

**NOTICE TO CONTRACTORS CALLING FOR BIDS**  
**COAST COMMUNITY COLLEGE DISTRICT**

NOTICE IS HEREBY GIVEN that the Coast Community College District (“DISTRICT”), acting by and through its Board of Trustees, will receive sealed bids for the award of a contract for the following named Project. Bids will be received up until, but not later than, the bid deadline listed below.

Project Name: **Golden West College Executive Office**  
Bid Number: **2213**  
Advertisement Dates: **April 24, 2026 & May 1, 2026**  
Pre-Bid RFI Deadline: **May 8, 2026 at 2:00PM**  
Bid Deadline: **May 21, 2026 at 2:00PM**

A **MANDATORY** pre-bid job-walk will be held at 7:00AM, May 5, 2026 at Golden West College (15744 Goldenwest Street, Huntington Beach, CA 92647) at the Student Services Center Building #96. Parking permits must be purchased at the expense of the Contractor.

Place of Bid Receipt: All bids shall be submitted electronically via the PlanetBids Vendor portal located on the District Website (<https://vendors.planetbids.com/portal/36722/bo/bo-detail/141202>), including the forms furnished by the District, prior to the bid closing date and time, and results will be available immediately upon the close of bids. Incomplete, inaccurate, or untrue responses or information provided therein by a bidder shall be grounds for the District to reject such submissions for non-responsiveness.

Project Description: The project consists of the renovation of a portion of the second floor totaling approximately 4,509 SF of the (E) Student Services Building and converting this space to administrative offices plus conference room. The work will include selective demolition of interior walls, removal of (E) floor finishes, and ceiling finishes. The space will also include upgrades to mechanical, electrical, technology, fire alarm and fire sprinkler systems. Exterior scope includes upgrades to the existing parking lot. It is anticipated that the Project will commence on June 29, 2026 with an End Date of February 3, 2027. This is a Division of the State Architect (DSA) project.

Each bidder shall be a licensed contractor pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300. The District requires that the bidder possess at the time of bid, and maintain throughout the duration of the Agreement, the following license classification(s):

<b>Bid Package</b>	<b>Trade</b>	<b>License</b>	<b>Engineer’s Estimate</b>
01	General Contractor	B	\$2,250,000

DIR Registration. Each bidder submitting a proposal to complete the work, labor, material, and/or services (“Work”) subject to this procurement must be a Department of Industrial Relations (“DIR”) registered contractor pursuant to Labor Code Section 1725.5. A bidder who is not a DIR-registered contractor when submitting a proposal for the Work is deemed “not qualified” and the proposal of such a Bidder will be rejected for non-responsiveness. Pursuant to Labor Code Section 1725.5, all subcontractors identified in a Bidder’s subcontractors’ list shall be DIR-registered contractors as well.

Prevailing Wage Rate (“PWR”) Monitoring and Enforcement. The Work is subject to payment of the PWR. The Contractor and all Subcontractors of every tier shall pay laborers performing any portion of the Work not less than the PWR established for the labor provided. Pursuant to Labor Code Section 1771.4(a)(4), PWR monitoring and enforcement shall be by the DIR.

More information regarding this project can be found on the PlanetBids Vendor portal listed above. Further inquiries should be directed to the District’s Purchasing Department at [purchasing@ccd.edu](mailto:purchasing@ccd.edu).

## INFORMATION FOR BIDDERS

1. Preparation of Bid Form. Bids shall only be submitted electronically via the Coast Colleges PlanetBids Vendor Portal. No other forms of bid will be accepted. All bid items and statements shall be accurately and thoroughly completed.

2. Form and Delivery of Bids. The bid must conform and be responsive to all Project Documents and shall be submitted electronically via the Coast Colleges PlanetBids Vendor Portal, and the complete bid, together with any and all additional materials as required, shall be electronically submitted to the DISTRICT per the Notice to Contractors Calling for Bids on or before the bid deadline (Public Contract Code Section 20112). **It is the bidder's sole responsibility to ensure that their bid is received prior to the bid deadline.** In accordance with Government Code Section 53068, any bid received after the scheduled closing time for receipt of bids shall be refused. Bid tabulations will be available immediately after the bid closing within the PlanetBids portal. If prequalification of bidders is required by the DISTRICT pursuant to Public Contract Code Section 20111.5, only those sealed bids received from prequalified bidders shall be accepted.

3. Bid Security. Each bid shall be accompanied by a bid security in the form of cash, a certified or cashier's check or bid bond in the amount of not less than ten percent of the total bid price payable to the DISTRICT and shall be given as a guarantee that the bidder, if awarded the contract, will execute the Agreement and all Project Documents within Fifteen working days after notice of intent to award, and will furnish, on the prescribed forms, a satisfactory Faithful Performance Bond in an amount not less than 100% of the total bid price and separate Payment (labor and material) Bond in an amount not less than 100% of the total bid price. It is understood and agreed that should the Bidder fail or refuse to return these documents as required by the DISTRICT, the bid security shall be forfeited to the DISTRICT. If the Bidder elects to furnish a bid bond as its Bid Security, the Bidder shall use the bid bond form included in the Project Documents. **An electronic copy of the completed bid bond must be included with the electronic bid submission, and the original should be retained by the contractor. The original bid bond must be supplied to District within 48 hours upon request. Failure to provide Bid Bond within 48 hours may deem the bidder non-responsive.**

4. Signature. Any signature required on Project Documents must be signed in the name of the Bidder and must bear the signature of the person or persons duly authorized to sign these documents. Where indicated, if the Bidder is a corporation, the legal name of the corporation shall be set forth, together with two signatures: one from among the chairman of the board, or president or vice president of the corporation, and one from among the secretary, chief financial officer, or treasurer of the corporation. Alternatively, the signature of other authorized officers or agents may be affixed, if duly authorized by the corporation. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal if available. Where indicated, in the event that the bidder is a joint venture or partnership, there shall be submitted with the bid certifications signed by authorized officers of each of the parties to the joint venture or partnership, naming the individual who shall sign all necessary documents for the joint venture or partnership and, should the joint venture or partnership be the successful bidder, who shall act in all matters relative to the Project for the joint venture or partnership. If the Bidder is an individual, his/her signature shall be placed on such documents.

5. Modifications. Changes in or additions to any of the bid documents, summary of the work bid upon, alternative proposals, or any other modifications which are not specifically called for by the DISTRICT may result in the DISTRICT'S rejection of the bid as being non-responsive. No oral, telephonic, facsimile, or electronic modification of any of the bid documents will be considered.

6. Inconsistent Bids. In the event that the DISTRICT determines that any bid is unintelligible, inconsistent, or ambiguous, the DISTRICT may reject such bid as being non-responsive.

7. Examination of Site and Project Documents. At its own expense and prior to submitting its bid, each bidder shall examine all documents relating to the Project; visit the site and determine the local conditions which may in any way affect the performance of the work, including the general prevailing rates of per diem wages and other relevant cost factors; familiarize itself with all federal, state, and local laws, ordinances, rules, regulations, and codes affecting the performance of the Work, including the cost of permits and licenses required for the Work; make such surveys and investigations, including investigation of subsurface or latent physical conditions at the site or where work is to be performed, as it may deem necessary for performance of the Work at its bid price; determine the character, quality, and quantities of the Work and the materials and equipment to be provided; and correlate its observations, investigations, and determinations with all requirements of the Project. The Project Documents show and describe the existing conditions as they are believed to have been used in the design of the work and are only provided as information for the bidder. The DISTRICT is not making any warranties regarding said information. The DISTRICT shall not be liable for any loss sustained by the successful bidder resulting from any variance between the conditions and design data given in the Project Documents and the actual conditions revealed during the bidder's pre-bid examination or during the progress of the work. **Bidder agrees that the submission of a bid shall be incontrovertible evidence that the bidder has complied with all the requirements of this provision of the Information for Bidders.**

8. Withdrawal of Bids. Any electronic bid may be withdrawn via the vendor portal at any time **prior** to the scheduled closing time for receipt of bids. The bid security for a bid withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this paragraph, shall be returned. No bidder may withdraw any bid for a period of 60 calendar days after the date set for the opening of bids. The DISTRICT may consent to relieve a bidder of a bid due to mistake following the preparation of a report in writing documenting the facts establishing the grounds for relief. The Bidder must establish all of the following elements for relief to be considered.

1. The mistake was not due to an error in judgement or carelessness in reading the plans and specifications.
2. The Bidder must provide DISTRICT written notice within five days after the opening of the bids, detailing the manner in which the mistake was made
3. The mistake rendered the bid materially different than the Bidder intended it to be.

9. Interpretation of Project Documents. If any bidder is in doubt as to the true meaning of any part of the Project Documents, or finds discrepancies in or omissions from the Project Documents, a written request for an interpretation or correction thereof must be submitted prior to the pre-bid RFI deadline set forth in the Notice to Contractors Calling for Bids Any interpretation or correction of the Project Documents will be made solely at the DISTRICT's discretion and only by written addendum duly issued by the DISTRICT, and a copy of such addendum will be delivered to each bidder known to have received a set of the Project Documents. No person is authorized to make any oral interpretation of any provision in the Project Documents, nor shall any oral interpretation of Project Documents be binding on the DISTRICT. If there are discrepancies of any kind in the Project Documents, the interpretation of the DISTRICT shall prevail. Submittal of a bid without a request for clarifications shall be incontrovertible evidence that the bidder has determined that the Project Documents are acceptable and sufficient for bidding and completing the work; that bidder is capable of reading, following, and completing the Work in accordance with the Project Documents; and that Bidder agrees that the Project can and will be completed according to the DISTRICT's timelines and according to the progress schedule to be submitted by the successful bidder incorporating the DISTRICT's timelines for completion of the Project.

10. Bidders Interested in More Than One Bid. No person, firm, or corporation shall be allowed to make, file, or be interested in more than one bid for the same Work unless alternate bids are specifically called for by the DISTRICT. A person, firm, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders or submitting a bid on the Project.

11. Award of Contract. The DISTRICT reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding process. The award of the contract, if made by the DISTRICT, will be by action of the Board of Trustees and to the lowest responsive and responsible bidder. If two identical low bids are received from responsive and responsible bidders, the DISTRICT will determine which bid will be accepted pursuant to Public Contract Code Section 20117. In the event that an award of the contract is made to a bidder, and such bidder fails or refuses to execute the Agreement and provide the required documents within 15 working days after the notice of intent to award, the DISTRICT may award the contract to the next lowest responsive and responsible bidder or reject all bidders. As a condition of bid, the Bidder consents to the use of the DISTRICT's Standard Contractor Agreement for the Project, without alteration or change.

12. Listing Subcontractors. Each bidder shall submit with their electronic bid a list of the proposed subcontractors on the Project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 et seq.). Pursuant to Labor Code Section 1725.5, all subcontractors identified in the Bidder's subcontractor list shall be DIR-registered contractors. The foregoing notwithstanding, a proposal is not subject to rejection for non-responsiveness when the subcontractors list accompanying the proposal lists any subcontractor who is not DIR registered contractors if the listed subcontractor who are not DIR registered *become* DIR registered within 24 hours of the opening of proposals pursuant to Labor Code Section 1771.1(c)(1-2). If the subcontractors list accompanying the proposal lists any subcontractor who is not DIR registered contractors and the listed subcontractor who is not DIR registered does not become DIR registered prior to the opening of proposals or become DIR registered within 24 hours of the opening of proposals pursuant to Labor Code Section 1771.1(c)(1-2), such proposal is not subject to rejection for non-responsiveness, provided that if the Bidder submitting the subcontractors list with non-DIR registered subcontractors is awarded the contract for the work, the bidder shall request consent of the DISTRICT to substitute another subcontractor for the non-DIR registered subcontractor pursuant to Labor Code Section 1771.1(c)(3), without adjustment of the contract price or the contract time, within 24 hours of the opening of proposals.

If alternate bids are called for and the bidder intends to use different or additional subcontractors, a separate list of DIR registered subcontractors must be submitted for each such alternate bid. If the bidder fails to specify a subcontractor for any portion of the work in excess of one half of one percent of the bidder's total bid, the bidder agrees that it is fully qualified to perform that work and agrees to perform that portion of the work. **ALL SUBCONTRACTOR INFORMATION SHALL BE ENTERED ON THE SUBCONTRACTOR SECTION OF THE ELECTRONIC BID SUBMISSION.** Violation of this requirement (including the procurement of a subcontractor for the Project if no subcontractor is specified) can result in the DISTRICT invoking the remedies of Public Contract Code Sections 4110 and 4111.

13. Contractor's License. If, at the time and date of the bid opening, bidder is not properly licensed to perform the Project in accordance with Division 3, Chapter 9, of the Business and Professions Code and the Project Documents, such bid will be rejected as non-responsive under Public Contract Code Section 3300. Pursuant to Business and Professions Code Section 7028.15, no payment shall be made for work or materials under the Agreement unless and until the Registrar of Contractors verifies to the DISTRICT that the bidder was properly licensed at the time the bid was submitted. Any bidder not so licensed is subject to penalties under the law, the contract will be considered void, and the DISTRICT shall have the right to bring an action against the unlicensed bidder awarded the contract for recovery of all compensation paid under the contract pursuant to Business and Professions Code Section 7031(b). If the license classification specified hereinafter is that of a "specialty contractor" as defined in Section 7058 of the Business and Professions Code, the specialty contractor awarded the contract for this Work shall construct a majority of the Work in accordance with Business and Professions Code Section 7059. The Bidder may not use the contractor license of a third party for this bid.

14. Drug-Free Workplace Certification. Pursuant to Government Code Sections 8350 et seq., the successful bidder will be required to execute a Drug-Free Workplace Certification upon execution of the Agreement. The bidder will be required to take positive measures outlined in the certification in order to ensure

the presence of a drug-free workplace. Failure to abide with the conditions set forth in the Drug-Free Workplace Act could result in penalties including termination of the Agreement or suspension of payment thereunder.

15. Non-collusion Affidavit. In accordance with the provisions of Section 7106 of the Public Contract Code, each bid must be accompanied by a non-collusion affidavit.

16. Escrow Agreement. Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract. At the request and expense of the successful bidder awarded the contract, securities equivalent to the amount withheld as retention shall be deposited with the DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the successful bidder. The DISTRICT retains the sole discretion to approve the bank selected by the successful bidder to serve as escrow agent. Upon satisfactory completion of the Work, the securities shall be returned to the successful bidder. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The successful bidder shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the successful bidder may request the DISTRICT to make payment of earned retentions directly to the escrow agent at the expense of the successful bidder. Also at the successful bidder's expense, the successful bidder may direct investment of the payments into securities, and the successful bidder shall receive interest earned on such investment upon the same conditions as provided for securities deposited by successful bidder. Upon satisfactory completion of the Work, the successful bidder shall receive from the escrow agent all securities, interest, and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300.

