the Contract Price and/or Contract Time on account thereof. THE GIVING OF AN APPLICABLE NOTICE PURSUANT TO ARTICLE 17.1 SHALL BE A CONDITION PRECEDENT TO THE CONTRACTOR HAVING ANY RIGHT, WHETHER PURSUANT TO A CLAIM FILED IN ACCORDANCE WITH ARTICLE 20 OR OTHERWISE, TO SEEK OR OBTAIN AN ADJUSTMENT (OR FURTHER ADJUSTMENT) OF THE CONTRACT PRICE AND/OR CONTRACT TIME ON ACCOUNT OF AN APPLICABLE INTERPRETATION, CLARIFICATION, CCD, UNILATERAL CHANGE ORDER, OR ICD.

17.3 District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless authorized District representative has approved the cost in writing by a Record of Change. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Record of Change. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 17, all Records of Change shall be prepared and issued by the Architect and/or CM and shall become effective when executed by the authorized District representative, the Architect, and the Contractor.

17.4 Notices of Non-Compliance. Contractor deviation or changes from approved plans and specifications may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Contract Documents, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 17.6 for definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Project Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved plans and specifications may prevent

approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays that are caused by the Contractor's deviation from approved plans and specifications shall be the Contractor's responsibility.

17.5 **Architect Authority.** The Architect will have authority to order minor changes in the Work that do not involve any adjustment in the Contract Price, or an extension of the Substantial Completion Date or Final Completion Date.

17.6 CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)

17.6.1 *Definitions*

a. **Construction Change Document (CCD).** A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved plans and specifications. There are two types of Construction Change Documents: 1) DSA approved CCD Category A (DSA Form 140) for Work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and 2) CCD Category B (DSA Form 141) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required);

b. **Immediate Change Directive (ICD).** An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District, CM (if there is a CM on the Project), and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Price or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Price and Contract Time will be adjusted accordingly.

i. *In the case of an ICD being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 19 or determination of partial default under Article 12.2.*

ii. *If adequate time exists, an ICD may be subject of a Request for Price for pricing and determination if any time that may be required. However, if a Request for Price is not completed, Contractor shall immediately commence Work when an ICD is issued. If the Request for Price is incomplete, it may still be completed to be submitted for Pricing Purposes as long as the PR is submitted within the timeline provided by the PR, or within 10 days following issuance of the ICD.*

iii. *An ICD does not automatically trigger an Article 20 Dispute or Claim. Contractor must timely follow the procedures outlined in Article 20 and this Article 17 where applicable.*

iv. *Refer to the Construction Documents for a copy of the template Immediate Change Directive form.*

- c. Use to Direct Change. An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of an Extra, or a Request for Price. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and 0 time. Contract may prepare an Extra associated with the ICD pursuant to this Article 17. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 19 or take over the Work under Article 12.2.
- d. ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off. In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an acknowledgement by the District that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.
 - i. Contractor Compliance with all Aspects of an ICD. *Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Project Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction of the ICD Work under Article 12.2 or Termination of the Contractor pursuant to Article 19.*
 - ii. Exception in the Case of DSA Issued Stop Work Order. *Contractor must proceed with an ICD even if a CCD has not been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the District.*
 - iii. ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance. *If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor Caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 10.3.*

17.7 Work Modifications. Extra work, a modification, or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Contract Documents (“Work Modifications”).

17.7.1 Cost Components to be Included in All Estimates. The District and/or the Architect may require that reasonable additional or modified cost components or information be included in any necessary cost estimate, but, otherwise, each estimate prepared by the Contractor in response to a Request for Price or in connection with a Change Order Request must include

the following cost components and conform to all associated requirements specified below:

- a. Labor Costs: Itemize all job classifications for labor necessary to complete the proposed change(s), direct hourly wage rates, and the estimated total number of hours in each job classification required to complete the change(s). Separately itemize any employer-paid payroll taxes, insurance, benefits and other costs attributable to such labor. Do not include on-site management, off-site management, supervision and/or administration in this cost component, as the compensation for such costs shall be deemed to be included within the Contractor's general markup.
- b. Materials Costs: Itemize (in sufficient detail to identify) all materials necessary to complete the proposed change(s), quantities required, taxes, and any delivery costs. The amounts itemized in this cost component must be reduced by the full amount of any credits and/or discounts given in connection with obtaining the materials.
- c. Equipment Costs: Itemize all equipment necessary to complete the proposed change(s), hourly costs of rental or operations, and total number of hours required. Separately itemize any rented or leased equipment from any owned equipment. Separately itemize any equipment cost that is based on a per-load amount. Do not include in this cost component any hand tools, equipment with a value of less than \$1,000, or equipment with a daily rental rate of less than \$500, as the compensation for such items shall be deemed to be included within the Contractor's general markup. Also, do not include in this cost component the rental of any equipment if other suitable equipment already is available at the Project Site, unless the use of such equipment would unreasonably delay the Work or any Work by Others.
- d. Contractor Markup: Specify an amount, in no event in excess of twelve and one-half percent (12.5%) of the Labor Costs, Materials Costs and Equipment Costs indicated above, for self-performed work, which shall be deemed and construed to fully compensate the Contractor for overhead, profit and all other direct and indirect costs (other than bond markup) attributable to the proposed change(s), including, without limitation, any and all costs of research; negotiations; preparation of estimates and other documents; insurance; home-office overhead; on-site and off-site supervision; interference, delay, acceleration and other affects on the Work; guarantees; protection facilities; materials handling; supplies; safety equipment; and hand tools, equipment with a value of less than \$1,000, and equipment with a daily rental rate of less than \$500.
- e. Subcontractor Markup: Notwithstanding the foregoing, any portion of the work necessary to complete the proposed change(s) to be performed by any Subcontractor must not include a markup by the Subcontractor in excess of fifteen percent (15%) (fifteen percent (15%) total as well if any tier subcontractor is utilized).
- f. Contractor Markup on Subcontractor: Specify an amount, in no event in excess of five percent (5%), of the total labor, materials and equipment included within such subcontracted work.

g. Bonds and Insurance Markup: Specify an amount, in no event in excess of one percent (1%) of the Labor Costs, Materials Costs and Equipment Costs indicated above, to compensate the Contractor for any additional insurance and bonding costs incurred in connection with the work necessary to complete the proposed change(s). Do not include any such amount if no additional bonding costs will be incurred.

17.7.2 *Format.* All Record(s) of Change to the Contract shall utilize the following format. The most stringent guidelines will apply to all forms.

		<u>EXTRA</u>	<u>CREDIT</u>
(1)	Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(2)	Actual Labor Cost (attach itemized hours and rates)	_____	_____
(3)	Equipment (attach itemized quantity and unit cost plus sales tax)	_____	_____
(4)	Subtotal (1+2+3)	_____	_____
(4a)	Subcontractor Subtotal: Amount of Item (1+2+3) that is Subcontractor-performed work	_____	_____
(4b)	Contractor Subtotal: Amount of Item (1+2+3) that is Contractor Self-Performed work	_____	_____
(5)	Subcontractor Markup: For Subcontractor-performed work: (Subcontractor's overhead and profit not to exceed 15% of Item (4a) above. If sub-tier contractor (of any tier) is utilized to perform scope, overhead and profit for subcontractor and sub-tier (of any tier) shall not exceed 15% of Item (4a) above.)	_____	_____
(6)	Contractor Markup (for Self-performed work): Contractor's overhead not to exceed 12-1/2% of Item (4b) above	_____	_____
(7)	Contractor Markup (on Subcontractor-performed work): Contractor's overhead and profit not to exceed 5% of Item (4a) above)	_____	_____
(8)	Subtotal (4+5+6+7)	_____	_____
(9)	Bond and Insurance Markup (Not to Exceed 1% - 2%).	_____	_____
(10)	Total Change Order Cost	_____	_____

17.7.3 *Discounts and Refunds Deducted from Change Order Costs.* The Contractor must make reasonable efforts to obtain or otherwise secure any and all discounts, rebates, refunds and/or offsets that may be available with respect to materials, equipment and supplies necessary, or no longer necessary, in connection with any change(s) in the Work or other requirements of the Contract. The Contractor must include in each estimate prepared in accordance with this Article 17 any such discounts, rebates, refunds and/or offsets as reasonably may be available. In the case of any change(s) completed on a time-and-materials basis or a unit-pricing basis, the Contractor must document any and all discounts, rebates, refunds and/or offsets as provided in this Article 17.

17.7.4 *Substantiation of Subcontractor Pricing Included in Estimates.* If an estimate includes any work by a Subcontractor of any tier or materials provided by any materialman, the Contractor must furnish to the District and the Architect: (i) a detailed estimate, prepared and signed, as applicable, by the Subcontractor or materialman, of the cost for labor, material, equipment, markup, et cetera; and (ii) such information as reasonably substantiates wage rates, bond premiums or other amounts included in the estimate, including, without limitation, any markup by the Subcontractor.

17.7.5 *Substantiation of Time-and-Materials and Unit-Price Costs.*

- a. *Requirement for Notice.* The Contractor must not commence performance of any portion of the Work authorized to be performed on a time-and-materials basis or a unit-price basis unless the Contractor gives notice at least twenty-four hours in advance to the District and the Project Inspector that such Work will be commencing, so that they may be present during performance of such Work.
- b. *Requirements for Daily Time-and-Materials Tickets.* The Contractor must obtain the Project Inspector's signature on a copy of the "Time-and-Materials Ticket", in a format acceptable to the District, for each day during the performance of the Work, specifying: 1) the identification number assigned to that portion of the Work; 2) the location and description of such Work; 3) the job classifications and names of the workers performing such Work; 4) the materials used in performing such Work; and 5) the equipment used in performing such Work, other than tools and equipment included within the Contractor's general markup. The Contractor must prepare the time and material tickets on a form that is reasonably acceptable to the Architect and that permits the Project Inspector to tear off and retain a copy of the form after signing it. The Contractor must provide copies of the daily time and material tickets to the District and the Architect at least once per week until the Work being performed on a time-and-materials basis or unit-price basis has been fully completed. Upon request, the Contractor must also submit any other relevant information as the District may require, including, without limitation, copies of wage rates as included in certified payroll records, receipts, payment invoices, shipping invoices, bills of lading, etc. If the Contractor fails to provide documentary evidence or other information sufficient to substantiate the amount and/or costs of Work performed on a time-and-materials basis or unit-price basis, the District, in its reasonable discretion, may determine such amounts and/or costs. THE CONTRACTOR MUST PROVIDE WRITTEN NOTICE TO THE DISTRICT AND THE ARCHITECT IF AND WHEN THE COST OF ANY WORK PERFORMED

ON A TIME-AND-MATERIALS BASIS REACHES EIGHTY PERCENT OF ANY MAXIMUM AMOUNT SPECIFIED IN THE APPLICABLE CHANGE ORDER OR IMMEDIATE CHANGE DIRECTIVE.

c. *Requirements for Separate Accounting Records.* If the Contractor performs any Work (whether pursuant to the original Contract, any Record of Change) on a time-and-materials basis or a unit-price basis, the Contractor must adequately document all labor, materials and equipment used and/or consumed in connection with such Work. The Contractor must prepare and maintain separate cost-accounting records, in accordance with generally-accepted accounting standards and principles, for each portion of the Work performed on a time-and-materials basis or unit-price basis, and shall make such accounting records available to the District, the State, and other parties to the same extent as required pursuant to the Contract Documents for other accounting records related to the Work.

17.7.6 The following language shall be included in all Record of Change(s) to the Contract and, if not included, shall be deemed to be part of any such document: *The undersigned Contractor approves the foregoing Work Modification as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for Substantial Completion or Final Completion of the entire work on account of said Work Modification, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Work Modification shall be effective upon approval from the District's Representative. It is expressly understood that the value of such Work Modification, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived. The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.*

17.7.7 Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the Substantial Completion Date or the Final Completion Date; or (iii) constitutes a waiver of any provision in the Contract, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM under Article 20. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within the ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

17.7.8 All costs associated with the Work Modification may be in terms of time, money or both.

17.8 Deductive Change Orders

- 17.8.1 All Deductive Change Order(s) must be prepared utilizing the format included within this Article 17.6.2 setting forth the actual costs incurred. Contractor will be allowed to reduce Profit and Fee portion, returned to the District for a Deductive Change Order, from five percent (5%) to three percent (3%) except in the case of Article 12.2 and 19, where no mark-up shall be allowed.
- 17.8.2 For Unilateral Deductive Change Orders, or where credits are due from Contractor, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect or Project Inspector costs for after hours or corrective services, Work removed from the Contract Documents under Article 12.2 or Article 29.4, the District shall also deduct five percent (5%) for Profit and Fee.
- 17.8.3 District may, at any time, after a Deductive Change Order is presented to Contractor by District for items under Article 12.2 or Article 29.4 or if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a subsequent payment to Contractor.

18. TIME OF COMPLETION

- 18.1 ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL REACH SUBSTANTIAL COMPLETION WITHIN THE CALENDAR DAYS DESIGNATED IN THE SUPPLEMENTARY CONDITIONS AND REACH FINAL COMPLETION WITHIN THE CALENDAR DAYS DESIGNATED IN THE SUPPLEMENTARY CONDITIONS. SAID TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN ARTICLE 9, OR AS OTHERWISE AGREED TO IN WRITING BY THE DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR'S EXTENSION OF CONTRACT SHALL RESULT IN LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM SET FORTH IN THE SUPPLEMENTARY CONDITIONS. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES FOR EXTENDED PERIOD. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.
- 18.2 In case of encountering either unforeseen conditions, Contractor shall notify the District in writing immediately prior to testing or continuing work and no later than seven (7) days following encountering the unforeseen condition. After providing written notice, Contractor shall test and provide District with Test results (unless District chooses to test) and shall proceed with Work based on the Test results. A Record of Change pursuant to Article 17 shall be submitted. All time and expenses shall be verified with the Project Inspector or District Designee either on the day the extra work occurs, but no later than 10 am the following business day. Contractor shall not stop work if unforeseen conditions are encountered.

18.3 Contractor shall within ten (10) calendar days of any delay impact to the critical path in the Work, notify the District in writing of the causes of the delay including documentation and facts explaining the delay. Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Article 18 shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.

18.4 Any request by Contractor for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in accordance with the provisions in the Contract Documents governing "**Work Modifications**." When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the **most current approved** Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. **If the request is not properly substantiated, the District may return the request for time and ask for additional, reasonable substantiation. If Contractor thereafter fails to provide such substantiation within ten (10) days, Contractor waives its right to a time extension.**

18.5 Any claim for delay must include the following information as support, without limitation:

18.5.1 *Duration.* The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

18.5.2 *Logical Ties / Fragnets.* Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.) Include a "fragnet" analysis for the portion of the schedule and the activities the Contractor contends are impacted by the delay.

18.5.3 *Updated Construction Schedule.* A recovery or updated Construction Schedule must be submitted.

18.6 District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District's judgment, the findings of fact justify an extension.

18.7 Extension(s) of time shall apply only to that portion of Work affected by delay and shall not apply to other portions of Work not so affected.

18.8 An extension of time may only be granted if Contractor has timely submitted the updated Construction Schedule as required herein.

18.9 Following submission of a notice of delay, the District may determine whether the delay is to be considered:

18.9.1 Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;

18.9.2 How long the delay continues; and

18.9.3 To what extent the prosecution and Completion of the Work might be delayed thereby.

18.10 Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of its right to assert a claim for a delay.

18.11 Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Construction Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of that request, Contractor shall insert into the then current and updated approved Construction Schedule a "fragnet" analysis representing the event that Contractor claims to result in delay to the critical path as depicted in the updated approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

18.12 Excusable and Compensable Delay(s).

18.12.1 "Adverse Weather" as used in this Article 18 shall mean weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) occurring at the Project site.

18.12.2 Contractor is not entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless all of the following conditions are met:

- a. The District is responsible for the delay;
- b. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;
- c. The delay was not within the contemplation of District and Contractor;
- d. Contractor complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract Documents;
- e. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence;
- f. The delay extends the most current Contract Completion date; and

g. The delay is not concurrent with a Contractor-caused delay or other type of Excusable Delay.