The successful bidder who elects to receive interest on monies withheld in retention by the DISTRICT shall, at the request of any subcontractor performing more than 5% of the successful bidder's total bid, make that option available to the subcontractor regarding any monies withheld in retention by the successful bidder from the subcontractor. If the successful bidder elects to receive interest on any monies withheld in retention by the DISTRICT, then the subcontractor shall receive the identical rate of interest received by the successful bidder on any retention monies withheld from the subcontractor by the successful bidder, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the successful bidder elects to substitute securities in lieu of retention, then, by mutual consent of the successful bidder and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by the successful bidder. Public Contract Code Section 22300(d)(1).

The successful bidder wishing to utilize Public Contract Code Section 22300 and enter into an Escrow Agreement shall complete and execute the form Escrow Agreement included in the Project Documents and submit it to the DISTRICT.

17. Copies. The Contractor is required to provide two copies of the Agreement, along with one Faithful Performance Bond and one Payment Bond. The DISTRICT will return one fully executed Agreement to contractor.

18. DIR Registration Verification. A form of DIR Registration Verification (Appendix A) is included with the contract documents. Each bidder shall submit the completed DIR Registration Verification Form executed by a duly authorized officer or employee of the bidder with the bidder's proposal for the work; failure of a bidder to do so will render the proposal non-responsive and rejected. The proposal of a bidder who does not verify to all matters set for in the form of DIR Registration Verification will be rejected for non-responsiveness.

19. Contractor and Subcontractor Compliance. Strict compliance with DIR Registration requirements pursuant to Labor Code Section 1725.5 is a material obligation of the Contractor under the contract documents. The foregoing includes without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all subcontractors of any tier. The failure of the Contractor and all subcontractors of every tier to be DIR registered at all times during performance of the work is a contractor's default of a material obligation of the contractor under the contract documents.

20. Contractor/Subcontractor EMR/Insurance Experience. An Experience Modification Rate ("EMR") is a percentage that compares the payroll and loss history of a company to similar-sized companies within the same industry. An average EMR is considered to be 1.0 (or 100%). In California, EMRs are developed on an annual basis by the Workers' Compensation Rating Insurance Bureau ("WCIRB"). A company can locate their EMR in their Workers Compensation Policy Rating Pages or on an EMR worksheet produced by the WCIRB. If the Contractor needs assistance locating its EMR, the Contractor's insurance broker can assist with this process.

**Please Note:** In **no** instance shall a Contractor or any listed subcontractor have an EMR in excess of 1.35 at time of bid, or in cases of non-listed subcontractors, at the time of subcontract execution, be permitted to work on the Project. A bid submitted by prime contractor or any listed subcontractor with a current EMR of greater than 1.35 will be deemed non-responsive. The DISTRICT requires the production of the most recent three years of EMR data for those contractors or subcontractors who do not have a current qualified EMR based upon loss experience. **PROOF OF CURRENT EMR RATE IN THE FORM OF AN EXPERIENCE MODIFICATION WORKSHEET FROM THE WCIRB MUST BE INCLUDED WITH THE BID SUBMISSION.**

21. Request for Taxpayer Identification Number and Certification (Payee Data Record). The Bidder is required to submit the CCCD Payee Data Record to the DISTRICT.

## **STANDARD BID FORM**

TO: **COAST COMMUNITY COLLEGE DISTRICT** (the “District”), 1370 Adams Avenue, Costa Mesa, California 92626:

The undersigned Bidder, having become familiarized with all of the pertinent documents, including but not limited to the Notice Calling for Bids, Information for Bidders, Bid Form, Bid Security, Designation of Subcontractors Form, Information Required of Bidder, any prequalification forms pursuant to Public Contract Code Section 20111.5, Non-Collusion Affidavit, Equal Opportunity Affirmative Action Statement, Contractor’s Agreement, Workers’ Compensation Certificate, Faithful Performance Bond, Payment Bond, Agreement, Escrow Agreement, Drug-Free Workplace Certification, Change Order Forms, Shop Drawing Transmittal Form, all insurance requirements, Guarantee forms, Contractor’s Certificate Regarding Non-Asbestos Containing Materials, District’s Labor Compliance Program, General Conditions, Special Conditions (if any), drawings, specifications, and all modifications, addenda, and amendments thereto (if any) (hereinafter Project Documents), as well as local conditions which may affect the performance of the work on the Project, hereby proposes and agrees to be bound by all the terms and conditions of the Project Documents.

The undersigned Bidder acknowledges that each individual bid term shall be determined from visiting the work site, reviewing the drawings and specifications and all portions of the Project Documents, and shall include all items necessary to complete the work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the Project, and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work, and the furnishing of tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform and complete the work, all as per the requirements of the Project Documents, whether or not expressly listed or designated.

The undersigned Bidder understands that the District reserves the right to reject any or all bids, and to waive any irregularities or informalities in any bids or in the bidding process. The Bidder agrees that this bid shall remain open and shall not be withdrawn for the period specified in the Information for Bidders.

The undersigned Bidder acknowledges and understands the following: The base bid amount shall be entered directly in the PlanetBids Vendor Portal. The “Base Bid” shall include the project allowance (if any) but should not include any bid alternates. Bidders must provide a proposal price for any alternate bid items set forth in the Project Documents; failure to do so may result in rejection of the Bid Proposal for non-responsiveness. The allowance amount and conditions of use are noted in the Special Conditions.

**BID BOND**

KNOW ALL PERSONS BY THESE PRESENT, that we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, a California admitted surety insurer, are held and firmly bound unto the COAST COMMUNITY COLLEGE DISTRICT (“District”) in the sum of \$\_\_\_\_\_, which is equal to or greater than 10% of the total amount of the Bid that Principal submitted to District for the Project described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

The condition of this obligation is such that Principal has submitted the accompanying Bid dated \_\_\_\_\_, for this Project \_\_\_\_\_; Bid No. \_\_\_\_\_

NOW, THEREFORE, if Principal does not withdraw the Bid within the period specified therein after the opening of the bids, or, if no period be specified, within 60 days after the opening; and if Principal is awarded the contract, and shall within the period specified, or, if no period is specified, within five working days after the notice of award of the contract, or as otherwise requested in writing by District, enter into a written contract with the District, in accordance with the Bid as accepted, and give bonds with good and sufficient surety as may be required for the faithful performance of the contract and for the payment for labor and materials used for the performance of the contract, furnish certificates and endorsements evidencing the required insurance is in effect, and furnish and deliver to District all other documents required by District, then the above obligation shall be void and of no effect; otherwise the bond amount shall be forfeited to District.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract, or the call for bids, or to the work or its specifications to be performed thereunder shall in any way affect its obligation under this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this Bond by District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including reasonable attorney's fees to be fixed by the court.

IN WITNESS HEREOF, the parties have executed this Bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

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Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Facsimile No.

\_\_\_\_\_  
Facsimile No.

**INFORMATION REQUIRED OF BIDDER**

The Bidder shall furnish **all** the following information. The Bidder shall carefully read and answer all questions to ensure completeness and accuracy. Failure to comply with this requirement may cause rejection of the bid. Additional sheets may be attached if necessary. "You" or "your" as used herein refers to the Bidder and to any of its owners, officers, directors, shareholders, principals, responsible managing officer ("RMO"), or responsible managing employee ("RME"). The District has the discretion to request additional information depending on the Project.

(1) Bidder name and address (Post Office Box Number not sufficient):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Telephone: \_\_\_\_\_ Fax No.: \_\_\_\_\_  
Electronic Mail: \_\_\_\_\_

(3) Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Joint Venture \_\_\_\_\_ (check one)

(4) Bidder's License No. \_\_\_\_\_ Class: \_\_\_\_\_  
License Expiration Date \_\_\_\_\_  
Name of License holder \_\_\_\_\_  
DIR Registration No. \_\_\_\_\_

(5) Have you (as defined above) ever been licensed under a different name or different license number?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If "Yes," give name and license number.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Names and titles of all your owners, officers, principals, responsible managing officers and responsible managing employees:

Name	Title
_____	_____
_____	_____
_____	_____

(7) Number of years as a contractor in this type of construction work: \_\_\_\_\_

(8) How many years of experience have you had in school or college construction work?  
(a) As a general contractor? \_\_\_\_\_  
(b) As a subcontractor? \_\_\_\_\_

(9) How many years of experience have you had in public construction work?  
(a) As a general contractor? \_\_\_\_\_

(b) As a subcontractor? \_\_\_\_\_

(10) Have you ever been terminated from a school, college, or any public construction project prior to the completion of the project? Yes \_\_\_ No \_\_\_ If the answer is "Yes," give dates, names, and addresses of school/public agency and details.

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(11) Have you ever been barred from bidding on any school, college, or public construction project? Yes \_\_\_ No \_\_\_ If the answer is "Yes," give dates, names, and addresses of school/public agency and details.

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(12) Have you ever defaulted on any school, college, or public construction project that resulted in a claim to a surety? Yes \_\_\_ No \_\_\_ If the answer is "Yes," give dates, names, and addresses of school/public agency and details.

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(13) Have you been assessed damages (i.e., liquidated damages) for any public construction project in the past ten years? Yes \_\_\_ No \_\_\_ If the answer is "Yes," give dates, names, and addresses of public agency and details.

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(14) Have you ever brought any claim against a public agency? Yes \_\_\_ No \_\_\_ If the answer is "Yes," please explain in detail name of public agency, nature of the claim, and outcome.

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(15) Have you ever failed to complete a school, college, or public construction project in the last ten years?

Yes \_\_\_ No \_\_\_ If the answer is "Yes," provide name of public agency and details.

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- (16) Have you been in litigation or arbitration on a question or questions relating to a public construction project during the past ten years? Yes \_\_\_ No \_\_\_ If the answer is "Yes," provide name of public agency and details: \_\_\_\_\_

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- (17) List the names, addresses and telephone numbers of three Architects or Engineers whose jobs you have worked on in the past five years.

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
_____	_____	( ) _____
_____	_____	( ) _____
_____	_____	( ) _____

- (18) Do you now or have you ever had any direct or indirect business, financial, or other connection with any officer, employee, or consultant of the District or the Architect on this project?  
Yes \_\_\_ No \_\_\_ If so, please elaborate.

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- (19) List at least five of your most recent school or college construction projects.

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_  
(4) \_\_\_\_\_  
(5) \_\_\_\_\_

- (20) Are you currently under contract for another project? Yes \_\_\_ No \_\_\_ If the answer is "Yes," please provide the following information:

(a) Project Number 1:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

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Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(b) Project Number 2:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(c) Project Number 3:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(d) Project Number 4:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(e) Project Number 5:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(21) Are there projects not listed above that will be undertaken during the duration of the District's Project?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If the answer is "Yes," please provide the following information:

(a) Project Number 1:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

\_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(b) Project Number 2:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

\_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(c) Project Number 3:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

\_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(d) Project Number 4:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

\_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(e) Project Number 5:

Name of Project: \_\_\_\_\_

Detailed Description: \_\_\_\_\_

\_\_\_\_\_

Name of Project Owner: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Completion Date: \_\_\_\_\_

(22) Additional information required: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(23) List of References - Public construction projects of similar nature in a School/Community College/University within the last five years. The District has discretion to require more than five references.

1. Name: \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Description of Project: \_\_\_\_\_  
Dates of commencement and completion of Project: \_\_\_\_\_  
\_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Architect: \_\_\_\_\_  
Architect's Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_  
DSA or public agency inspector: \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_

2. Name: \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Description of Project: \_\_\_\_\_  
Dates of commencement and completion of Project: \_\_\_\_\_  
\_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Architect: \_\_\_\_\_  
Architect's Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_  
DSA or public agency inspector: \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_

3. Name: \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Description of Project: \_\_\_\_\_

Dates of commencement and completion of Project: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Address and Telephone: \_\_\_\_\_

DSA or public agency inspector: \_\_\_\_\_

Address and Telephone: \_\_\_\_\_

4. Name: \_\_\_\_\_

Address and Telephone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Description of Project: \_\_\_\_\_

Dates of commencement and completion of Project: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Address and Telephone: \_\_\_\_\_

DSA or public agency inspector: \_\_\_\_\_

Address and Telephone \_\_\_\_\_

5. Name: \_\_\_\_\_

Address and Telephone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Description of Project: \_\_\_\_\_

Dates of commencement and completion of Project: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Address and Telephone: \_\_\_\_\_

DSA or public agency inspector: \_\_\_\_\_

Address and Telephone: \_\_\_\_\_

\_\_\_\_\_

(24) Does your company have California Division of State Architect (DSA) project approval in the last five years?  
YES \_\_\_\_\_ NO \_\_\_\_\_

(25) What is your current Experience Modification Factor? \_\_\_\_\_

Do any of your listed subcontractors have an EMR in excess of 1.35 at time of bid? \_\_\_\_\_

**Please Note:** In no instance shall a contractor or any listed subcontractor with an EMR in excess of 1.35 at time of bid, or in cases of non-listed subcontractors, at the time of subcontract execution, be permitted to work on the Project. A bid submitted with prime contractor or any listed subcontractor EMRs greater than 1.35 will be deemed non-responsive. The District requires the production of the Contractor/Subcontractor's most recent three years of EMR data for those Contractors or Subcontractors who do not have a current qualified EMR based upon loss experience, or who have been issued a current default EMR of 1.0.

**I certify and declare under penalty of perjury under the laws of the State of California that the foregoing responses to the Information Required of Bidder are true and correct.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**NON-COLLUSION DECLARATION**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID FORM

(Public Contract Code § 7106)

The undersigned hereby declares as follows:

1. I am the \_\_\_\_\_ of \_\_\_\_\_, the bidder making the foregoing bid.
2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation.
3. The bid is genuine and not collusive or sham.
4. The bidder has not, directly or indirectly, induced or solicited any other bidder to put in a false or sham bid.
5. The bidder has not, directly or indirectly, colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding.
6. The bidder has not, in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder.
7. All statements contained in the bid are true.
8. The bidder has not, directly or indirectly, submitted its bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this Declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this Declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [City], \_\_\_\_\_ [State].

\_\_\_\_\_  
Signature & Date

\_\_\_\_\_  
Printed Name & Title

## **BIDDER CERTIFICATIONS**

### **(TO BE EXECUTED BY ALL BIDDERS AND SUBMITTED WITH BID)**

The undersigned authorized representative of the Bidder, as the prospective Contractor on this Project, hereby certifies to the Coast Community College District as follows:

#### **1. STATEMENT OF CONVICTIONS**

No more than one final finding of contempt of court by a federal or state court has been issued against the Bidder within the past two years because of failure to comply with a court order or to comply with an order of the National Labor Relations Board.

#### **2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE**

The Bidder is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that statute, and the Bidder will comply with these provisions before commencing the performance of the work on the Project.

#### **3. CERTIFICATION OF DRUG-FREE WORKPLACE**

The Bidder is aware of the provisions of Government Code Sections 8350 *et. seq.* which require a certification that contractors will provide a drug-free workplace by doing certain specified acts, and the Bidder will comply with these provisions before commencing the performance of the work on the Project.

#### **4. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS**

The Bidder is aware of the provisions of Labor Code Section 1773 that requires the payment of prevailing wage on public projects. The Bidder and its subcontractors will comply with Labor Code Section 1776 regarding wage records, and with Labor Code Section 1777.5 regarding the employment and training of apprentices. The Bidder also will be responsible to ensure compliance by all subcontractors performing work on the Project.

#### **5. CERTIFICATION OF ELIGIBILITY TO WORK ON PUBLIC WORKS PROJECTS**

The Bidder is aware of Labor Code Sections 1777.1 and 1777.7, and that the Bidder and its subcontractors are eligible to bid and work on public works projects.

#### **6. CERTIFICATION OF COMPLIANCE WITH SEXUAL MISCONDUCT PROHIBITION**

The Bidder is aware of the prohibitions set forth in District Board Policy 5910 regarding sexual misconduct and will comply.

#### **7. CERTIFICATION OF NON-DISCRIMINATION**

In performing work or providing products on the Project, there will be no unlawful discrimination in hiring or employment practices by the Bidder, such as because of age, gender, gender identity, gender expression, race, ancestry, national origin, religion, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, or sexual orientation. The Bidder will comply with District Board Policy 3410 and all applicable federal and California anti-discrimination laws, including the California Fair Employment and Housing Act at Government Code Sections 12900 *et. seq.*

#### **8. CERTIFICATION REGARDING NON-ASBESTOS CONTAINING MATERIALS**

No asbestos or asbestos-containing materials shall be used in the Project or in any tools, devices, clothing, or equipment used in construction of the Project. The Bidder has instructed its employees with respect to these standards, hazards, risks, and liabilities. All work or materials found to contain asbestos, or work or material installed with asbestos-containing equipment, will be immediately rejected and this work will be removed at no additional cost to the District.

**9. CERTIFICATION OF NON-DISQUALIFICATION**

The Bidder, any officer of the Bidder, and any employee of the Bidder who has a proprietary interest in the Bidder, has never been disqualified, removed, or otherwise prevented from bidding on or completing a federal, State, or local government project because of a violation of law or safety regulation, except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If a statement of "Previous Disqualifications" is attached, the circumstances are to be explained therein.

**10. CERTIFICATION OF ADEQUACY OF FUNDS**

Pursuant to Labor Code Section 2810(a), if awarded the Contract for the Project, the Bidder will have funds sufficient to allow compliance with all applicable local, state, and federal laws and regulations governing the labor and services to be provided.

**11. CERTIFICATION REGARDING QUALIFICATION INFORMATION**

The Bidder has carefully reviewed all of the qualification information contained in the Bidder's Statement of Qualifications, and that all qualification information remains true and correct in all material respects as of the date hereof.

**12. CERTIFICATION REGARDING CONTRACTOR REGISTRATION**

The Bidder, and all listed Subcontractors, are the subject of current and active contractor registrations with the California Department of Industrial Relations. The Bidder's registration number is \_\_\_\_\_, and the subcontractors' registration numbers are as indicated in the Subcontractor List.

**13. CERTIFICATION OF CONTRACT ACCEPTABILITY**

The Bidder has reviewed all pertinent documents for the Project, and if selected for the Project, the Bidder will execute the Contractor Agreement form in its current form without substantive revisions.

On behalf of the Bidder, I declare under penalty of perjury, under the Laws of the State of California, that the foregoing certifications are true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in \_\_\_\_\_.

Bidder: \_\_\_\_\_  
Name of Bidder

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Print Name

Its: \_\_\_\_\_  
Title

**CONSTRUCTION PERFORMANCE BOND**

THIS CONSTRUCTION PERFORMANCE BOND is dated \_\_\_\_\_ 20\_\_ and is in the amount of \$ \_\_\_\_\_ (“Penal Sum”) which is 100% of the price of the Contract dated \_\_\_\_\_ entered into by and between the Coast Community College District (“DISTRICT”) and the CONTRACTOR to ensure the faithful performance of the Contract by the Surety for this Project: \_\_\_\_\_. This Bond consists of this page and the Bond Terms and Conditions, Sections 1 through 14 attached to this page.

**CONTRACTOR:**

**SURETY:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
City/State/Zip

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **BOND TERMS AND CONDITIONS**

1. CONTRACTOR and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to DISTRICT and for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If CONTRACTOR completely and properly performs all of its obligations under the Contract, Surety and CONTRACTOR shall have no obligation under this Bond.
3. If there is no DISTRICT Default, Surety's obligation under this Bond shall arise after:
  - 3.1 DISTRICT provides Surety with written notice that DISTRICT has declared a CONTRACTOR Default under the Contract pursuant to the terms of the Contract; and
  - 3.2 DISTRICT has agreed to pay the Balance Due on the Contract:
    - 3.2.1 To Surety in accordance with the terms of this Bond and the Contract; or
    - 3.2.2 To a contractor selected to perform the Contract in accordance with the terms of this Bond and the Contract.
4. When DISTRICT has satisfied the conditions of Section 3 above, Surety shall promptly (within 40 days), and at Surety's expense, elect to take one of the following actions:
  - 4.1 Arrange for CONTRACTOR, with consent of DISTRICT, to perform and complete the Contract (but DISTRICT may withhold consent, in which case Surety must elect an option described in Sections 4.2, 4.3, or 4.4 below); or
  - 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; provided, that Surety may not select CONTRACTOR as its agent or independent contractor without DISTRICT'S consent; or
  - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to DISTRICT for a contract for performance and completion of the Contract and, upon determination by DISTRICT of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by DISTRICT and the contractor selected with DISTRICT'S concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract; and, if Surety's obligations, defined in Section 6 below, exceed the Balance Due on the Contract, then Surety shall pay to DISTRICT the amount of such excess; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with DISTRICT, determine in good faith its monetary obligation to DISTRICT under Section 6 below, for the performance and completion of the Contract and, as soon as practicable after the amount is determined, tender payment therefor to DISTRICT with full explanation of the payment's calculation. If DISTRICT accepts Surety's tender under this Section 4.4, DISTRICT may still hold Surety liable for future damages then unknown or unliquidated resulting from the CONTRACTOR default, as agreed by DISTRICT and Surety at the time of tender. If DISTRICT disputes the amount of Surety's tender under this Section 4.4, DISTRICT may

exercise all remedies available to it at law to enforce Surety's liability under Sections 6 and 7 below.

5. At all times, DISTRICT shall be entitled to enforce any remedy available to DISTRICT at law or under the Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, advance critical work to mitigate schedule delay, and coordinate work with other consultants or contractors.
6. If Surety elects to act under Sections 4.1, 4.2, or 4.3 above, within the time period provided in Section 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with CONTRACTOR'S Contract obligations. Surety's obligations include, without limitation:
  - 6.1 CONTRACTOR'S obligations to complete the Contract and correct defective work;
  - 6.2 CONTRACTOR'S obligations to pay liquidated damages; and
  - 6.3 To the extent otherwise required of CONTRACTOR under the Contract, CONTRACTOR'S obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from CONTRACTOR default (but excluding attorney's fees and costs incurred to enforce this Bond).
7. If Surety does not elect to act under Sections 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Section 4, above, or to comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from DISTRICT to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the CONTRACTOR default. To the extent that Surety's independent default causes DISTRICT to suffer damages including, without limitation, delay damages, which are different from, or in addition to (but not duplicative of) damages which DISTRICT is entitled to receive under the Contract, Surety shall also be liable for such damages. In the event that any Surety obligation following its independent default is inconsistent or conflicts with Civil Code Section 2809, or any other law that either prohibits, restricts, limits, or modifies in any way any obligation of a surety that is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Sections 4.1, 4.3, or 4.4 above, within the time period provided in Section 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than DISTRICT or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Contract or to related subcontracts, design agreements, purchase orders, and other obligations, including changes of time, and of any DISTRICT action in accordance with Section 5 above. Surety consents to all terms of the Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work (including services) required thereunder, or any DISTRICT action in accordance with Section 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is a DISTRICT default.

11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is already pending between DISTRICT and CONTRACTOR regarding the Contract, or in the courts of the County of Orange. Communications from DISTRICT to Surety under Section 3.1 above shall be deemed to include the necessary agreements under Section 3.2 above unless expressly stated otherwise.
12. All notices to Surety or to CONTRACTOR shall be mailed or delivered at the address set forth on the signature page of this Bond. Actual receipt of notice by Surety, DISTRICT or CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
14. **Definitions**
  - 14.1 **Balance Due:** The total amount payable by DISTRICT to CONTRACTOR pursuant to the terms of the Contract after all proper adjustments have been made under the Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Contract.
  - 14.2 **Contract:** The agreement between DISTRICT and CONTRACTOR identified on the signature page of this Bond, including all Contract Documents as defined therein and changes thereto.
  - 14.3 **CONTRACTOR Default:** Material failure of CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract, limited to “default” or any other condition allowing for termination for cause as provided in the General Conditions.
  - 14.4 **DISTRICT Default:** Material failure of DISTRICT, which has neither been remedied nor waived, to pay CONTRACTOR progress payments due under the Contract, or to perform other material terms of the Contract, if such failure is the cause of the asserted CONTRACTOR Default and is sufficient to justify CONTRACTOR’s termination of the Contract.

### PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENT:

WHEREAS Coast Community College District (“DISTRICT”) has awarded to \_\_\_\_\_ (“Contractor”) the Contract for work described as follows:

Golden West College – Executive Office Bid #2213

and WHEREAS Contractor is required to furnish a Bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law.

NOW, THEREFORE, we, the undersigned Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto DISTRICT in the sum of 100% of the Contract price \$ \_\_\_\_\_), for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that if Contractor, or its executors, administrators, successors, assigns, or subcontractors, fail to pay any of the persons named in Civil Code Section 9100; or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract; or for any amounts required to be deducted, withheld, and paid over to the California Employment Development Department from the wages of employees of Contractor or of subcontractors pursuant to Unemployment Insurance Code Section 13020 with respect to such work and labor, or for any materials or other supplies used in, upon, for, or about the performance of the Contract, that Surety will pay for the same in an amount not exceeding the sum specified in this Bond, plus reasonable attorneys’ fees and costs, otherwise the above obligation shall become and be null and void..

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

Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this Bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

Surety’s obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing DISTRICT’S rights against the other.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR**

**SURETY**

Company:

Company:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

---

Name

---

Title

---

Street Address

---

City, State, Zip Code

---

Name

---

Title

---

Street Address

---

City, State, Zip Code

**PROJECT GUARANTY**

TO: **COAST COMMUNITY COLLEGE DISTRICT** for construction of the \_\_\_\_\_  
\_\_\_\_\_ Project.

The undersigned CONTRACTOR guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

CONTRACTOR hereby grants to DISTRICT for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the CONTRACT DOCUMENTS, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials, and equipment provided by CONTRACTOR and its SUBCONTRACTORS of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the CONTRACTOR shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve CONTRACTOR of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. CONTRACTOR shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within one year after the date of Final Acceptance, or such other period of time as may be prescribed by laws or regulations, or by the terms of CONTRACT DOCUMENTS or any extended warranty or guaranty, any Work is found to be Defective, CONTRACTOR shall promptly, without cost to DISTRICT and in accordance with DISTRICT's written instructions, correct such Defective Work. CONTRACTOR shall remove any Defective Work rejected by DISTRICT and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR fails to comply promptly with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, DISTRICT may have the Defective Work corrected or the rejected Work removed and replaced. CONTRACTOR shall pay for all claims, costs, losses, and damages caused by or resulting from such removal and replacement. Where CONTRACTOR fails to correct Defective Work, or defects are discovered outside the correction period, DISTRICT shall have all rights and remedies granted by law.

CONTRACTOR shall respond within 72 hours to any claim made by DISTRICT pursuant to this Guaranty.

Observation and inspection of the Work by DISTRICT, or by its representatives or inspectors, shall not relieve CONTRACTOR of any of its obligations under the CONTRACT DOCUMENTS. Even though equipment, materials, or Work required to be provided under the CONTRACT DOCUMENTS have been inspected, accepted, and estimated for payment, CONTRACTOR shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the CONTRACT DOCUMENTS up to the end of the guaranty period.

///

///  
This Guaranty is in addition to any other CONTRACTOR warranties contained in the CONTRACT DOCUMENTS, and not in lieu of, any and all other CONTRACTOR liability imposed under the CONTRACT

DOCUMENTS or at law. In the event of any conflict or inconsistency between the terms of this Guaranty and any CONTRACTOR warranty or obligation CONTRACTOR under the CONTRACT DOCUMENTS or at law, such inconsistency or conflict shall be resolved in favor of the greater protection to DISTRICT.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**ESCROW AGREEMENT**  
FOR PRIVATE SECURITY DEPOSITS IN LIEU OF RETENTION  
Public Contract Code Section 22300

This Escrow Agreement is made and entered into, as the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Coast Community College District (“District”), \_\_\_\_\_, whose address is \_\_\_\_\_ (“Contractor”), and \_\_\_\_\_, whose address is \_\_\_\_\_ (“Escrow Agent”). District, Contractor, and Escrow Agent are referred to herein as the “Parties.”

For the consideration hereinafter set forth, the Parties agree as follows:

Pursuant to Public Contract Code Section 22300, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Agreement dated \_\_\_\_\_ entered into between District and Contractor for in the amount of \$\_\_\_\_\_ for this Project \_\_\_\_\_ and Bid # \_\_\_\_\_ (“Agreement”). Alternatively, on written request of Contractor, District shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for retention earnings, Escrow Agent shall notify District within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Agreement. Securities shall be held in the name of District, and shall designate Contractor as the beneficial owner.

District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Agreement provisions, provided that Escrow Agent holds securities in the form and amount specified above.

When District makes payment of retentions earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of Contractor and District shall be equally applicable and binding when District pays Escrow Agent directly.

Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of District. These expenses and payment terms shall be determined by the Parties.

The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.

Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by Contractor.