18.12.3 In accordance with California Public Contract Code section 7102, if the Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, the "Work Modifications" section and the percentages in the "Format" subsection thereof.

18.12. Excusable and Non-Compensable Delay(s)

18.12.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:

- a. Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence, and
- b. Actually extended the most current Project Completion date.

18.12.2. Excusable Delays and claims for excusable delays from the performance of any obligation imposed in the Contract Documents shall only be for the period and only to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of unforeseen delays caused by a governmental restriction, law, or other order by a governmental agency or governmental entity preventing performance of the Work, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts. Any such interference with the performance of the Work under this Article shall not be a default hereunder or a grounds for termination. Any delay to the Work associated with COVID-19, or any derivative or similar strain thereof, or any governmentally declared pandemic or similar public pestilence declared by any federal, state, or local order relating thereto, shall not be considered a basis for an excusable delay Force Majeure event unless it renders Contractor's performance impossible, and that event was not reasonably foreseeable at the time of the execution of the Contract.

18.13. Contractor is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or other approvals from the Division of the State Architect, the

Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

18.14. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Construction Schedule or the most recent updated approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

18.15. Computation of Time / Adverse Weather

18.15.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor within five (5) calendar days of the Adverse Weather event, and only if all of the following conditions are met – thereby making the resulting delay an Excusable Delay.

- a. The weather conditions constitute Adverse Weather, as defined herein and further specified in the Supplementary Conditions;
- b. Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;
- c. The Contractor's crew is dismissed as a result of the Adverse Weather; and
- d. The number of days of delay for the month exceed those indicated in the Supplementary Conditions.

18.15.2. A day-for-day extension will only be allowed for those days in excess of those indicated in the Supplementary Conditions.

18.15.3. The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

18.15.4. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

18.16. Unexcused Delay(s) – Liquidated Damages

18.16.1. Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the “Excusable and Compensable Delay(s)” or the “Excusable and Non-Compensable Delay(s)” sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

18.16.2. Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall forfeit and pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Agreement for each calendar day of delay in Completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

18.16.3. Contractor shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

18.17. Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials.

18.18. Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, in addition to Rain Days that exceed the Rain Days agreed to herein, provided such delays are not caused by Contractor's or any subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays.

18.19. District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the Substantial Completion Date or the Final Completion Date. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any subcontractors or materialmen of any tier, or their officers, employees or agents.

19. TERMINATION AND SUSPENSION

19.1 District's Right to Terminate Contractor for Cause

19.1.1 **Grounds for Termination.** The District, in its sole discretion, may terminate the Contract and/or terminate the Contractor's right to perform the work of the Contract based upon the following:

- a. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
- b. Contractor fails to complete said Work within the time specified or any extension thereof, or
- c. Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- d. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days; or
- e. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- f. Contractor persistently or repeatedly refuses fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- g. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- h. Contractor persistently disregards laws, or ordinances, or instructions of District; or
- i. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- j. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

19.1.2 **Notification of Termination**

- a. Upon the occurrence at District's sole determination of any of the above conditions, District may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of District's termination of this Contract and/or the Contractor's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within twenty (20) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the Contractor's right to perform the Work shall cease and terminate. Upon termination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.

- b. Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:
 - i. Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to takeover and perform this Contract; and
 - ii. Commences performance of the Contract within seven (7) days from date of serving of its notice to District.
- c. If Surety fails to notify District or begin performance as indicated herein, District may takeover the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in the Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.
- d. **Conversion to Termination for Convenience.** In the event the Contract is terminated under this "District's Right to Terminate Contractor for Cause" section and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the District's exercise of its rights under this section was defective, deficient, ineffective, invalid or improper for any reason, the termination shall be deemed a termination for convenience of the District under the "Termination of Contractor for Convenience" section herein and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with the "Termination of Contractor for Convenience" section herein.

19.1.3 Effect of Termination

- a. Contractor shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. Contractor and its Surety shall be liable upon the performance bond for all damages caused the District by reason of the Contractor's failure to complete the Contract.
- b. In the event that the District shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the District shall not be liable nor account to the Contractor in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in

connection with the Work.

- c. In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor or any impact or impairment of Contractor's bonding capacity.
- d. If the expense to the District to finish the Work exceeds the unpaid Contract Price, Contractor and Surety shall pay difference to District within twenty-one (21) days of District's request.
- e. **Assignment and Assumption of Subcontracts.** District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Contractor shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Contractor. Contractor must include this assignment provision in all of its contracts with its Subcontractors.
- f. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

19.2 Emergency Termination of Public Contracts Act of 1949

- 19.2.1 The Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.
 - a. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.
 - b. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination

of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

19.2.2 Compensation to the Contractor shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted Schedule of Values, that price shall control. District, in its sole discretion, may adopt the Contract Price as the reasonable value of the Work performed or any portion thereof.

19.3 Termination of Contractor for Convenience. District in its sole discretion may terminate the Contract upon three (3) days written notice to the Contractor. Under a termination for convenience, the District retains the right to all the options available to the District if there is a termination for cause. In case of a termination for convenience, Contractor shall have no claims against the District except:

19.3.1 The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

19.3.2 Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all Contractor's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience.

19.4 Suspension of Work

19.4.1 District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. When the District resumes the Project, the Parties will attempt to negotiate an adjustment in the Contract Price for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted Contract Price, the District may terminate the Contract as permitted herein.

19.4.2 In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

19.5 Scope Reduction. In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order

to reduce scope of work or perform work with other forces or its own forces.

20. RESOLUTION OF CONTRACT CLAIMS

20.1 Exclusive Remedy.

- 20.1.1 Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").
- 20.1.2 Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Substantial Completion Date or the Final Completion Date or the Contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.
- 20.1.3 To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

20.2 Performance during Claim Resolution Process. The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.

20.3 Waiver. If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and District mutually agree in writing to other time limits.

20.4 Intention. The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

20.5 Other Provisions. If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

20.6 Claim Presentation.

20.6.1 Claim: A “Claim” as used herein is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by registered mail or certified mail return receipt requested for:

- a. An extension to the Substantial Completion Date or the Final Completion Date, including relief from damages or penalties assessed by the District for delay;
- b. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or
- c. Payment that is disputed by the District.

20.6.2 A Proposed Change Order “PCO” may be a Claim, but the Parties agree that a PCO shall only be a Claim if:

- a. The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or
- b. The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the District rejected.

20.7 Subcontractors.

20.7.1 Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

20.7.2 Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney’s fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

20.7.3 Contractor Must Timely Identify, Present and Document Any Claim

- a. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten

(10) calendar days from the date Contractor discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should be an adjustment of the Contract Price or the Substantial Completion Date or the Final Completion Date. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

- i. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;
- ii. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or the Substantial Completion Date or the Final Completion Date adjustments; and
- iii. Identify in detail line-item costs if the Claim seeks money.
- iv. If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having a Project Inspector verify the performance of alleged extra work on a daily basis).
- v. If the Claim involves an error or omission in the Contract Documents:
 1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
 2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.
- vi. Contractor shall not be entitled to compensation for escalation of materials costs unless Contractor demonstrates to the satisfaction of

the District that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Contractor, and were not reasonably foreseeable at the time of the award of the Contract. Contractor shall provide evidence to District of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Contractor timely ordered the materials at issue.

b. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

c. A Claim that asserts an effect on any schedule milestones and/or the Substantial Completion Date or the Final Completion Date shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or the Substantial Completion Date or the Final Completion Date.

20.7.4 Certification. Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit.***" The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor

20.7.5 District's Written Statement/Decision on Claim. The District shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) days of receipt of the written Claim from the Contractor, or three (3) days after the District's first regular governing board meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

20.7.6 Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim

a. FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.

b. **Where There Is No Contract:** If there is no agreement between Contractor and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District

staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.

- c. **Where There Is Partial Contract:** If Contractor and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.
- d. **Meet and Confer Conference.** District and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) days after Contractor's demand.
- e. **District's Written Decision.** Within ten (10) business days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
 - i. If the District's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.
 - ii. If the District rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
 - iii. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

20.7.7 Mediation.

- a. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Project Inspector, and/or other District consultants.
- b. The District and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

20.7.8 Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's

obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

20.7.9 Post Mediation Provisions.

- a. Claims of \$375,000 or Less: The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.
- b. Litigation of Claims in Excess of \$375,000. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

20.7.10 The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.

20.8 Documentation of Resolution. If a Claim is resolved, the District shall determine if that resolution shall be documented in a Contract and Release of Any and All Claims form or other document, as appropriate.