District shall have a right to draw upon the securities in the event of default by Contractor. Upon seven days’ written notice to Escrow Agent from District of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

Upon receipt of written notification from District certifying that the Agreement is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Agreement, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

Escrow Agent shall rely on the written notifications from District and Contractor pursuant to Sections 5 to through 8 of this Escrow Agreement, and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Parties in connection with the foregoing, and their respective signatures are as follows:

At the time that the Escrow Account is opened, District and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Escrow Agreement.

**IN WITNESS WHEREOF, the Parties have executed this Escrow Agreement.**

**On behalf of District:**

**On behalf of Contractor:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

1370 Adams Avenue, Costa Mesa, CA 92626  
Address

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Address

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Phone No.

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Phone No.

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Email Address

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Email Address:

**On behalf of Escrow Agent:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
Email Address

**SPECIAL CONDITIONS**

## 1. APPLICATION OF SPECIAL CONDITIONS

These Special Conditions form a part of the Contract Documents for the Work generally described as Golden West College – Executive Office Bid #2213.

## 2. INSURANCE AND WORKERS' COMPENSATION

- a. At or before the date specified in the Project Documents, Contractor shall furnish to District satisfactory proof that Contractor has taken out for the entire period covered by the Agreement the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Project Documents:
- 1) Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a Standard Commercial General Liability Insurance policy (Occurrence Form). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards. The limits of such insurance shall not be coverage of less than **[\$2,000,000]** each occurrence, **[\$4,000,000]** general aggregate limit, and **[\$4,000,000]** aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.
  - 2) Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **[\$1,000,000]** each person Bodily Injury, **[\$1,000,000]** each occurrence Bodily Injury, and **[\$1,000,000]** each occurrence Property Damage.
  - 3) All-Risk Course of Construction Insurance shall be carried by the District, including damage to property owned by District, Contractor or third parties caused by fire.
  - 4) Workers' Compensation Insurance for all persons whom Contractor may employ in carrying out Work contemplated under Project Documents, in accordance with law.
  - 5) **[Optional]** Environmental Impairment Liability Insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than **[\$1,000,000]** combined single limit for each occurrence.
- b. If Contractor normally carries insurance in an amount greater than the minimum amounts required by District in Paragraph "a" above, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- c. All policies of insurance shall be placed with insurers acceptable to District. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of **[A-, VIII]** or better, unless otherwise specified in Project Documents. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of District, warrant such increase. Contractor shall increase required insurance amounts upon direction by District.

- d. Required Endorsements: The policies required herein (including any umbrella or excess liability policies) shall be endorsed as follows:
1. Name District, its trustees, employees, representatives, consultants, and agents, and Project Manager, as additional insureds, but only with respect to liability arising out of the activities of the named insured. Additional insured language must be at least as broad as the Insurance Services Office (“ISO”) forms GC 20 38 04 13 and GC 20 37 04 13.
  2. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company’s liability required hereunder. Should any of the policies identified herein contain a “cross-suits” exclusion, such exclusion must not apply to any additional insureds.
  3. Insurance shall be primary to District and no other insurance or self-insured retention carried or held by District shall be called upon to contribute to a loss covered by insurance for the named insured.
  4. All endorsements shall include the applicable policy number, the named insured(s) and policy terms.
  5. Contractor or its insurance broker shall submit to District a copy of the “Declarations Page” for each policy identified under Paragraph “a” a above. The Declarations Page shall include the name of the insurance carrier, the applicable policy number, the types of coverage and limits of insurance provided, the effective dates of the policy, the insurance broker’s name and license number, and a list of all coverage forms and endorsements.
  6. Certificates of insurance and endorsements shall have clearly typed thereon District Contract Number and title of Project Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to District (Attention: District Risk Manager), 60 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within ten Days of cancellation. Contractor shall maintain all insurance in full force and effect during entire period of performance of Project Documents, including warranty and guarantee periods. Contractor shall maintain General Liability Insurance throughout the entire Extended Term specified Paragraph “a” a above. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon District’s request, Contractor shall submit to District, within 30 Days, copies of the actual insurance policies or renewals or replacements.
  7. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Project Documents.
  8. If injury occurs to any employee of Contractor, Subcontractor or sub-Subcontractor for which the employee, or the employee’s dependents in the event of employee’s death, is entitled to compensation under provisions of the Workers’ Compensation law, or for which compensation is claimed from District, District may retain out of sums due Contractor under Project Documents, amount sufficient to cover such compensation, as fixed by law until such compensation is paid, or until it is determined that no

compensation is due. If District is compelled to pay compensation, District may, in its discretion, either deduct and retain from the Contract Sum the amount so paid or require Contractor to reimburse District.

9. Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
10. Except for Comprehensive General Liability Insurance, of which Subcontractors need only obtain \$1,000,000 in coverage, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in Project Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to District within ten Days of District's request.
11. The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional").
  - i. Each Professional shall maintain the following insurance, unless otherwise specified in Project Documents:
  - ii. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than **\$1,000,000** combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.
  - iii. Professional shall satisfy all other provisions of this Document 00 73 16 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.

### **3. RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION**

- a. District and each of its trustees, officers, employees, consultants, and agents including, without limitation, the Project Manager and each District's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except District's sole negligence, willful misconduct, or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- b. To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), Contractor shall defend, indemnify, and hold harmless, District and each of its trustees, officers, employees, consultants, and agents including, without limitation, the Project Manager, Architect/Engineer, Construction Manager, and each District's Representative, from claims, suits, actions, losses, and liability of every kind, nature, and description including, without limitation, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by Contractor or Subcontractors or their agents, or anyone for whose acts, Contractor or Subcontractors or their agents, or anyone for whose acts may be liable, resulting from any cause whatsoever except District's sole negligence, willful misconduct, or active negligence.
- c. With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against District and each of its trustees, officers, employees, consultants, and agents including, without limitation, District, the Project Manager, Architect/Engineer, Construction Manager, and each District's Representative. District shall provide timely notice to Contractor of any third-party claim relating to the Project Documents, in accordance with Public Contract Code Section 9201.
- d. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- e. To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Project Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Project Documents. If Contractor fails to perform any of these defense or indemnity obligations, District may in its discretion back charge Contractor for District's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.

### **4. EARLY COMPLETION INCENTIVE – NOT APPLICABLE FOR THIS PROJECT**

~~This Project includes an early completion incentive opportunity.~~

- a. ~~As set forth in the Agreement, Contractor shall complete the Project within [number of Days] from the Commencement Date stated in the Notice to Proceed ("Original Contract Completion~~

Date”). ~~Completion for purposes of this provision shall be in accordance with Article 2 of the Agreement.~~

- b. ~~In the event that Contractor completes the Project prior to the Original Contract Completion Date, District will pay Contractor, pursuant to Government Code Section 53069.85, an early completion incentive in the amount of [XXX] for each Day that the actual completion date precedes the Original Contract Completion Date.~~
- c. ~~The maximum early completion incentive shall not exceed [XXXXX].~~
- d. ~~For purposes of the calculation and the determination of the early completion incentive, the Original Contract Completion Date will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault.~~
  - 1. ~~The Parties anticipate that delays may be caused by or arise from various types of events during the course of the Project, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, conduct of subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor’s operations, and other such events sometimes experienced in construction work. Such delays or events and their potential impacts on performance by Contractor are specifically contemplated and acknowledged by the Parties in entering into the Agreement and shall not extend the Original Contract Completion Date for purposes of calculation of the early completion incentive.~~
- e. ~~Not later than 10 Days after Project completion, Contractor shall notify District, in writing, of Contractor’s request for compensation pursuant to this provision. Such request shall set forth the actual final completion date and requested early completion incentive payment. District shall, within ten Days, accept or reject Contractor’s request.~~
- f. ~~Such written notice shall constitute Contractor’s full and complete waiver, release, and acknowledgment of satisfaction by Contractor of any and all claims, causes of action, issues, demands, disputes, matters, or controversies, of any nature or kind whatsoever, known or unknown, against District, its employees, officers, agents, representatives, consultants, and their respective employees, officers, and representatives including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, permitting issues, actions of suppliers or subcontractors or other contractors, actions by third parties, weather, weekends, holidays, suspensions of operations, extended overhead, lost profits, prime mark-up on Subcontractor work, acceleration costs, any and all direct and indirect costs, and any other adverse impacts, events, conditions, circumstances, or potential damages on, pertaining to, or arising out of the Agreement.~~

## **5. SHARED SAVINGS – NOT APPLICABLE FOR THIS PROJECT**

~~District will consider cost savings proposals from Contractor whereby Contractor would be eligible to receive extra compensation for cost reduction changes in the plans and specifications.~~

- a. ~~Pursuant to Public Contract Code Section 7101, District has elected to offer Contractor the opportunity to receive extra compensation for cost reduction changes in the plans and~~

~~specifications. Contractor shall notify District and [Project Manager], in writing, of Contractor's request for additional compensation pursuant to this provision. Such request shall set forth the original parameters outlined in the plans and specifications, the proposed changes to these plans and specifications, the corresponding cost reductions, and requested shared savings payment.~~

~~b. District shall, within 15 Days, accept or reject Contractor's request. Acceptance or rejections of these requests for shared savings is at the sole discretion of District.~~

~~c. All approved requests shall be included in the subsequent month's payment application.~~

## **6. UTILITIES**

Contractor shall be prepared to provide emergency response if any of its activities, including the work of Subcontractors and the delivery of materials by Contractor Vendors and Suppliers, cause un-planned interruption to the operation of utilities for the College. Emergency response shall be immediate and continuous until the problem is corrected.

## **7. EMERGENCY ACCESS**

Contractor shall not encroach upon the Campus emergency access lanes abutting District's perimeter fence without District approval. For work requiring the encroachment or the crossing of any emergency access lane, Contractor shall submit a Work Plan that, at minimum, details how work is to be staged to maintain emergency access at all times.

## **8. ALLOWANCE AND SITE SPECIFIC CONDITIONS**

District has allotted an allowance in the amount of, \$90,000.00 as noted in trade specific bid documents for unforeseen conditions for this Project. This allowance will be itemized separately from the base bid amount. The project allowance is not a guarantee of money to Contractor. All requests for use of allowance funds must be submitted in writing to the Construction Manager of the project for approval prior to utilizing said funds. Any unused funds at the completion of the project said revert back to District as a deductive change order.

## **9. PREVAILING PARTY**

In any litigation involving District and Contractor, the prevailing party shall be entitled to reimbursement of its reasonable attorney fees and costs.

## GENERAL CONDITIONS

### ARTICLE 1 INTERPRETATION OF CONTRACT DOCUMENTS

#### **A. INTERPRETATION OF DOCUMENTS**

1. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
2. Individual Contract Documents subdivide at first level into Articles, and then into paragraphs.

#### **B. ORDER OF PRECEDENCE OF DOCUMENTS**

1. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
  - a. Modifications in inverse chronological order (*i.e.*, most recent first), and in the same order as specific portions they are modifying;
  - b. Agreement Forms, and terms and conditions referenced therein;
  - c. Special Conditions, if included;
  - d. General Conditions;
  - e. General Requirements, if included;
  - f. Drawings and Technical Specifications;
  - g. Written words over figures, unless obviously incorrect;
  - h. Figured dimensions over scaled dimensions;
  - i. Large-scale Drawings over small-scale Drawings.
2. Any conflict between Drawings and Technical Specifications will be resolved in favor of the document of the latest date (*i.e.*, the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
3. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
4. All Technical Specifications included in the Project Manual shall be included within the Contract Documents unless identified otherwise.

#### **C. DEFINITIONS**

These definitions shall apply to all Contract Documents:

1. "Addenda" means the written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the bidding requirements or the Contract Documents. Addenda shall not include the minutes of the pre-Bid conference or Site visit.

2. “Agreement” is the written agreement between District and Contractor. All Contract Documents are incorporated into the Agreement.
3. “Application for Payment” is the written application for monthly or periodic progress or final payment made by Contractor in compliance with the Contract Documents.
4. “Architect” means the entity under contract with District to provide architectural services related to the Project.
5. “Bid” means the offer or proposal of the Bidder submitted on the prescribed form(s) setting forth the prices (including, if applicable, maximum prices) for the Work to be performed.
6. “Bidder” means one who submits a Bid or Proposal.
7. “Board” means the Board of Trustees of District.
8. “Change Order” means a written instrument prepared by District, and signed by the Parties stating their agreement on a change in the Work, the amount of any adjustment in the Contract Sum, and the amount of any adjustment in the Contract Time.
9. “Claim” means a Contractor’s claim as defined in Public Contract Code Section 9204.
10. “College” or “Colleges” refers to one or more of the colleges of District.
11. “Construction Change Directive” is a written order prepared and signed by District, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
12. “Contract Modification” is either:
  - a. a written amendment to Contract signed by the Parties; or
  - b. a Change Order; or
  - c. a Construction Change Directive; or
  - d. a written directive for a minor change in the Work issued by District.
13. “Contractor” is the contractor identified as a Party in the Contract Documents.
14. “Contract Documents” are the documents as defined in the Agreement.
15. “Contract Sum” means the sum stated in the Agreement and, including authorized adjustments, the total amount payable by District to Contractor for performance of the Work. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.
16. “Contract Time” means the number or numbers of Days or the dates stated in the Agreement to achieve Substantial Completion of the Work or designated Milestones, or to achieve Final Completion of the Work so that it is ready for final payment.
17. “Contractor” means the person or entity identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number and neutral in gender. The term “Contractor” refers to the Contractor or its authorized representative.

18. “CPM” is Critical Path Monitoring.
19. “Days” means calendar days unless otherwise specified.
20. “Defective” is an adjective which, when modifying the word “Work,” refers to Work that is unsatisfactory, is unsuited for the use intended, is faulty, is deficient, does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents (including, without limitation, approval of Samples and “or equal” items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by District). Unapproved substitutions are Defective. District is the sole judge of whether Work is Defective.
21. “District” is the Coast Community College District.
22. “Drawings” means the graphic and pictorial portions of Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
23. “DSA” is the California Division of State Architects.
24. “Final Acceptance” or “Final Completion” is District’s acceptance of the Work as satisfactorily completed in accordance with Contract Documents. Requirements for Final Acceptance or Final Completion include, but are not limited to:
  - a. Final cleaning is completed.
  - b. All systems having been tested and accepted as having met requirements of Contract Documents.
  - c. All required instructions and training sessions having been given by Contractor.
  - d. All Project Record Documents having been submitted by Contractor, reviewed by District, and accepted by District.
  - e. All punch list Work, as directed by District, having been completed by Contractor.
  - f. Generally all Work, except Contractor maintenance after Final Acceptance or Final Completion, having been completed to satisfaction of District.
25. “GMP” means Guaranteed Maximum Price.
26. “Initial Schedule” means the initial schedule transmitted by Contractor at the preconstruction conference.
27. “Inspector of Record” shall have the meaning as defined by DSA.
28. “Key Personnel” has the meaning as defined for key personnel in the Agreement.
29. “Milestone” is a principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of Work.
30. “Original Schedule” is interchangeable with Initial Schedule

31. “Party” or “Parties” pertains to Contractor and District, individually or collectively.
32. “Product Data” means that information (brochures, catalog sheets, manufacturer’s cut sheets, etc.) supplied by vendors having technical and commercial characteristics of the supplied equipment or materials and accompanying commercial terms such as warranties, instructions, and manuals.
33. “Project” is comprised of the Work required by the Contract Documents.
34. “Project Inspector” means the individual who has been hired by District to provide continuous inspection of all Project Work.
35. “Project Record Documents” means all Project deliverables required under the Contract Documents, including without limitation, as built drawings, installation, operation, and maintenance manuals; and machine inventory sheets.
36. “Proposal” means a Bid.
37. “Provide,” in reference to duties of Contractor or its Subcontractors, includes “furnish and install.”
38. “Safety Orders” includes all statutes, regulations, ordinances, and orders, pertaining to safety, issued by an applicable federal, state, or local governmental entity.
39. “Samples” means the physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
40. “Services” means those services performed by the Architect or consultant of the Architect.
41. “Site” is the particular geographical location of Work performed pursuant to the Contract Documents.
42. “Schedule of Values or SOV” means a start to finish list of work items on a project broken down into their component parts and with corresponding values.
43. “Special Inspection and Materials Testing Laboratory” shall have the meaning as defined by DSA.
44. “Specifications” means the written portion of the Contract Documents consisting of requirements for materials, equipment, construction systems, standards, and workmanship for the Work; and performance of related services.
45. “Subcontractor” or “Subcontractors” includes all those having a direct contractual relationship with Contractor related to the Project.
46. “Substantial Completion” means that the Work (or a specified part thereof) has progressed to the point where, in the opinion of District as evidenced by a notice or certificate of Substantial Completion, that the Work is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended, and unperformed or incomplete work elements are minor in nature; or if no such certificate is issued, when the Work (or specified part) is complete and ready for final payment as evidenced by written recommendation of District for final payment. The terms “Substantially Complete” and

“Substantially Completed” as applied to all or part of the Work refer to Substantial Completion thereof.

47. “Surety” is the person or entity who executes, as a California admitted surety insurer, Contractor’s bid security, faithful performance bond, or payment bond.
48. “Underground Facilities” means all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
49. “Work” means the entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents within the Contract Time. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents including everything shown in the Drawings and set forth in the Specifications. Wherever the word “work” is used, rather than the word “Work,” it shall be understood to have its ordinary and customary meaning.

## **ARTICLE 2**      **STATUS OF CONTRACTOR**

- A. Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Contract Documents. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between District and Contractor or any of Contractor’s agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents, and employees shall not be entitled to any rights or privileges of District employees and shall not be considered in any manner to be District employees. District shall be permitted to monitor the activities of Contractor to determine compliance with the terms of the Contract Documents.
- B. Contractor is required by law to be licensed, and is regulated by, the California Contractors’ State License Board. If Contractor is not so licensed, Contractor is subject to penalties under the law, and the Agreement will be considered void.

## **ARTICLE 3**      **CHANGE IN CONTRACTOR’S LEGAL ENTITY**

- A. Before Contractor makes any change in the name or legal nature of Contractor’s entity, Contractor shall first notify District in writing and shall cooperate with District in making such changes in the Contract Documents as District may request.

## **ARTICLE 4**      **CONTRACTOR’S OBLIGATIONS, SUPERVISION, AND PROGRESS**

- A. During progress of the work on the Project, Contractor shall keep on the work site a competent superintendent (“Superintendent”) satisfactory to District. Before commencing the work on the Project, Contractor shall give written notice to District of the name, qualifications, and experience of the Superintendent. If Superintendent is found unsatisfactory by District, Contractor shall replace the Superintendent with one acceptable to District. Superintendent shall not be changed except with written consent of District, unless the Superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District in writing and replace the Superintendent

with one acceptable to District. Superintendent shall represent Contractor, and all directions given to Superintendent shall be as binding as if given to Contractor.

- B. Without limiting the generality of the paragraphs that follow, Contractor shall provide, at a minimum, the following services, materials, and equipment, provided, however, that these provisions shall not be construed in any way to limit Contractor’s obligations hereunder to design, engineer, furnish, construct, checkout, startup, and test a complete, operable, and maintainable Project in accordance with the provisions of the Contract Documents.
- C. Contractor shall furnish the services of all personnel, including supervisors, engineers, designers, and draftspersons necessary for the Work. Except as otherwise provided in the Contract Documents, Contractor shall obtain, at Contractor’s sole expense, all governmental and private approvals, licenses, and permits required to complete the Work, including but not limited to, all aspects of coordination and approvals of any type from governmental agencies, for example and not by way of limitation, DSA, fire marshall, and city building officials.
- D. Contractor shall provide all labor, materials, equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing (except that testing to be provided by District), Site cleanup, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies, and facilities) necessary for the proper execution and completion of the Project.
- E. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract Documents, and District shall not be responsible for or exercise any control over the actions or omissions of Contractor, any supplier, or any of their employees or agents performing any of the Work or Contractor’s warranty obligations. Contractor shall prosecute the Work continuously and diligently, and complete the Work in accordance with all requirements of the Contract Documents.
- F. Contractor shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site.
- G. Contractor shall be responsible for Site security until Final Completion, or termination of the Work. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, materials, and equipment.
- H. Contractor shall be responsible for all labor relations matters relative to the Work on the Site, and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site.
- I. Contractor, as well as its employees while under contract, shall be responsible for adhering to District board policies while on the work site. Policies can be found at <https://www.cccd.edu/boardoftrustees/boardpolicies/index.html>.

BP 3050	Code of Professional Ethics
BP 3410	Prohibition of Discrimination and Harassment
BP 3435	Discrimination, Harassment, and Retaliation Complaints and Investigations
BP 3500	Campus Safety
BP 3510	Prohibition of Workplace Violence
BP 3530	Weapons Prohibited on Campus
BP 3540	Sexual and Other Assaults on Campus

BP 3550	Drug Free Environment and Drug Prevention Program
BP 3560	Alcoholic Beverages
BP 3570	Smoking and Tobacco Use

**ARTICLE 5      SUBCONTRACTORS**

- A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents. Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor, and of persons and entities directly or indirectly employed by any Subcontractor, as it is for acts and omissions of Contractor and of persons and entities directly employed by Contractor. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and District, nor shall the Contract Documents be construed to be for the benefit of any Subcontractor.
- B. District’s consent to any Subcontractor shall not in any way relieve Contractor of any obligations under the Contract Documents, and no such consent shall be deemed to waive any provision of any part of the Contract Documents.
- C. In accordance with Business and Professions Code Section 7059, if Contractor is designated as a “specialty contractor” (as defined in Public Contract Code Section 7058), all of the work to be performed outside of Contractor’s license specialty shall be performed by a licensed Subcontractor in compliance with the California Subletting and Subcontracting Fair Practices Act.
- D. A copy of each subcontract with the name of the Subcontractor and the terms and conditions of such subcontract shall be filed with District before Subcontractor begins work. Each subcontract shall provide for its annulment by Contractor at the order of District if in District’s opinion the Subcontractor fails to comply with the requirements of the Contract Documents insofar as applicable to the work. Nothing herein contained shall relieve Contractor of any liability or obligation hereunder.
- E. Subcontractor agreements shall preserve and protect the rights of District under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor’s written agreement: (1) to be bound to the terms of Contract Documents, and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward District under the Contract Documents. These agreements include, for example and not by way of limitation, all warranties, claims procedures, and rules governing submittals of all types to which Contractor is subject under the Contract Documents.
- F. Contractor shall provide for the assignment to District of all rights that any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guaranties relating to the Work performed by the Subcontractor under the Contract Documents.

**ARTICLE 6      PROHIBITED INTERESTS**

- A. No official of District who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving, any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in the Project. 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 the Project shall become directly or indirectly interested financially in the Project. Contractor shall receive no compensation, and shall repay District for any compensation received by Contractor hereunder, should Contractor aid, abet, or knowingly participate in violation of this Article.

## **ARTICLE 7      DISTRICT'S INSPECTORS**

- A. All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of the Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by District, its agents, representatives, or independent contractors retained by District to perform inspection services, or governmental agencies. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures so that they may comply therewith as applicable. Upon request or where specified, District shall be afforded access for inspection at the source of supply, manufacture, or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Contractor shall give District a minimum of two business days' notice of readiness of Work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- C. District shall hire, through separate contract, a DSA-certified Inspector of Record for this Project, and a Special Inspection and Materials Testing Laboratory. Upon advance notice as set forth above, District will endeavor to schedule required inspections, but if resources are not available, Contractor may need to reschedule the Work at no additional cost to District.
- D. In the event that a scheduled inspection is canceled in less than 24 hours notice by Contractor and District incurs costs associated with the cancellation, Contractor will reimburse District for the actual costs of the canceled inspections. The amount will be deducted from payment owed to Contractor.
- E. If applicable laws or regulations of any governmental agency (other than DSA) require any Work (or part thereof) to be inspected, tested, or approved by such agency, Contractor shall assume full responsibility for arranging and obtaining such inspections and tests, and shall furnish District with any required certificates. District will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor also shall be responsible for arranging and obtaining, and shall pay all costs in connection with, any inspections or tests required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- F. If Contractor physically covers any Work, or the work of others, prior to any required inspection or test without the written approval of District, Contractor shall uncover the Work at District's request, and Contractor shall bear the expense of uncovering Work and replacing Work.
- G. In any case where Contractor covers Work contrary to District's request, Contractor shall uncover Work for District's observation or inspection at District's request and Contractor shall bear the cost of uncovering Work.
- H. Whenever required by District, Contractor shall furnish tools, labor, and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, the cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, District, in the manner herein prescribed for paying for alterations, modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- I. District shall select testing agencies approved by DSA to conduct required tests and inspections for the Project. A list of required structural tests and inspections prepared by Contractor and approved by DSA

shall be provided to the designated testing agency, District's representative, and Inspector prior to the start of construction. Refer to Sections 4-335 *et seq.*, Part 1, Title 24, California Code of Regulations.

- J. The testing agency shall forward the test results to DSA, Contractor, District and the Project Inspector within 14 Days of the date of the test. The testing agency shall forward to DSA a verified report covering all the tests required during the progress of the Project.
- K. Inspection of the Work by or on behalf of District, or District's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by District, to perform Work in conformance with the Contract Documents.
- L. Any inspection, evaluation, or test performed by or on behalf of District relating to the Work is solely for the benefit of District, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation as a result of any inspections, evaluations, or tests performed by District, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.
- M. Contractor shall provide for the exclusive use of Inspector a temporary field office to be located as directed by Inspector and to be maintained until removal is authorized by District. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. The door shall have a key-type lock or padlock hasp. A table satisfactory for study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, telephone service, and adequate heat for the field office until authorized removal.
- N. No Work shall be carried on except with the knowledge and under the inspection of the Inspector. The Inspector shall have free access to all parts of the Site at any time. Contractor shall furnish the Inspector with reasonable opportunities for obtaining such information as may be necessary to keep the Inspector fully informed respecting progress and manner of work and character of materials. Inspection of work by the Inspector shall not relieve Contractor from any obligation to fulfill the Project Documents. The Inspector or Architect shall have the authority to stop work whenever provisions of the Project Documents are not being complied with and such noncompliance is discovered. Contractor shall instruct its workers and employees accordingly.
- O. Contractor understands and agrees that the Inspector may serve concurrently as inspector for other projects and may not therefore be available on Site during the entire work day. It shall be the responsibility of Contractor to notify the Inspector not less than 24 hours in advance of materials and equipment deliveries and required inspections.

## **ARTICLE 8      ARCHITECT'S STATUS**

- A. Architect shall be District's representative during construction of the Project and shall observe the progress and quality of the Work on behalf of District. Architect shall have the authority to act on behalf of District only to the extent provided in the Contract Documents. Architect shall have authority to stop Work whenever such stoppage may be necessary, in Architect's reasonable opinion, to ensure the proper execution of the Contract Documents.
- B. Architect shall be, in the first instance, the judge of the performance of the Work. Architect shall exercise authority under the Contract Documents to enforce Contractor's faithful performance.

- C. Contractor shall promptly comply with instructions from Architect or an authorized representative of Architect.
- D. On all questions related to quantities; acceptability of material, equipment, or workmanship; the execution, progress, or sequence of Work; the interpretation of plans, specifications, or drawings; or the acceptable performance of Contractor, the judgment of Architect shall govern and shall be precedent to any payment unless otherwise ordered by District. The progress and completion of the Work shall not be impaired or delayed by virtue of any question or dispute arising out of or related to these matters or to the instructions of Architect relating thereto.
- E. General supervision and direction of the Work by Architect shall in no way imply that Architect is in any way responsible for the safety of Contractor or its employees, or that Architect will maintain supervision over Contractor's construction methods or personnel other than to ensure that the quality of the finished Work is in accordance with the Contract Documents.

## **ARTICLE 9      OTHER CONTRACTORS**

- A. District reserves the right to let other contracts in connection with the Work on the Project. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work, and shall properly connect and coordinate its work with such other contractors.
- B. If any part of Contractor's work depends for proper execution or results upon work of any other contractor, Contractor shall inspect and promptly report to District in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held accountable for damages to District for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractors' work as fit and proper for reception of its Work, except as to defects which may develop in other contractors' work after final completion of Contractor's work.
- C. In order to ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to District in writing any discrepancy between executed work and the Contract Documents.
- D. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District related to the Project so that Contractor may perform these Contract Documents in the light of such other contracts, if any.
- E. Nothing herein shall be interpreted as granting to Contractor exclusive occupancy to the Site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract, District shall decide which contractor shall cease work temporarily, which contractor shall continue, or whether work can be coordinated so that Contractor may proceed simultaneously.
- F. District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from the award, performance, or attempted performance of any other contract on the Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

## **ARTICLE 10    OCCUPANCY**

- A. District reserves the right to occupy buildings and portions of the Site of the Project at any time before completion, and such occupancy shall not constitute final acceptance of any part of Work covered by these Contract Documents, nor shall such occupancy extend the date specified for completion of the Work. Beneficial occupancy of a building or other portion of the Site does not commence any warranty period, nor shall it entitle Contractor to any additional compensation due to such occupancy.