20.9 Claim Resolution Process – Non-Applicability. The procedures and provisions in this Claims Resolution section shall not apply to:

- 20.9.1 District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;
- 20.9.2 District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the

mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

- 20.9.3 Personal injury, wrongful death or property damage claims;
- 20.9.4 Latent defect or breach of warranty or guarantee to repair;
- 20.9.5 Stop notices or stop payment notices; or
- 20.9.6 Any other District rights as set forth herein.

20.10 The District's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

20.11 If District fails timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

21. MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS

- 21.1 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 Contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after the District makes the final payment to the Contractor under the Contract, excluding those funds properly retained or withheld from Contractor pursuant to the Contract or applicable law. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.
- 21.2 District Audit. Contractor, through execution of the Contract, also agrees the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. The purpose of this Audit is to quickly and efficiently resolve disputes based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information. The District shall perform any audits at its own cost and any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Change Orders, Response to Request for Proposals, Claims, Appeal of Claims, or other requests for payment the Auditor shall report the results of the Audit findings to the District and provide a copy to the Contractor after giving the District Board the opportunity for at least 10 days review. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in the manner set forth under Article 20.
- 21.3 Failure to Produce Books or Records. If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note

this refusal in the results of the Audit findings for further evaluation by the District and the District's Board. The refusal to release records that are concerning monies associated with the Project may be used as a grounds to Debar the Contractor from future Projects for failure to preserve records under this Article 21 and the failure to produce required audit records may also be used as a grounds for a negative finding against the Contractor depending on the significance of the records that are withheld by Contractor. Failure to produce Job Cost Data tied to Job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce daily time records (prepared at or near the time of the Work actually took place shall be presumed an intentional failure to produce key audited records.

21.4 Inefficiency, Acceleration or Delay Claims. If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original bid tabulation utilized in submitting Contractors bid for the Project. This document shall be considered confidential and shall not be subject to disclosure through a Public Records Act and shall not be distributed to anyone other than the District and the District's counsel. This bid tabulation shall only be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial. If the records for the bid tabulation are kept on a computer, the Contractor shall also produce all metadata (in native format) that accompanies the bid tabulation for inspection to prove the authenticity of the underlying bid tabulation. Failure to produce the bid tabulation for review of inefficiency, home office overhead, or unanticipated increased costs due to delays or accelerations shall be considered material evidence that the bid tabulation was not favorable to the Contractor. This evidence shall be entered as a jury instruction for trial that the bid tabulation was not produced and the bid tabulation information was unfavorable to the Contractor. The evidence may also be used in Debarment Proceedings, and noted as an exception to an Audit Findings.

21.5 Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to Audit Findings and if either there is no Dispute of the Audit findings under this Article 21 or if the result after utilizing the Disputes Clause confirms the Audit findings, the District may seek any Savings that have not been accounted for with District and may also seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims.

21.6 Ownership of Drawings. Notwithstanding any provision of the Contract, all drawings, specifications, and copies thereof furnished by District are the property of the District and/or Architect pursuant Contract requirements between the District and Architect. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a Copyright in the Drawings, Specifications, and other documents prepared by the Architect. All copies except the Contractor's record set, shall be returned or properly accounted for upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work. The District and/or Architect hereby grants the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings, Specifications, and other documents prepared for the Project in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the District's property interest or other reserved right.

22. PREVAILING RATES OF WAGES; RECORDS, APPRENTICES

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

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

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

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

22.4 **Per Diem Wages.** The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

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

23. RECORDS OF WAGES PAID

23.1 **Payroll Records**

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

23.1.2 All payroll records shall be certified and submitted electronically directly to the Labor Commissioner/Compliance Monitoring Unit and to the with each application for payment, but shall not be submitted less than once per month. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

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

23.1.5 A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Article 23.1.4 above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

23.1.6 If a request for inspection of a certified copy payroll records is made through the District, the Contractor and/or Subcontractors shall have 10 days to comply following receipt of a written notice from the District requesting the certified payroll records described in Labor Code section 1776. If the Contractor or any Subcontractor fails to comply within this 10-day period, the District shall notify the Division of Labor Standards enforcement who may request penalties be withheld from progress payments then due as described in Article 23.1.11 below.

23.1.7 Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(C), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

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

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

to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

- 23.1.10 The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- 23.1.11 The Contractor or Subcontractor(s) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from Payment Applications then due.
- 23.1.12 Responsibility for compliance with this Article 23 shall rest upon the Contractor.

23.2 Withholding of Contract Payments & Penalties

- 23.2.1 The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:
 - a. The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
 - b. The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
 - c. The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
 - d. The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
 - e. The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

24. APPRENTICES

- 24.1 Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the

Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

24.2 **Employment of Apprentices.** Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article 24 means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.

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

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

24.5 **Prime Contractor Compliance.** The responsibility of compliance with Article 13 and §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article 24 or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.

24.6 WHEN DETERMINING BID PROPOSAL, CONTRACTOR SHALL INCLUDE TO THE EXTENT POSSIBLE ANTICIPATED GENERAL PREVAILING WAGE RATES FOR THE TIME WHEN WORK ON THE PROJECT WILL ACTUALLY BE PERFORMED.

25. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS AND REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS

- 25.1 The Contractor or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.
- 25.2 This Project is a public works project. Each Contractor bidding on this Project and all Subcontractors performing any portion of the Work must comply with the requirements of Labor Code Sections 1725.5 and 1771.1.
- 25.3 Each Contractor and all Subcontractors performing any portion of the Work must register with the California Department of Industrial Relations (“DIR”). The DIR’s website is <http://www.dir.ca.gov>. Proof of such registration must be provided to the District.

26. HOURS OF WORK

- 26.1 Eight (8) hours of work shall constitute a legal day’s work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- 26.2 Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. (“Regular Working Hours”), however nothing herein shall prevent Contractor from working weekends and after class hours in order to reach the Substantial Completion Date or the Final Completion Date so long as not otherwise prohibited by law or local ordinances or regulations.
- 26.3 Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the Bid Proposal, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Work Modifications.
- 26.4 *Permissive Work Outside of Regular Working Hours.* If the Contractor desires to perform any portion of the Work on, at or in the vicinity of the Project Site on any days or at any times other than during Regular Working Hours, or for more than eight working hours per day, the Contractor must obtain the written consent of the District, the Project Inspector and/or any special inspector, and, if necessary, any city, County and other governmental agencies having competent jurisdiction. The Contractor may request such consent for the Contractor’s convenience, including, without limitation, because the Contractor desires to accelerate the

Work in order to comply with requirements of the Construction Schedule. The Contractor shall be responsible for paying any and all additional or increased management, supervision, inspection and other costs incurred by the District attributable to: (i) the Contractor performing any of the Work on, at or in the vicinity of the Project Site on any days or at any times other than Regular Working Hours, or for more than eight working hours per day, based on consent obtained as required herein; (ii) the Contractor performing any Work at a location that is not on, at or in the vicinity of the Project Site on any days or at any times other than Regular Working Hours; or (iii) the District requiring that the Contractor perform any of the Work on any days or at any times other than Regular Working Hours for any reason that is the fault of, caused by, or otherwise the responsibility of, the Contractor. Any such amounts payable by the Contractor shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

27. PAYROLL RECORDS

- 27.1 This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit (“CMU”) within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq.
- 27.2 The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the Labor Commissioner/Compliance Monitoring Unit in accordance with Labor Code §1771.4 and Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://www.dir.ca.gov/public-works/publicworks.html> and follow the instructions to enroll in DIR’s eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
- 27.3 The CMU may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site (“On-Site Visits”). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.
- 27.4 Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- 27.5 Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and

Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to CMU@dir.ca.gov.