## **ARTICLE 11    DISTRICT'S RIGHT TO TERMINATE AGREEMENT**

### **A.    TERMINATION OF CONTRACT FOR CAUSE**

1. If Contractor refuses or fails to complete the Work, or any separable part thereof, with such diligence to insure its completion within the time specified or any extension thereof, or fails to complete the work within such time, or if Contractor files a petition for relief as a debtor, or if relief is ordered against Contractor as a debtor under Title 11 of the United States Code, or if Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if Contractor refuses or fails to supply enough properly skilled workers or proper equipment, tools, and materials in the necessary quantity and quality to complete the Work in the time specified, or if Contractor fails to make prompt payment to Subcontractors for materials or labor, or disregards laws, regulations, ordinances, or instructions of District, or if Contractor or its Subcontractors otherwise violates any provision of the Agreement, then Contractor shall be deemed to be in default of the Contract Documents and District may, without prejudice to any other right or remedy, serve written notice upon Contractor and Surety of District's intention to terminate the Agreement, such notice to contain the reasons for such intention to terminate, and unless within ten Days after the service of such notice such condition ceases or such violation ceases, or arrangements satisfactory to District for the correction thereof are made and corrective action commenced in a diligent and workmanlike manner and pursued to satisfactory completion, the Agreement shall upon the expiration of the ten Days, cease and terminate. In such case, Contractor shall be excluded from the Site and not be entitled to receive any further payment until Work is finished to District's satisfaction.
2. In the event of any such termination, Surety shall have the right to take over and perform the Agreement, provided, however, that if Surety, within five Days after service upon it of the notice of termination, does not give District written notice of its intention to take over and perform the Contract Documents or does not commence performance thereof within ten Days after date of service of the notice of termination by District on Surety, District may take over the work and proceed to completion by any means determined by District including hiring another contractor at the expense of Contractor, and Contractor and the Surety shall be liable to District for any excess cost or other damages occasioned by District thereby. Time is of the essence in the Agreement. If District takes over the work as hereinabove provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, supplies, equipment, and other property belonging to Contractor as may be on the Site and necessary therefore.
3. The expense of finishing the work, including compensation for additional architectural, managerial, and administrative services, shall be a charge against Contractor, and Contractor agrees that the charge may be deducted from any money due or becoming due to Contractor from District, or Contractor shall pay the charges to District. Expense incurred by District as herein provided, and damage incurred due to District's termination of the Agreement or Contractor's default, may be certified to District by Architect. The Surety shall become liable for payment should Contractor fail to pay in full any costs incurred by District.

4. In the event that a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have the recovery rights as specified below. Any claim by Contractor arising out of a termination for cause, however, shall be made in accordance with the Contract Documents. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Contractor.

**B. TERMINATION OF CONTRACT FOR CONVENIENCE**

1. District may terminate performance of the Work under the Contract Documents for convenience in accordance with these provisions, in whole, or from time-to-time in part, whenever District determines that termination is in District's best interest. Termination shall be effected by District delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
2. After receiving a notice of termination for convenience, and except as otherwise directed by District, Contractor shall:
  - a. Stop Work under the Contract Documents on the date and to the extent specified in notice of termination;
  - b. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of Work under the Contract Documents which is not terminated;
  - c. Terminate all orders and subcontracts to the extent that they relate to performance of Work terminated by the notice of termination;
  - d. Assign to District in the manner, at the times, and to the extent directed by District, all right, title, and interest of Contractor under orders and subcontracts so terminated. District shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
  - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent that District may require. District's approval or ratification shall be final for purposes of this paragraph;
  - f. Transfer title to District, and deliver in the manner, at the times, and to the extent, if any, directed by District, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to District;
  - g. Use its best efforts to sell, in the manner, at the times, to the extent, and at price or prices that District directs or authorizes, any property of types referred to in this subparagraph, but Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by District. Proceeds of transfer or disposition shall be applied to reduce payments to be made by District to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as District may direct;



4. District shall have no obligation to pay Contractor for termination for convenience unless and until Contractor provides District with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
5. In arriving at the amount due to Contractor, there shall be deducted in whole (or in the appropriate part[s] if the termination is partial):
  - a. All unliquidated advances or other payments on account previously made to Contractor, including without limitation all payments applicable to the terminated portion of Contract Documents;
  - b. Any claim which District may have against Contractor in connection with Contract Documents; and
  - c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of these Contract Documents, and not otherwise recovered by or credited to District.

**C. CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

1. Contractor hereby assigns to District each Subcontract for a portion of the Work, provided that:
  - a. The assignment is effective only after District's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) for cause or for convenience;
  - b. The Assignment is effective only for the Subcontracts which District expressly accepts by notifying the Subcontractor in writing;
  - c. The assignment is subject to the prior rights, if any, of the Surety, (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract; and
  - d. After the effectiveness of an assignment, Contractor shall, at its sole cost and expense, sign all instruments and take all actions reasonably requested by District to evidence and confirm the effectiveness of the assignment in District.
2. Nothing herein shall modify or limit any of Contractor's obligations to District arising from acts or omissions occurring before the effectiveness of any subcontract assignment, including but not limited to all defense, indemnity, and hold harmless obligations arising from or related to the assigned subcontract.

**ARTICLE 12 PAYMENT AND PERFORMANCE BONDS**

**A. PAYMENT BOND**

Contractor shall provide, within ten Days after the Notice of Award, a Payment Bond in the form included in the Contract Documents in accordance with Civil Code Section 3247. The Payment Bond shall be in the amount of 100% of the Contract in accordance with Civil Code Section 3248. All bond premiums shall be at Contractor's cost.

**B. PERFORMANCE BOND**

Contractor shall provide, within ten Days after the Notice of Award, a Performance Bond in the form included in the Contract Documents. The Performance Bond shall be in the amount of 100% of the Contract which shall remain in full force and effect through the guarantee period. All bond premiums shall be at Contractor's cost.

### **ARTICLE 13    DRAWINGS AND SPECIFICATIONS**

- A. Drawings and Specifications are intended to delineate and describe the Project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the Work, and to carry the Work to a successful conclusion.
- B. Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of governmental agencies, and where referred to in the Contract Documents, these laws, ordinances, rules, and regulations shall be considered as a part of the Agreement within the limits specified. Contractor shall bear all expenses of correcting work done contrary to applicable laws, ordinances, rules, and regulations if Contractor performed same without first consulting District for further instructions regarding this work, or disregarded District's instructions regarding the work.
- C. Questions regarding interpretation of Drawings and Specifications shall be clarified by Architect. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor. Contractor shall immediately notify Architect and District in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications. If Contractor or its Subcontractors, material or equipment suppliers, or any of their respective officers, agents, or employees performs, permits, or causes the performance of any work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom, including, without limitation, the cost of correction thereof. In the event that Architect determines that Contractor's requests for clarification or interpretation are not justified or do not reflect adequate competent supervision or knowledge by Contractor or the Subcontractors, Contractor shall be required to pay District's reasonable and customary fees in processing and responding to such requests. Should Contractor commence work or any part thereof without seeking clarification, Contractor waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information.
- D. Figured dimensions on drawings shall govern, but Work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale drawings shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and Specifications are intended to be fully complimentary and internally consistent. If Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify District in writing, and any necessary changes shall be adjusted as provided in the Contract Documents; provided, however, that specifications calling for the higher quality material or workmanship shall prevail without additional cost to District.
- E. Materials or work described in words which so applied has a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- F. It is not the intention of the Agreement to go into detailed descriptions of any materials or methods commonly known to the trade under a "trade name" or a "trade term." The mere mention or notation of such trade name or trade term shall be considered a sufficient notice to Contractor that it will be required to complete the Work so named with all its incidental and accessory items according to the best practices of the trade.

- G. The naming of any material or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and labor necessary to achieve full and complete functioning of the material and equipment pursuant to best practices of the trades involved, unless specifically noted otherwise.
- H. District will furnish to Contractor one complete set of blue-line prints for posting of changes. Additional blue-line prints shall be provided by District upon payment by Contractor. During the construction period, Contractor shall maintain the set of blue-line prints in a satisfactory record condition, and shall thoroughly and neatly post, as they occur, all additions, deletions, corrections, and revisions in the actual construction of the Project. The record drawings must be posted monthly and be current prior to each submission of each certificate of payment.
- I. No modification or deviation from the Contract Documents will be permitted without District approval. Contractor must perform design and construction Work in strict accordance with the Contract Documents. Contractor shall review drawings and specifications developed by its consultants and subcontractors under this Agreement for compliance with the Contract Documents prior to submission to and approval by DSA. No order for any alteration or modification which would increase or decrease the cost of the Work shall be valid unless the resulting increase or decrease in price is agreed upon in writing, and the resulting Change Order signed by Contractor, and certified by the authorized officer representing District. As appropriate or required by law, Change Orders changing approved Drawings and Specifications are subject to approval by DSA. Deviations from Drawings and from the dimensions therein, or from the Specifications, whether or not error is believed to exist, shall be made only when approved in writing by District.

**ARTICLE 14 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND CONTRACT DOCUMENTS: OWNERSHIP OF RESULTS/WORKS FOR HIRE**

- A. Any interest (including copyright interests) of Contractor or its Subcontractors and consultants (together, “Subconsultants”), in studies, reports, memoranda, computational sheets, drawings, plans, or any other documents (including electronic media) prepared by Contractor or the Subconsultants in connection with the Services, shall become the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under the Contract Documents shall be deemed works for hire, and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works created by Contractor or its Subconsultants under the Agreement are not works for hire under U.S. law, Contractor hereby assigns to District all copyrights to such works. With District’s prior written approval, Contractor may retain and use copies of such works for reference and as documentation of experience and capabilities. Contractor shall, however, retain the copyright in its standard details, and grants District an unlimited license to use such details for the purposes stated in the Contract Documents. Should District desire to reuse any of the items specified herein and not use the services of Contractor, then District agrees to assume all obligations for their reuse and, if applicable, process the same through DSA, and District releases Contractor and its Sub-consultants from liability associated with the reuse.
- B. All artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, and any original works of authorship created by Contractor, or its Subconsultants or designers, in connection with services performed under the Agreement shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event that it is ever determined that any works created by Contractor or its Subconsultants or designers under the Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to District. With the prior written approval of District,

Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **ARTICLE 15    SUBMITTALS**

### **A.    SUMMARY**

1.    This section describes general requirements for submittals for the Work:
  - a.    Procedures
  - b.    Schedule of Shop Drawing and Sample Submittals
  - c.    Safety Plan
  - d.    Progress Schedule
  - e.    Product Data
  - f.    Shop drawings
  - g.    Samples
  - h.    Quality Control Submittals
    - i.    Engineering Data
    - ii.    Test Reports
    - iii.    Certificates
    - iv.    Manufacturers' Instructions
  - i.    Machine Inventory Sheets
  - j.    Operations and Maintenance Manuals
  - k.    Computer Programs
  - l.    Project Record Documents

### **B.    PROCEDURES**

1.    Submit in duplicate sets Schedule of Shop Drawing and Sample Submittals, Safety Plans, Progress Schedule, Product Data, Shop Drawings, Samples, Quality Control Data, Machine Inventory Sheets, Operations and Maintenance Manuals, Computer Programs, and Project Record Documents required by the Contract Documents.
2.    Transmit each item with a standard letter of transmittal in form approved by District.
3.    Identify Contractor, Subcontractor, Subconsultant, major supplier, pertinent drawing sheet and detail number, and specification section number as appropriate. Provide space for District review stamps.

4. Where manufacturers' standard drawings or data sheets are used, they shall be marked clearly to show those portions of the data which are applicable to this Project.
5. Submit Shop Drawings, Samples, Product Data and other submittals (individually, "**Submittal**"; collectively, "**Submittals**") to District for review and action in accordance with accepted Schedule of Submittals. If no such Schedule of Submittals is agreed upon, then all Submittals shall be completed within 30 Days after commencement of Contract Time.
6. The data shown on all Submittals shall be complete with respect to quantities, dimensions, specified performance, design criteria, materials, and similar data to show District the materials and equipment Contractor proposes to provide and to enable District to review the information for the limited purposes specified below. Samples shall be identified clearly as to material, supplier, pertinent data such as catalog numbers, and the use for which it is intended and otherwise as District may require to enable District to review the Submittal. The number of each Sample to be submitted will be as specified in the Specifications.
7. At the time of each submission, Contractor shall give District specific written notice of all variations, if any, that the Submittal may have from the requirements of the Contract Documents, and the reasons therefore. This written notice shall be in a written communication separate from the Submittal. In addition, Contractor shall cause a specific notation to be made on each Submittal submitted to District for review and approval of each such variation.
8. If District accepts deviation, District shall issue an appropriate Contract Modification.
9. Submittal coordination and verification is the responsibility of Contractor, this responsibility shall not be delegated in whole or in part to Subcontractors, Subconsultants, or suppliers. Before submitting each Submittal, Contractor shall have determined and verified:
10. Submittal coordination and verification is the responsibility of Contractor; this responsibility shall not be delegated in whole or in part to Subcontractors, subconsultants or suppliers. Before submitting each Submittal, Contractor shall have determined and verified:
  - a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto;
  - b. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work; and
  - c. All information relative to Contractor's sole responsibilities and of means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto.
11. Contractor shall also have reviewed and coordinated each Submittal with other Submittals and with the requirements of the Work and the Contract Documents.
12. Contractor's submission to District of a Submittal will constitute Contractor's representation that it has satisfied its obligations under the Contract Documents, and as set forth immediately above, with respect to Contractor's review and approval of that Submittal.