28. PROTECTION OF PERSONS AND PROPERTY

- 28.1 Contractor and subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its subcontractors.
- 28.2 Contractor has been advised and is aware that District limits the use of tobacco products on the construction site, including smokeless tobacco. Contractor shall be responsible for the enforcement of District's tobacco policy among all Contractor's employees and subcontractors while on District property. Contractor understands and agrees that should any employee or subcontractor of Contractor violate this policy, after having already been warned once for violating District's tobacco policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- 28.3 Contractor shall take all steps necessary to ensure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Contractor shall also prevent its employees or subcontractors' employees from bringing any animal onto the Project. The Contractor shall not violate any written District or campus policies.
- 28.4 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until Final Completion and final acceptance by District.
- 28.5 Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards or regulations.

Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

- 28.6 In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 28.7 Contractor shall provide heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- 28.8 Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- 28.9 In the event Contractor is required to access District's computer system or network in the performance of the Contract, Contractor shall provide 48-hours advance notification to District. In the event such access infects District's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, Contractor agrees to indemnify District and pay for any and all losses, damages and expenses incurred by District to remedy any such infection.
- 28.10 All persons working for the Contractor and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.
- 28.11 Trenches.
 - 28.11.1 The Contractor shall submit to the District, in advance of excavation, 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 any trench or trenches five feet or more in depth. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
 - 28.11.2 All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
 - 28.11.3 Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

28.11.4 No Excavation Without Permits. The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

28.11.5 The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA.

28.11.6 No Tort Liability of District. Pursuant to Labor Code section 6705, nothing in this Article 28 shall impose tort liability upon the District or any of its employees.

28.11.7 Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Conditions

- a. Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the Surface, the Contractor shall immediately, but in no case longer than two (2) Business Days, 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 differing 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.
- b. 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 herein.
- c. In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided by the Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and proposed change order provisions of the Contract Documents. Contractor's failure to submit a proposed change order pursuant to the terms of the Contract Documents shall be deemed a waiver of Contractor's right to an adjustment of the Contract Price or Contract Time.

28.12 Contractor shall (unless waived by District in writing):

- 28.12.1 When performing construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the academic routine before, during, or after hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular activities.
- 28.12.2 Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
- 28.12.3 Provide substantial barricades around any shrubs or trees indicated to be preserved.
- 28.12.4 Deliver materials to building area over route designated by District.
- 28.12.5 Take preventive measures to eliminate dust.
- 28.12.6 Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
- 28.12.7 Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
- 28.12.8 Not allow personal radios on the work site
- 28.12.9 Where the Project involves work at an operating campus, inform and take such preventive measures necessary to ensure that all employees, subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- 28.12.10 Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- 28.12.11 Contractor shall require that subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its subcontractors. All subcontractors and material or

equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty-four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.

- 28.12.12 Contractor and subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.
- 28.12.13 Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- 28.12.14 Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.
- 28.12.15 Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract 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 28. Any person in the employ of Contractor or subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District.

- 28.13 Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.
- 28.14 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Final Completion and final acceptance by District. Contractor shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

29. PAYMENT APPLICATIONS

- 29.1. Contractor acknowledges the Contract Price as stated in the Contract and, including authorized adjustments, is the total amount payable by the District to the Contractor for performance of the

Work pursuant to the Contract Documents. If all or a portion of the Project is being funded by funds requiring approval by the State Chancellor's Office, payment may be subject to that approval being received and funds released by the California State Chancellor's Office and California Department of Finance.

29.2. Not before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for Work completed in accordance with the Schedule of Values. Each Application for Payment shall be supported by the following or each portion thereof unless waived by the District in writing:

- 29.2.1. The amount paid to the date of the Application for Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- 29.2.2. The amount being requested under the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- 29.2.3. The balance that will be due to each of such entities after said payment is made;
- 29.2.4. A certification that the As-Built Drawings and annotated Specifications are current;
- 29.2.5. Itemized breakdown of work done for the purpose of requesting partial payment;
- 29.2.6. An updated and acceptable construction schedule in conformance with the provisions herein;
- 29.2.7. The additions to and subtractions from the Contract Dollars and Contract Time;
- 29.2.8. A total of the cumulative retention withheld prior to the current Application for Payment, and that to be withheld under the current Application for Payment (5% of the current Application for Payment);
- 29.2.9. Verified material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;
- 29.2.10. The percentage of completion of the Contractor's Work by line item;
- 29.2.11. Schedule of Values updated from the preceding Application for Payment;
- 29.2.12. A duly completed and executed "Conditional Waiver and Release on Progress Payment" compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current Application for Payment;
- 29.2.13. A duly completed and executed "Unconditional Waiver and Release on Progress Payment" compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the Application for Payment from sixty (60) days prior; and
- 29.2.14. A certification by the Contractor of the following:
 - a. The Contractor warrants title to all Work performed as of the date of this Payment Application. The Contractor further warrants that all Work performed as of the date of this Payment Application is free and clear of

liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

- 29.3. If requested by the District, a third party, or as required by the California Department of Industrial Relations, all requested or required certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.
- 29.4. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment that, at the time of the Contractor's submittal of an Application for Payment, has/have not been incorporated into and made a part of the Work.
- 29.5. Contractor shall be subject to the False Claims Act set forth under Government Code section 12650 et seq., for information provided with any Application for Progress Payment.
- 29.6. Upon receipt of a Payment Application, District shall act in accordance with the following:
 - 29.4.1. Each Payment Application shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Payment Application is a proper Payment Application.
 - 29.4.2. Any Payment Application determined not to be a proper Payment Application suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A Payment Application returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Payment Application is not proper. The number of days available to the District to make a payment without being subject to any applicable statute regarding prompt payment or interest accrual, shall be reduced by the number of days by which the District exceeds this seven-day return requirement.
 - 29.4.3. An approved Payment Application shall be considered payable if funds are available for payment after the deduction of amounts allowed by law and/or pursuant to the section herein entitled "Reasons to Withhold Payment."
- 29.5. The District's review of the Contractor's Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:
 - 29.5.1. Observation of the Work for general conformance with the Contract Documents,
 - 29.5.2. Results of subsequent tests and inspections,
 - 29.5.3. Minor deviations from the Contract Documents correctable prior to Completion, and
 - 29.5.4. Specific qualifications expressed by the Architect.

- 29.6. Subject to the provisions set forth in the Contract, each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to ninety-five percent (95%) of undisputed and properly substantiated amounts in the Payment Application associated with the construction service work performed up to the last day of the previous month, less aggregate of previous payments and less retention. If all of the necessary information is submitted and accurate (including the schedule of values), District shall pay such payments within thirty (30) days after the District's approval of the payment application.
- 29.7. The parties agree that the District may, in its sole and absolute discretion, decrease any and all remaining Payment Applications for Project scope of work to a fixed amount, after such work has reached Substantial Completion Date or Final Completion, and still allow for Work Modifications as may be agreed upon by the parties pursuant Section 9 hereof for minor work added to the Project's additional scope of work. Payment Applications shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed 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 release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment.
- 29.8. Contractor shall not be entitled to have any payment processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from Payment Applications 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied.
- 29.9. Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.
- 29.10. Notwithstanding anything to the contrary stated above, the Contractor may include in its Payment Application the value of any structural steel, glue laminated beams, trusses, bleachers and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:
 - 29.10.1. The aggregate cost of materials stored off-site shall not exceed Twenty-Five Thousand Dollars (\$25,000) at any time or as otherwise agreed to by the District in writing;
 - 29.10.2. Title to such materials shall be vested in the District as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;
 - 29.10.3. With each Payment Application, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

29.10.4. The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;

29.10.5. Representatives of the District shall have the right to make inspections of the storage areas at any time; and

29.10.6. Such materials shall be 1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District; 2) specifically marked for use on the Project; and 3) segregated from other materials at the storage facility.

29.11. Reasons to Withhold Payment. The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required by Article 9.4 cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

- 29.11.1. Defective Work not remedied;
- 29.11.2. Stop Payment Notices or other liens served upon the District;
- 29.11.3. Liquidated damages assessed against the Contractor;
- 29.11.4. The cost of Substantial Completion and Final Completion of the Contract if there exists reasonable doubt that the Work cannot be completed for the unpaid balance of any Contract Price or by the Substantial Completion Date or the Final Completion Date, as applicable;
- 29.11.5. Damage to the District or other contractor;
- 29.11.6. Unsatisfactory prosecution of the Work by the Contractor;
- 29.11.7. Failure to store and properly secure materials;
- 29.11.8. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, Shop Drawings, Submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Documents, and verified reports;
- 29.11.9. Failure of the Contractor to maintain As-Built drawings;
- 29.11.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 29.11.11. Unauthorized deviations from the Contract Documents (including but not limited to Unresolved Notices of Deviations (DSA Form 154));
- 29.11.12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and the Substantial Completion Date and/or the Final Completion Date;
- 29.11.13. Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
- 29.11.14. If requested by the District, or the failure to provide to the DIR, certified payroll records acceptable to the District and the DIR for each journeyman, apprentice, worker, or other

employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;

- 29.11.15. Failure to properly maintain or clean up the Site and failure to correct safety deficiencies.
- 29.11.16. Payments to indemnify, defend, or hold harmless the District;
- 29.11.17. Any payments due to the District including but not limited to payments for failed tests, or utilities changes or permits;
- 29.11.18. Failure to submit an acceptable schedule in accordance with Article 9;
- 29.11.19. Failure to pay Subcontractor or suppliers as required by Article 31;
- 29.11.20. Failure to secure warranties, including the cost to pay for warranties;
- 29.11.21. Failure to pay any royalty, license or similar fees;
- 29.11.22. Failure to provide release from material suppliers or subcontractors when requested to do so;
- 29.11.23. Items deducted pursuant to Article 17.7;
- 29.11.24. Incomplete Punch List items under Article 13.6 which have gone through the Article 12.2 process; or
- 29.11.25. Failure of the Contractor to submit on a timely basis all Closeout documents in a manner and form that is proper, sufficient, and reasonably acceptable to the District, and to not cause a delay in the Substantial Completion, Completion and/or approval of the Project; or
- 29.11.26. Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines imposed therefore against Contractor or District;
- 29.11.27. Payment is delayed due to an audit inquiry by the State, the County Office of Education, the County, or any entity with jurisdiction related to the Project;
- 29.11.28. Allowance(s) that have not been used; and
- 29.11.29. Contractor is otherwise in breach, default or in substantial violation of any provision of the Contract or Contract Documents.

29.12. Prerequisites for First Application for Payment. The following items, if applicable, must be completed before District will accept and/or process Contractor's first payment request:

- 29.12.1. Installation of the Project sign;
- 29.12.2. Installation of field office;
- 29.12.3. Installation of temporary facilities and fencing;
- 29.12.4. Schedule of Values;

- 29.12.5. Contractor's Construction Schedule;
- 29.12.6. Schedule of unit prices, if applicable;
- 29.12.7. Submittal Schedule;
- 29.12.8. Receipt by Architect of all submittals due as of the date of the payment application;
- 29.12.9. Copies of necessary permits;
- 29.12.10. Copies of authorizations and licenses from governing authorities;
- 29.12.11. Initial progress report;
- 29.12.12. Surveyor qualifications;
- 29.12.13. Written acceptance of District's survey of rough grading, if applicable;
- 29.12.14. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 29.12.15. All bonds and insurance endorsements; and
- 29.12.16. Resumes of Contractor's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

29.13. RESERVED

- 29.14. Prerequisites for Final Application for Payment. The following conditions must be fulfilled prior to Final Application for Payment:
 - 29.14.1. A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Contractor, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.
 - 29.14.2. A duly completed and executed "Conditional Waiver and Release on Final Payment" compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the current Payment Application;
 - 29.14.3. A duly completed and executed "Unconditional Waiver and Release upon Final Payment" compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the previous Payment Application; and
 - 29.14.4. The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.
 - 29.14.5. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

29.14.6. Contractor must have completed all requirements set forth under “Closeout Procedures,” including, without limitation, an approved set of complete As-Built Drawings.

29.14.7. Architect shall have issued its written approval that final payment can be made.

29.14.8. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

29.14.9. The Contractor shall have completed final clean up as provided herein.

29.15. Retention

29.15.1. The District shall withhold five percent (5%) from all payments made to Contractor pursuant to any Payment Application.

29.15.2. The retention (5% of the total Contract Price) less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid as follows:

29.15.2.1. After approval of all District required signatures,

29.15.2.2. After the satisfaction of the conditions set forth herein, and

29.15.2.3. Within sixty (60) days following the Completion Date pursuant to Public Contract Code section 7107.

29.15.2.4. No earlier than thirty-five (35) days of the recording of the Notice of Completion by District if a Notice of Completion is recorded by the District.

29.15.3. No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

29.16. **Reallocation of Withheld Amounts.** District may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations as defined in Article 29.3. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The District shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefor.

29.17. **Payment After Cure.** When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

29.18. **No Waiver.** No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract and the Contract Documents. The District may correct or require correction of any error subsequent to any payment.

30. NONCONFORMING WORK

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

30.2 If Contractor does not remove such Work which has been identified by District by written notice as failing to conform to the Contract Documents within a reasonable time, not to exceed forty-eight (48) hours, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, District may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

30.3 *Costs of Erroneous or Non-Conforming Work.* If, at any time during the course of the Work, the Contractor or any Subcontractor performs, or permits the performance of, any portion of the Work that is affected by or relates to any provision of the Contract Documents that the Contractor knows or reasonably should have known: (i) is erroneous, inconsistent, conflicting, ambiguous, omitted, or not sufficiently detailed or explained (including, without limitation, and notwithstanding any approval by the Architect, any materials, equipment, processes or other items for which the designs or Specifications were submitted by or on behalf of the Contractor); or (ii) does not conform with any applicable law, ordinance, code, rule, regulation or other governmental requirement; then the Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction, without increase or adjustment to the Contract Price or the time for performance, if: (i) the work was performed without the Contractor having first notified and/or sought written directive(s) from the District and Architect as required herein; or (ii) the work was performed contrary in any manner to the instructions, Addenda or other written directive(s) of the Architect or District.

30.4 Correction of Rejected / Nonconforming Work. After written notice of any rejected or nonconforming work, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

30.5 District's Right to Takeover Work

30.5.1 If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, including correction of any rejected or non-conforming Work, the District, after forty-eight (48) hours written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

30.5.2 If it is found at any time, before or after Substantial Completion or Completion of the Work, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

- a. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;
- b. That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or
- c. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Unilateral Change Order, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

30.5.3 Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work that is defective or that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

31. SUBCONTRACTOR PAYMENTS

- 31.1 Payments to Subcontractors. No later than ten (10) days after receipt, or pursuant to Business and Professions Code Section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 31.2 No Obligation of District for Subcontractor Payment. The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.
- 31.3 Payment Not Constituting Approval or Acceptance. An approved Application for Payment, a Certificate of Substantial Completion, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work that is not in accordance with the Contract Documents.
- 31.4 Joint Checks. District shall have the right, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the

District. The District may choose to issue joint checks at District's sole discretion and only after all the requirements of that particular district and county are specifically met. Some districts cannot issue joint checks, so the ability to issue joint checks depends on the District and the specific circumstances.

32. SEPARATE CONTRACTS

32.1 Reservation of Rights to have other Contractors on Site. District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such Contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured. Contractor shall not be entitled to seek an extension to the Contract Time if Contractor fails to reasonably cooperate and coordinate with other contractors.

32.2 Notice of Coordination of Work. If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such Contractors, Contractor shall inspect and promptly report to District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other Contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other Contractors prior to its Final Completion. In no event shall the work of such other Contractors be covered by the warranty given by Contractor to the District, nor shall Contractor be required to provide insurance for such work.

33. USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

The Contractor shall be responsible to coordinate its services with the District and its consultants to develop and obtain approval of a Site Safety Plan for the Project meeting the requirements and as set forth in California Fire Code Chapter 33. At a minimum, the Site Safety Plan shall include all information required in California Fire Code section 3303.1.1. Contractor shall note specific requirements set forth in California Fire Code Chapter 33 including, but not limited to, providing a fire watch during non-working hours for new construction that exceed 40 feet in height above the lowest adjacent grade at any point along the building perimeter, providing portable fire extinguishers, etc. All Work on the Project shall be in accordance with Chapter 33 of the California Building Code and California Fire Code, and the approved written Site Safety Plan. No construction activity shall commence on the Site prior to the DSA's approval of the submission of the Site Safety Plan. Any costs and delays by the Contractor for its failure to coordinate its services to develop and obtain approval of the required Site Safety Plan shall be the sole responsibility of the Contractor and shall not be the basis for any type of delay claim or delay-related damages.