13. Designation of work “by others”, if shown in Submittals prepared by a Subcontractor, Subconsultant, or supplier, shall mean that work will be responsibility of Contractor rather than the Subcontractor, Subconsultant, or supplier who has prepared submittals.
14. After review by District of each of Contractor’s Submittals, one of set of duplicates of material will be returned to Contractor with actions defined as follows:
  - a. NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with future Submittals and additional partial Submittals for portions of the Work not covered in this Submittal. Does not constitute approval or deletion of specified or required items not shown on the Submittal.
  - b. MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED) - Same as above, except that minor corrections as noted shall be made by Contractor.
  - c. AMEND AND RESUBMIT - Rejected because of major inconsistencies or errors which shall be resolved or corrected by Contractor prior to subsequent review by District.
  - d. REJECTED - RESUBMIT - Submitted material does not conform to Drawings and Specifications in a major respect (*e.g.*, wrong size, model, capacity, or material).
  - e. NOT REVIEWED - Submitted material has not been reviewed and is being returned to be acted upon by Contractor without review by District.
15. It is considered reasonable that Contractor shall make a complete and acceptable Submittal at least by its second submission. District reserves the right to deduct monies from payments due Contractor to cover additional costs of District’s review beyond the second submission. Illegible Submittals will be rejected and returned to Contractor for resubmission.
16. Favorable review will not constitute acceptance by District of any responsibility for the accuracy, coordination and completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be sole responsibility of Contractor, including responsibility to backcheck comments, corrections, and modifications from District’s review before proceeding with the Work which is the subject of the Submittals. Submittals may be prepared by Contractor, Subcontractors or suppliers, but Contractor shall ascertain that Submittals meet all requirements of the Contract Documents while conforming to structural space and access conditions at the point of installation. District’s review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the requirements of the Contract Documents. Favorable review of a Submittal, method of work, or information regarding materials and equipment that Contractor proposes to furnish shall not relieve Contractor of responsibility for errors therein and shall not be regarded as an assumption of risk or liability by District, or any officer or employee thereof, and Contractor shall have no claim under Contract on account of failure, partial failure, inefficiency, or insufficiency of any plan, method of work, or material and equipment so reviewed. Favorable review shall be considered to mean merely that District has no objection to Contractor using, upon his own full responsibility, the plan or method of work proposed, or furnishing the materials and equipment proposed.
17. District’s review will not extend to the means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. District may decline to review Submittals in which event the Submittals will be returned to

Contractor to be acted upon without review. There is no obligation running to Contractor by District, or anyone acting upon its behalf to act upon Contractor's Submittals, and action upon them does not give rise to liability of any type to Contractor.

18. Submit a complete initial Submittal for those items where required by individual Specification sections. The complete submittal shall contain sufficient data to demonstrate that items comply with the Contract Documents, shall meet minimum requirements for submissions cited in the Technical Specifications, shall include motor data and seismic anchorage certifications, where required, and shall include other necessary revisions required for equipment. If Contractor submits an incomplete initial Submittal, when complete the Submittal is required, submittal may be returned to Contractor without review.
19. It shall be Contractor's responsibility to copy, conform, and distribute reviewed Submittals in sufficient numbers for Contractor's files, Subcontractors, and vendors.
20. After District's review of a Submittal, revise and resubmit as required. Identify changes made since previous Submittal.
  - a. Begin no fabrication or work which requires Submittals until return of Submittals not requiring resubmittal.
  - b. Normally, Submittals will be processed and returned to Contractor within 15 working days of receipt.
21. Distribute copies of reviewed Submittals to concerned persons. Instruct recipients to promptly report any inability to comply with Submittals.

**C. SCHEDULE OF SHOP DRAWINGS AND SAMPLE SUBMITTALS**

1. Submit preliminary Schedule of Shop Drawing and Sample Submittals as required by the General Conditions. Submit two copies of final and accepted Schedule of Submittals of Shop Drawings and samples as required by the General Conditions, and in no event later than 30 Days following Notice to Proceed.
2. The Schedule of Shop Drawing and Sample Submittals will be used by District to schedule activities relating to review of submittals. Schedule of Submittals shall indicate a spreading out of Submittals and early Submittals of long lead-time items and of items which require extensive review.
3. Schedule of Shop Drawing and Sample Submittals shall be reviewed by District and shall be revised and resubmitted until accepted by District.

**D. SAFETY PLAN**

1. Submit two copies of a Safety Plan specific to this Contract to District within 15 Days after commencement of Contract Time.
2. One copy of accepted the Safety Plan will be returned to Contractor.
3. No on-site work shall be started until Safety Plan has been reviewed and accepted by District. Acceptance of the Safety Plan shall not affect Contractor's responsibility for maintaining a safe working place and instituting safety programs in connection with project. Neither District nor

District assumes any responsibility for Contractor's safety related obligations. Contractor shall have sole responsibility for safety on and off the Site.

**E. PROGRESS SCHEDULE**

1. See Article 23 (Progress Schedule), for schedule and report requirements.
2. Submit one electronic and three print copies of the schedule at each of the following times:
  - a. Initial CPM Schedule at the Preconstruction Conference.
  - b. Original CPM Schedule within 60 Days of commencement of Contract Time.
  - c. Adjustments to the CPM Schedule as required.
  - d. CPM Schedule updates monthly, submitted with each Pay Application.
3. Submit four copies of the reports listed in Article 23(Progress Schedule) with:
  - a. Initial CPM Schedule
  - b. Original CPM Schedule
  - c. Each monthly Schedule update
4. Progress Schedules and Reports shall be submitted electronically in addition to hard copies specified above.

**F. PRODUCT DATA**

1. Within 30 Days after commencement of Contract Time, submit two copies of complete list of major products proposed for use, with name of the manufacturer, trade name, and model number of each product.
2. For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.
3. Tabulate products by specification section number.
4. Supplemental Data:
  - a. Submit number of copies which Contractor requires, plus two copies which will be retained by District.
  - b. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to the Project.
5. Provide copies for Project Record Documents described in Article 48 (Completion).

**G. SHOP DRAWINGS**

1. Minimum Sheet Size: 8½ inches by 11 inches. All others: Multiples of 8½ inches by 11 inches, 34 inches by 44 inches maximum.

2. For 8½ inch by 11 inch and 11 inch by 17 inch sheets, submit the number of copies which Contractor requires, plus two copies which will be retained by District.
3. For 17 inch by 22 inch through 34 inch by 44 inch sheets, submit one reproducible transparency and two prints. After review, reproduce, and distribute.
4. The original sheet or reproducible transparency will be marked with District's review comments and returned to Contractor.
5. Mark each copy to identify applicable products, models, options, and other data; supplement manufacturers' standard data to provide information unique to the Work.
6. Include manufacturers' installation instructions when required by Specification section.

## **H. SAMPLES**

1. Submit full range of manufacturers' standard colors, textures, and patterns for District's selection.
2. Submit samples to illustrate functional and aesthetic characteristics of each product, with integral parts and attachment devices. Coordinate Submittal of different categories for interfacing work.
3. Include identification on each sample, giving full information.
4. Submit two samples unless otherwise specified. One will be retained.
5. Sizes: Unless otherwise specified, provide the following:
  - a. Paint Chips: Manufacturers' standard
  - b. Flat or Sheet Products: Minimum 6 inches square, maximum 12 inches square
  - c. Linear Products: Minimum 6 inches, maximum 12 inches long
  - d. Bulk Products: Minimum 1 pint, maximum 1 gallon
6. Full size samples may be used in the Work upon approval.
7. Mock-ups:
  - a. Erect field samples and mock-ups at the Project Site in accordance with the requirements of Specification sections.
  - b. Modify or make additional field samples and mock-ups as required to provide appearance and finishes approved by District.
  - c. Approved field samples and mock-ups may be used in the Work upon approval.

## **I. QUALITY CONTROL SUBMITTALS**

1. Test Reports: Three copies. One copy will be marked with District's review comments and returned to Contractor.
  - a. Indicate that the material or product conforms to or exceeds specified requirements.

- b. Reports may be from recent or previous tests on material or product but must be acceptable to District. Comply with requirements of each individual Specification.
- 2. Certificates: Three copies. One copy will be marked with District's review comments and returned to Contractor.
  - a. Indicate that the material or product conforms to or exceeds specified requirements.
  - b. Submit supporting reference data, affidavits, and certifications as appropriate.
  - c. Certificates may be recent or from previous test results on material or product but must be acceptable to District.
- 3. Manufacturers' Instructions: Three copies. One copy will be marked with District's review comments and returned to Contractor.
  - a. Include manufacturers' printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing.
  - b. Identify conflicts between manufacturers' instructions and Contract Documents.

**J. MACHINE INVENTORY SHEETS [IF APPLICABLE]**

- 1. [TBD]

**K. OPERATIONS AND MAINTENANCE MANUALS**

- 1. Submit two copies of manufacturers' operations and maintenance manuals. If necessary, both copies will be marked with District's review comments and returned to Contractor for correction until satisfactory information is provided. District will retain satisfactorily corrected manuals for District's own use.
- 2. Operations and maintenance manuals shall include the following as appropriate:
  - a. Operating instructions
  - b. Preventive maintenance instructions
  - c. Cleaning instructions
  - d. Safety precautions
  - e. Trouble shooting procedures
  - f. Theory of operation to discrete component level
  - g. Schematic diagrams, flow diagrams, wiring diagrams, logic diagrams, etc. to discrete component level
  - h. Parts lists showing all discrete components with part number, current prices, and availability

- i. List of replaceable supplies; paper, ink, ribbon, etc. with part numbers, current prices, and availability
  - j. Recommended levels of spare parts and supplies to keep on hand
  - k. Manufacturers' service and maintenance technical manuals
  - l. Names, addresses and telephone numbers of service and repair firms for the equipment
3. Manuals shall be the same as are used by manufacturers' authorized technicians to completely service and repair the equipment.

**L. COMPUTER PROGRAMS**

1. When any equipment requires operation by computer programs, submit a copy of the program on appropriate diskette plus all user manuals and guides for operating the programs and making changes in the programs for upgrading and expanding the databases. Programs must be compatible with District software requirements, or in a form otherwise acceptable to District. Provide required licenses to District at no additional cost.

**M. PROJECT RECORD DOCUMENTS**

1. Submit one copy of each of the Project Record Documents as listed in Article 49, Project Record Documents.

**N. DELAY OF SUBMITTALS**

1. Delay of Submittals by Contractor is considered Contractor-caused delay. Liquidated damages incurred because of late Submittals will be assessed to Contractor.

**ARTICLE 16 LAYOUT AND FIELD ENGINEERING**

- A. All field engineering required for laying out of this work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified civil engineer approved by District. Any required "Record" drawings of site development shall be prepared by the approved civil engineer.

**ARTICLE 17 SOILS INVESTIGATION REPORT**

- A. When a soils investigation report has been obtained from test holes at the site, such report is available for Contractor's use in preparing its bid and work under the Contract Documents, but such report shall not be part of the Contract Documents. Any information obtained from such report or any information given on drawings as to surface and 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. Contractor is required to make a visual examination of site and must make whatever test Contractor deems appropriate to determine surface and subsurface soil conditions. If, during the course of work under the Contract Documents, Contractor encounters subsurface or latent conditions which differ materially from those indicated in the soils investigation report, then Contractor shall notify District within five working days of discovery of the condition.
- B. **WARNING: DISTRICT DOES NOT WARRANT THE SOILS AT THE PROJECT SITE NOR ANY INFORMATION CONTAINED IN ANY SOILS REPORT. SOILS INVESTIGATION REPORT IS PROVIDED FOR CONTRACTOR'S INFORMATION ONLY. CONTRACTOR IS TO CONDUCT**

AN INDEPENDENT INVESTIGATION OF THE PROJECT SITE AND THE SOILS CONDITIONS OF THE SITE. DISTRICT DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION.

- C. Contractor agrees that no claim against District will be made by Contractor for damages related to surface and subsurface conditions and hereby waives any rights to damages in the event that during progress of work Contractor encounters subsurface or latent conditions at the worksite materially different from those shown on drawings or indicated in specifications.

## **ARTICLE 18    TESTS AND INSPECTIONS**

- A. Tests and inspections will comply with the California Code of Regulations and with any other applicable laws, ordinances, rules, regulations, and orders of governmental agencies.
- B. Contractor's duties include, but are not limited to, compliance with and shall cooperate with Inspector and District in all testing required by DSA. Contractor shall comply with Part 2, Title 24, California Code of Regulations, and shall cooperate with Inspector in all inspections, testing and approvals required by DSA. Contractor also shall comply with Uniform Building Code requirements and all other applicable requirements of governmental agencies.
- C. If the Contract Documents, District's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two working days prior to being tested or covered up. If inspection is by authority other than District, Contractor shall inform Inspector of the date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by Inspector shall be promptly made, and where practicable, at source of supply. If any work should be covered up without approval or consent of Inspector, it must be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with the Contract Documents. Costs of tests, inspections, and any materials found to be not in compliance with the Contract Documents shall be paid for by Contractor. Other costs for test and inspection shall be paid by District.

## **ARTICLE 19    TRENCHES**

- A. Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.
- B. If the Contract Documents involve the excavation of any trench or trenches five feet or more in depth, and the Project cost is in excess of \$25,000, Contractor shall, in advance of excavation, submit to District for acceptance, or to whomever District designates, which may include a registered civil or structural engineer employed by District to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefore shall be included in the price named in the Agreement for completion of the work as set forth in the Contract Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until the plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such

plan delivered to District pursuant to Labor Code Sections 6500 and 6705, and Health and Safety Code Section 17922.5.

- C. If the Agreement involves the digging of trenches or excavations that extend deeper than four feet below the surface, the following shall apply pursuant to Public Contract Code Section 7104:
  - 1. Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:
    - a. Material that Contractor believes may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
    - b. Subsurface or latent physical conditions at the site different from those indicated.
    - c. 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.
- D. 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 Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Contract Documents.
- E. In the event that a dispute arises between District and Contractor, whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the work to be performed under the Contract Documents. Contractor shall retain all rights provided in the Agreement and in law which pertain to the resolution of disputes and protests.

**ARTICLE 20**    **CONTRACT DOCUMENTS AT WORK SITE**

- A. Contractor shall keep on the Site at all times one legible copy of all Contract Documents, including addenda and change orders, and all approved drawings, plans, schedules, and specifications. The Contract Documents shall be kept in good order and available to Architect, District, and any applicable governmental agency. Contractor shall be acquainted with and comply with all laws and regulations relating to the Project.

**ARTICLE 21**    **STATE AUDIT**

- A. Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records, and files of District, Contractor, or any Subcontractor involving the expenditure of public funds in excess of \$10,000 including, but not limited to, the costs of administration of the Agreement, shall be subject to the examination and audit of the State Auditor at the request of District or as part of any audit of District for a period of three years after final payment is made under the Agreement.

**ARTICLE 22**    **SUBSTITUTIONS**

- A.    **PRIOR TO BID OPENING**

1. Should the bidder wish to request prior to bid opening, any substitution for the materials, process, service, or equipment specified, the bidder shall submit a written request at least ten working days before the bid opening date and hour. If the substituted item is acceptable, District will approve it in an Addendum issued to all bidders of record. Requests received less than ten working days prior to bid opening will not be considered. District shall consider substitution requests only from bidders submitting the bid for the Project.