34. CLEANING UP

34.1 Contractor's Responsibility to Clean Up.

34.1.1 The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until its Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. At Completion of the Work and portions thereof, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

34.1.2 Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Waste disposal receipts or dump tickets shall be furnished to the Architect and/or CM within five (5) days of request.

34.1.3 Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the project by the District. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.

34.1.4 If the Construction Manager, Architect, or District observes the accumulation of trash, debris, and/or any obstructions in the path of travel the District will give the Contractor a twenty-four (24) hour written notice to mitigate the condition.

34.2 General Final Clean-Up. Upon Final Completion of Work, Contractor shall employ experienced workers or professional cleaners for final cleaning. Clean each surface to the condition expected in a normal, commercial, building cleaning and maintenance program.

34.2.1 Clean interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration;

34.2.2 Clean the Project site. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Sweep paved areas broom clean.

34.2.3 Repair or replace any damaged materials. Replace any chipped or broken glass.

34.2.4 Remove any and all stains.

34.2.5 Remove labels that aren't permanent labels.

- 34.2.6 Clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Remove any glazing compounds
- 34.2.7 Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.
- 34.2.8 Remove temporary film that remains on any hardware, doors or other surfaces.
- 34.2.9 Seal the bottom and tops of all doors
- 34.3 Special Clean-Up. In addition to the general cleaning, the following special cleaning shall be done at the Final Completion of the Work in accordance with the specifications including, but not limited to:
 - 34.3.1 Remove putty stains from glazing, then wash and polish glazing.
 - 34.3.2 Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.
 - 34.3.3 Remove temporary protection and clean and polish floors and waxed surfaces.
 - 34.3.4 Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint
 - 34.3.5 Wipe surfaces of mechanical and electrical equipment.
 - 34.3.6 Remove spots, soil, plaster and paint from tile work, and wash tile.
 - 34.3.7 Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
 - 34.3.8 Vacuum-clean carpeted surfaces.
 - 34.3.9 Remove debris from roofs, down spout and drainage system.
- 34.4 Failure to Cleanup. If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be the responsibility of the Contractor pursuant to Article 12.2 and seek a Deductive Change Order.

35. INSURANCE AND BONDS

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

- 35.1.1 Claims for damages because of bodily injury, sickness, disease, or death of any person, the District would require indemnification and coverage for employee claim;

- 35.1.2 Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- 35.1.3 Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- 35.1.4 Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
- 35.1.5 Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- 35.1.6 Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU Coverage)
- 35.1.7 Claims involving sudden or accidental discharge of contaminants or pollutants.

35.2 Specific Insurance Requirements. Before the commencement of the Work, Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

- 35.2.1 Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000 or Commercial General Liability Insurance which provides limits of not less than:

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

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

The District, Architect and Construction Manager, Inspectors, their directors, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Such insurance coverage shall be primary and non-contributory insurance as respects the District, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers shall be excess of the

Contractor's insurance and shall not be called upon to contribute with it. The insurer shall agree to waive all rights of subrogation against the District, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy that arise from Work performed by the Contractor.

35.2.3 For the General Contractor: Excess Liability Insurance coverage in the amount of \$4,000,000

35.3 Insurance Covering Special Hazards. {RESERVED}

35.4 Miscellaneous Insurances

35.4.1 Fire Insurance on all Work subject to loss or damage by fire. Before the commencement of Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the District.

35.4.2 Workers' Compensation limits as required by the Labor Code, but not less than \$1,000,000 and employers' liability limits of \$1,000,000 per accident for bodily injury or disease.

a. During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance as required under Paragraph 35.7 and in compliance with Labor Code § 3700.

35.5 Subcontractor Insurance Requirements. The Contractor shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under this Article 35 in like amounts. A "Claims Made" or modified "Occurrence" policy shall not satisfy the requirements of Article 35 without prior written approval of the District.

35.6 Additional Insured Endorsement Requirements. The Contractor shall name, on any policy of insurance required under Article 35, the District, Construction Manager, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion, and must state that

coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to this Article 35 must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

35.7 Builder's Risk/ "All Risk" Insurance

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

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

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

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

35.9.1 Certificates and insurance policies shall include the following clause: "*This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.*"

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

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

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

35.10 **Compliance.** In the event of the failure of the Contractor to furnish and maintain any insurance required by this Article 35, the Contractor shall be in default under the Contract. Compliance by the Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.

35.11 **Waiver of Subrogation.**

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

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

35.12 **Performance and Payment Bonds**

35.12.1 ***Bond Requirements.***

a. Unless otherwise specified in any applicable supplemental conditions, prior to commencing any portion of the Work, the Contractor shall furnish separate bonds as follows:

i. **Performance Bond.** A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

ii. **Payment Bond.** A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with the Contract.

b. To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of

the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the District may terminate the Contract for cause.

- c. Cost of bonds shall be included in the Bid and Contract Price.
- d. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

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

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

35.12.4 Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion and cost. Any bonds required by this subsection shall comply with the requirements set forth above.

36. HOLD HARMLESS AND INDEMNITY

36.1 Contractor shall defend, indemnify and hold harmless District, Architect, Construction Manager, Project Inspector, the State of California and their officers, employees, agents and independent contractors (“Indemnitees”) from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind whatsoever (“Indemnity Claims”), in any way arising from, asserted upon, or related to any act, omission, or breach connected with or arising from the progress of Work or performance of any service under the Contract Documents, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. As part of this indemnity, Contractor shall protect and defend, at its own expense, the Indemnified Parties from any legal action including attorney’s fees or other proceeding based upon such act, omission, breach or as otherwise required by this indemnity.

36.2 Contractor, at its own expense, cost, and risk, shall defend any and all Indemnity Claims that may be brought or instituted against the Indemnitees on account of or founded upon any cause, damage, or injury embraced by the indemnity, defense, and hold harmless obligation, including, without limitation, those identified herein, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

36.3 Contractor shall ensure that its contract with each of its subcontractors contains provisions requiring the subcontractors to defend, indemnify and hold harmless the District, Architect, Project Inspector, the State of California to a minimum level as set forth in this Article 36 and consistent with the language of this Article 36.

36.4 The Contractor’s and Subcontractors’ obligation to defend, indemnify and hold harmless the Indemnitees hereunder shall include, without any limitation whatsoever, any and all Indemnity Claims for the following: 1) any damages, injury, sickness, diseases, or death of any person,

and damage or injury to, loss (including theft), or loss of use of, any property; 2) breach of any warranty, express or implied; 3) failure or alleged failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; 4) products installed in or used in connection with the Work; 5) any violations or alleged violations of the Americans with Disabilities Act (“ADA”); 6) any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms; 7) any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement; and 8) alleged patent violation or copyright infringement.

36.5 Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

36.6 The indemnity, defense, and hold harmless obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

37. SUBSTITUTION OF SECURITY

In accordance with Public Contract Code section 22300, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the Contract Documents. At the request and expense of the Contractors, securities equivalent to the amount withheld shall be deposited with the District, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory Final Completion of the Project, the securities shall be returned to the Contractor.

38. TITLE TO WORK

Title to all work completed and in the course of construction paid for by District and title to all materials on account of which payment has been made by District to Contractor shall vest in District pursuant to the applicable provisions of the Contract(s).

39. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION {RESERVED}

40. EQUAL OPPORTUNITY CLAUSE

The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of the Contract and to comply with the provisions of the following laws:

40.1 California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin,

ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- 40.2 Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- 40.3 The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- 40.4 California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation);
- 40.5 Sexual Orientation;
- 40.6 American with Disabilities Act (ADA) (See Article 41); and
- 40.7 Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.
- 40.8 If this is a federally assisted construction contract, during the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

41. SPECIAL NOTICE OF AMERICAN'S WITH DISABILITIES ACT

- 41.1 Some of the requirements in the plans and specifications are meant to comply with the American's with Disabilities Act ("ADA"). The requirements of the ADA are technical in nature and may appear to be minor in nature (i.e. whether a walkway or ramp has a 2% cross-slope). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights Violation and subjects the District to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney's fees required to enforce the ADA violation. As a result of the significant liability and exposure associated with ADA aspects of the Contract, Contractor shall take special care to meet all ADA requirements detailed in the plans and specifications. Failure to comply with ADA rules that results in a Notice of Non-Compliance shall be repaired to meet ADA requirements promptly. In addition, any ADA violations that are not identified by Project Inspector or Architect that are later identified shall be repaired and charged back to the Contractor through a Deductive Change Order.
- 41.2 Indemnification of ADA Claims. ADA claims arising from failure to comply with plans and specifications shall be indemnified, held harmless and defended by Contractor. Further, any withholdings for ADA violations in Article 29.3 shall include potential redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project. This provision shall survive termination or cancellation of the Contract Documents.

42. PATENTS, ROYALTIES, AND INDEMNITIES

The Contractor shall hold and save the District and its 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 the Contract, including its use by the District, except to the extent a method or means was specifically required by the Contract Documents.

43. EXCISE TAX

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 a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the Bid Proposal.

44. PROHIBITED INTERESTS

No official of District and no District representative 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 Project, shall be or become directly or indirectly interested financially in the Contract or 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 the Contract or in any part thereof.

45. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- 45.1 If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with the Contract Documents, and all applicable California law, including the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).
- 45.2 With respect to any District-provided soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract Documents, unless otherwise specifically provided. No representation is made by District that information provided is completely representative of all conditions and materials which may be encountered. Further, no representation is made by District that information provided is solely adequate for purposes of construction. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Contract to be materially different from those reported and which are not customarily encountered in the geographic area of the Project shall be governed by provisions of the Contract for unforeseen conditions.

46. NO ASBESTOS CERTIFICATION

- 46.1 Asbestos Free Installation Certification: Contractor shall execute and submit an “Asbestos Free Materials Certification,” and further, is aware of the following

46.1.1 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 be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

- a. 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).
- b. 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.
- c. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
- d. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

46.1.2 If removal of asbestos containing materials is part of the Project, the 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 that may be incurred by the District shall be borne entirely by the Contractor.

46.1.3 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 Contract the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its 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, risk and liabilities.

47. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in the Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.

48. CONTRACT MODIFICATIONS

No waiver, alteration or modification of any of the provisions of the Contract Documents shall be binding upon either District or Contractor unless the same shall be in writing and signed by both District and Contractor.

49. NOTICES

All communications in writing between District and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed pursuant to the Contract.

50. THIRD-PARTY CLAIMS

Pursuant to Public Contract Code section 9201(b) and (c), District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. District is entitled to recover its reasonable costs incurred in providing such notification.

51. ASSIGNMENT

Except Contractor's responsibility to assign subcontractors and material suppliers to District upon Final Completion and the running of the Warranty Period, Contractor shall not assign or sublet the Contract or any of the Contract Documents, nor shall Contractor assign any monies due or to become due to it hereunder.

52. HEADINGS

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

53. INTEGRATION/MODIFICATION

The Contract represents the entire understanding of District and Contractor as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto. No extrinsic evidence whatsoever shall be admissible to supplement or vary the terms of this completely integrated contract.

54. APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of the Contract shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of the Contract the action shall be brought in a state court situated in the County of Orange, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

55. SUCCESSION OF RIGHTS AND OBLIGATIONS

All rights and obligations under the Contract shall inure to and be binding upon the successors and assigns of the parties hereto.

56. CONSTRUCTIVE OWNERSHIP OF PROJECT SITE AND MATERIAL

Upon commencement of Work, the Contractor becomes the constructive owner of the entire site, improvements, material and equipment on Project site. The Contractor must ensure proper safety and storage of all materials and assumes responsibility as if the Contractor was the owner of the Project site. All risk of loss or damage shall be borne by the Contractor during the Work until the date of Completion. As constructive owner of the Project site, the Contractor must carry adequate insurance in case of calamity and is not entitled to rely on the insurance requirements as set forth in this Contract as being adequate coverage in case of calamity.

SUPPLEMENTARY CONDITIONS

A. Article 8 – Liquidated Damages: Liquidated Damages shall be in the following sum(s) and in accordance with Article 8:

- 1) **Two Hundred Fifty Dollars (\$250)** per day as liquidated damages for each and every day's delay after the Final Completion Date for each phase.

B. Article 9 – Schedule: Construction Schedule for the Project is as follows:

- 1) It is hereby understood that the Contractor will meet the following schedule milestones:
 - a) The Contractor shall provide District:
 - i) Submittal Schedule, for the District's consideration and approval, within **five (5) calendar days from NTP**.
 - ii) Schedule of Values, for the District's consideration and approval, within **five (5) calendar days from NTP**.
 - iii) Proposed Baseline Construction Schedule, for the District's consideration and approval, within **ten (10) calendar days from NTP**. Once approved by the District, this Construction Schedule shall be the baseline Construction Schedule (or "Baseline Schedule") that the Contractor shall follow for the Project and which can only be changed by the written approval of the District as indicated in the Contract Documents.
 - iv) Fully burdened labor rates for each trade within **ten (10) calendar days from NTP** for District review and approval.
 - v) In conjunction with the District, provide a Site Safety Plan for the District's consideration and approval, before the start of construction or within **ten (10) calendar days from NTP**, whichever is first.
 - b) The Substantial Completion Date for the Project shall be **120 calendar days from NTP**.
 - c) The Final Completion Date (or "Completion Date") for the Project shall be **155 calendar days from NTP**.
- 2) It is hereby understood that Governmental Delay for the project is **Five (5) calendar days** and shall only be granted as further described in Article 9.
- 3) It is hereby understood that the Contract Time is **One Hundred Fifty-Five calendar days (155)**; 120 days (Substantial Completion) + 30 days (Final Completion) + 5 days (Governmental Delays).

C. Article 26 - Hours of work:

Forty (40) hours between Monday through Friday 6:00AM to 5:00PM shall constitute a work week at the applicable prevailing wage rate(s);

D. COVID-19 or Other Governmentally Declared Infectious Disease, Pestilence, or Virus Related Provisions Applicable to Contractor's Work

- 1) Contractor shall provide to the District, no later than ten (10) days after issuance of NTP, all protocols and procedures that will be in place during construction to ensure prevention the spread of coronavirus (SARS-CoV-2) or other governmentally declared infectious disease, pestilence or virus. Measures implemented shall at a minimum follow Cal OSHA's Safety and Health Guidance, COVID-19 Infection Prevention in Construction as well as implement the following:
 - a) At any time the Contractor receives notice that one of their employees tests positive for COVID-19 (or any other governmentally declared infectious disease, pestilence or virus) and/or an employee's family member tests positive, Contractor must immediately notify the District Representative.
 - b) Maintain a daily attendance log of all workers and visitors on site.
- 2) Contractor shall be responsible for obtaining and complying with any and all COVID-19 (or any other governmentally declared infectious disease, pestilence, or virus) construction protocols from federal, state, or local entities applicable to the Project.
- 3) Contractor's obligations to provide materials and equipment for the Project and the Project site shall include obtaining and providing personal protective equipment ("PPE") to its employees and that subcontractors to prevent the spread of COVID-19 (or any other governmentally declared infectious disease, pestilence, or virus) or any other similar virus or derivative strain, as well providing adequate site sanitation facilities. The Contract Price includes all such costs.
- 4) Contractor's site safety obligations require Contractor to comply with all applicable federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19 (or any other governmentally declared infectious disease, pestilence, or virus), and or any similar virus or derivative strain. The Contract Price shall include all such costs of compliance.
- 5) Contractor shall ensure that all its employees and its Subcontractor employees comply with all applicable construction site safety requirements, including, without limitation, those related to COVID-19 or any other similar virus or derivative strain. (or any other governmentally declared infectious disease, pestilence, or virus).
 - a) Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.
 - b) Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.
 - c) Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the performance of the Contract and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Contractor's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.
 - d) Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises

where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.