**B. AFTER BID OPENING AND PRIOR TO AWARD OF CONTRACT**

1. If the bidder clearly indicates in its bid that it is proposing to use an “equal” product, the brand name or trade name, if any, of a proposed substitute item shall be inserted in the space provided in the bid or shall be otherwise clearly identified in the bid. If the bidder fails to indicate an “equal” product, its bid shall be considered as offering the material, process, service, or equipment referred to by the brand name or trade name specified. It is expressly understood and agreed to by the bidder that District reserves the right to reject any such proposed substituted item. It is further expressly understood and agreed by bidder that in the event District rejects a proposed “equal” item, the bidder will then supply the material, process, service, or equipment designated by brand name or trade name or a substitute therefore which meets with the approval of District.
2. With respect to all proposed substitutions of “equal” items, the bidder shall submit all pertinent and appropriate data substantiating its request for substitutions within 10 Days prior to the award of the Contract. District shall consider substitution requests only from the bidders submitting the bid for the Project. District is not responsible for locating or securing any information which is not included in such substantiating data. The burden of proof as to the quality or suitability of proposed substituted items shall be borne by the bidder. District shall be the sole judge as to the quality and suitability of proposed substituted items, and decisions of District shall be final and conclusive. Unless extended by the mutual agreement of the Parties, District shall notify the successful bidder of the decision concerning the proposed substitution of “equal” items prior to the award of the contract. Also such decisions by District shall be in writing, and no proposed substituted item shall be deemed approved unless District has so indicated in writing. These time limitations shall be complied with strictly, and in no case will an extension of time for completion be granted because of the bidder’s failure to request the substitution of an item at the times and in the manner set forth herein.
3. Whenever in specifications any materials, process, service, or equipment is indicated or specified by brand name, trade name, proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, service, or equipment desired and shall be deemed to be followed by the words “or equal,” and Contractor may, unless otherwise stated, offer any material, process, service, or equipment which shall be substantially equal or better in every respect to that so indicated or specified subject to District or Architect approval.
4. If material, process, service, or equipment offered by Contractor is not, in opinion of Architect or District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, service, or equipment specified. Burden of proof as to equality of any material, process, service, or equipment shall rest with Contractor. Provision authorizing submission of “or equal” substantiating data shall not in any way authorize an extension of time for performance of the Agreement nor shall District nor Architect authorize the submission of “or equal” substantiating data within 30 Days of the filing of the Notice of Completion on the Project.

**C. FOLLOWING AWARD OF CONTRACT**

1. In the event that Contractor furnishes material, process, service, or equipment other than what was specified by District and which has been accepted by District and which later is found to be of less quality than was specified, then Contractor, at its sole cost and expense, shall furnish District with substituted material, process, service, or equipment or fully replace with new the material, process, service, or equipment at District's discretion.
2. In the event that Contractor furnishes material, process, service, or equipment more expensive than that specified, difference in cost of such material, process, service, or equipment so furnished shall be borne by Contractor. Any engineering, design fees, or approval agencies' fees required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by Contractor. Any difference in cost between an approved substitution which is lower in cost than the originally specified item shall be refunded or credited by Contractor to District.
3. Price, fitness, and quality being equal with regard to supplies, District may prefer supplies grown, manufactured, or produced in California and next prefer supplies partially manufactured, grown, or produced in California, provided that the bids of these suppliers or the prices quoted by them do not exceed by more than 5% of the lowest bids/prices quoted by out-of-state suppliers, the major portion of the manufacture of the supplies is not done outside of California and the public good will be served thereby under Government Code Sections 4330 through 4334.

**ARTICLE 23    PROGRESS SCHEDULE**

**A. SUMMARY**

1. This Article includes description of requirements and procedures for submitting progress schedules and submittals.
2. Contractor shall employ competent scheduling personnel or a schedule consultant with experience performing scheduling required herein on a minimum of two prior, similar projects, and with first-hand knowledge of this Project.

**B. GENERAL**

1. The Schedule shall be cost-loaded based on Work Breakdown Structure/Schedule of Values as approved by District.
2. Progress Schedule shall be based on, and incorporate milestone and completion dates specified, in Contract Documents.
3. Overall time of completion and time of completion for each milestone shown on Progress Schedule shall adhere to times in the Agreement, unless an earlier (advanced) time of completion is requested by Contractor and agreed to by District. A Contract Modification shall formalize any such agreement.
4. Progress Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. Responsibility for developing Contract schedule and monitoring actual progress as compared to Progress Schedule rests with Contractor.

5. Failure of Progress Schedule to include any element of the Work or any inaccuracy in Progress Schedule will not relieve Contractor from responsibility for accomplishing the Work in accordance with the Contract. District acceptance of Schedule shall be for its use in monitoring and evaluating job progress, payment requests, and time extension requests, and shall not, in any manner, impose a duty of care upon District, or act to relieve Contractor of its responsibility for means and methods of construction.
6. Transmit to District, no less than monthly, current progress schedule in electronic form, to include the entire electronic file without abridgment, inclusive of all updates.

**C. CONTRACTOR TO SUBMIT BASELINE AND PROGRESS SCHEDULES**

1. Contractor shall submit an Initial Contract Schedule two weeks prior to the first Application for Payment . Contractor’s initial Contract Schedule is subject to District’s review and comments. The approved initial Contract Schedule shall be referred to as the “**Baseline Schedule.**”
2. Contractor’s Baseline Schedule and progress schedules shall show Contractor’s construction and procurement activities including, without limitation, equipment procurement and delivery (Contractor and District supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on site, and necessary interface with District and third parties required to complete the Work in a timely manner and in accordance with Contract Time.

**D. SCHEDULE REQUIREMENTS**

1. Unless District agrees in writing otherwise, progress schedule shall be on Primavera P6, most current version of Sure Track, or equivalent software acceptable to District, as District may specify, which Contractor shall prepare and supply to District, with all datapoint entries completed for start dates, necessary work activities, durations (not longer than 21 Days), and logic ties.
2. Contractor shall develop a network plan and schedule for the Project demonstrating complete fulfillment of all Contract requirements, shall keep the network plans up to date in accordance with the requirements of this Article, and shall utilize the CPM in planning, coordinating, performing and reporting the work under this contract, including all activities of Subcontractors, equipment vendors, and suppliers, and in assisting District in monitoring the progress of the Work.
3. CPM network is a graphic depiction of Contractor’s construction plan, showing the sequential steps needed to reach completion of the Work within the prescribed Contract Time. It shall depict events and tasks as activities, and their interrelationships, and shall recognize the progress that must be made on one activity before subsequent activities can begin. These activities shall be logically represented in a CPM network showing their interrelationships in a chronological fashion. As each activity has a time allocation, the completed network shall show the critical path of activities that must be completed on time if the entire Project is not to be delayed. It shall also be possible to identify the earliest and latest start and finish times for each activity if the overall Project is not to be delayed. Therefore, the CPM network shall be comprehensive and shall include all interdependencies and interactions required to perform the Work of the Project.
4. Contractor’s Baseline Schedule and progress schedules shall be in the form of a CPM (arrow) diagram. [OPTIONAL - may be in the form of a CPM (arrow) diagram. Contractor shall provide District with native format electronic schedules and hard copies of the Baseline Schedule,

schedule updates, and look-ahead schedules. All electronic and hard copies of the schedule that Contractor provides to District shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through [Substantial and Final] completion within Contract Time.

5. Unless District agrees in writing otherwise, progress schedules shall also show early and late start and finish dates and total available float (float to the successor activity's late start date) for each activity.
6. District has no obligation to accept an early completion schedule.

#### **E. MONTHLY UPDATES**

1. Contractor's progress schedule shall be updated monthly to reflect actual progress. The schedule shall be subject to District's review and acceptance for use in monitoring Contractor's Work and evaluating Applications for Payment.
2. Contractor shall supply District with an electronic copy of the updated progress schedule with each monthly payment application. Contractor shall provide District with three-week look-ahead schedules weekly, showing in detail and activities and resources scheduled for the immediate two week period.
3. The three-week look-ahead schedule shall list the trades scheduled for the following three weeks, the approximate resource assignment, and the progress in the past week on trades and work activities for the prior week's three-week look-ahead schedule for the prior week. The three-week look-ahead schedule shall be produced and presented at each weekly progress meeting and shall be coordinated with the schedule required under this Article.

#### **F. GENERAL**

1. Progress Schedule shall be based on, and incorporate milestone and completion dates specified, in Contract Documents.
2. Overall time of completion and time of completion for each milestone shown on Progress Schedule shall adhere to times in the Agreement, unless an earlier (advanced) time of completion is requested by Contractor and agreed to by District. A Contract Modification shall formalize any such agreement.
3. Progress Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. Responsibility for developing Contract schedule and monitoring actual progress as compared to Progress Schedule rests with Contractor.
4. Failure of Progress Schedule to include any element of the Work or any inaccuracy in Progress Schedule will not relieve Contractor from responsibility for accomplishing the Work in accordance with the Contract. District acceptance of Schedule shall be for its use in monitoring and evaluating job progress, payment requests, and time extension requests, and shall not, in any manner, impose a duty of care upon District, or act to relieve Contractor of its responsibility for means and methods of construction.
5. Transmit to District, no less than monthly, current progress schedule in electronic form, to include the entire electronic file without abridgment, inclusive of all updates.

**G. INITIAL AND ORIGINAL PROGRESS SCHEDULE**

1. Initial Schedule submitted for review at the Preconstruction Conference shall serve as Contractor's schedule for up to 30 Days after the Notice to Proceed – I (Design and Preconstruction).
2. Initial Schedule must indicate detailed plan for the Work to be completed in first 30 Days of the Contract; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of materials and equipment. Show Work beyond 30 Days in summary form.
3. Contractor shall submit its Original Schedule for review no later than first progress payment. Original Schedule and all updates shall comply with all standards herein.
4. All Schedules shall be time-scaled.
5. In lieu of providing a cost loaded schedule, Contractor shall provide District with a monthly cash flow schedule, showing Contractor's forecasted expenditures on a monthly basis through completion of the Project. Contractor's cash flow schedule shall be updated monthly and shall have sufficient detail and accuracy to form a reasonable basis, based upon currently available information, for District to project and plan for Project cash flow requirements for the Project duration.
6. Except as otherwise expressly provided in this Article, meet with District to review and discuss each Schedule (*i.e.*, Initial, Original and monthly updates) within seven Days after each Schedule has been submitted to District.
  - a. District review and comment on any Schedule shall be limited to Contract conformance (with sequencing, coordination, and milestone requirements).
  - b. Contractor shall make corrections to Schedule necessary to comply with Contract requirements and shall adjust Schedule to incorporate any missing information requested by District. Resubmit Initial Schedule if requested by District.
7. Initial Schedule shall identify the following milestone events:
  - a. Notice to Proceed date(s)
  - b. Substantial completion and project completion at each construction phase
  - c. Start and completion dates for Work in each occupied space
  - d. Utility connections
  - e. Inspections
8. Original Schedule and all updates shall identify all Work activities, in proper sequence for the completion of the Work. Work activities shall include the following:
  - a. Major Contractor-furnished equipment, materials, and building elements, and scheduled activities requiring submittals or District prior approval.
    - i. Show dates for the submission, review, and approval of each submittal. Dates shall be shown for the procurement, fabrications, delivery, and installation of

major equipment, materials, and building elements, and for scheduled activities designated by District.

- ii. A minimum of 15 working days shall be allotted for District review for each submittal.
  - b. System test dates
  - c. Dates Contractor request designated working spaces, storage areas, access, and other facilities to be provided by District
  - d. Dates Contractor requests orders and decisions from District
  - e. Dates Contractor requests District-furnished equipment
  - f. Dates Contractor requests District-furnished utilities
  - g. Connection and relocation of existing utilities
  - h. Connecting to or penetrating existing structures
  - i. Dates Contractor requests access to areas requiring removal of Asbestos containing materials by District
9. If Contractor is of the opinion that any of the Work included on its Schedule has been impacted, submit to District a written Time Impact Evaluation (“TIE”) in accordance with this Article. The TIE shall be based on the most current update of the Initial Schedule.

## **H. SCHEDULE FORMAT AND LEVEL OF DETAIL**

- 1. Utilize Primavera computer-scheduling software, for all scheduling including schedule updates, and employ scheduling personnel experienced and competent in it. For all activities or impacts shown in schedule, Contractor shall complete all data points in the software to specifically include the activities, their durations, their logic ties and their resources.
- 2. Each Schedule (Initial, Original, and updates) shall indicate all separate design, approvals, design reviews, and submissions to applicable governmental agencies; fabrication; long lead item procurement activities, procurement, and field construction activities required for completion of the Work, including but not limited to the following:
  - a. All Contractor and Subcontractor work shall be shown in a logical work sequence that demonstrates a coordinated plan of work for all contractors. The intent is to provide a common basis of acceptance, understanding, and communication, as well as interface with other contractors.
  - b. Activities related to the delivery of Contractor and District-furnished equipment to be Contractor-installed per Contract shall be shown.
  - c. Critical design and construction milestones;
  - d. All activities shall be identified through codes or other identification to indicate the building and Contractor/Subcontractor responsibility to which they pertain.

- e. Break up the Work schedule into activities of durations of approximately 21 Work Days or less each, except for non-field construction activities or as otherwise deemed acceptable by District.
  - f. Show the critical path in red. For each activity, show early start, late start, early finish, late finish, durations measured in Days, float, resources, predecessor and successor activities, planned workday/week for the activity, material quantities, and scheduled/actual progress payments.
3. Seasonal weather conditions (which do not constitute a delay as defined herein) shall be considered in the planning and scheduling of all work influenced by high or low ambient temperatures or presence of high moisture for the completion of the Work within the allotted Contract Time.
  4. Failure by Contractor to include any element of Work required for performance of the Work on the detailed construction schedule shall not excuse Contractor from completing all Work required within the Contract Time.
  5. A three-week “look ahead,” detailed daily bar chart schedule shall be updated and issued weekly in hard copy and electronically.
  6. Monthly updates shall include schedule sorts in hard copy, by bid item (geographic work area) with critical items shown in red float and with early/late start and finish dates, to facilitate meaningful review and assessment of schedule.

#### **I. MONTHLY SCHEDULE UPDATE SUBMITTALS**

1. Following acceptance of Contractor’s Initial Schedule, Contractor shall monitor progress of Work and adjust Schedule each month to reflect actual progress and any anticipated changes to planned activities.
  - a. Each Schedule update submitted shall be complete, including all information requested for the Initial Schedule and Original Schedule submittal.
  - b. Each update shall continue to show all Work activities including those already completed. These completed activities shall accurately reflect “as built” information by indicating when activities were actually started and completed, and Contractor warrants the accuracy of as-built information as shown.
2. A meeting will be held on approximately the 25<sup>th</sup> day of each month to review the Schedule update submittal and progress payment application.
  - a. At this meeting, at a minimum, the following items will be reviewed: Percent complete of each activity; TIEs for Contract Modifications and Time Extension Request; actual and anticipated activity sequence changes; actual and anticipated duration changes; and actual and anticipated Contractor delays and critical issues.
  - b. These meetings are considered a critical component of overall monthly schedule update submittal; have appropriate personnel attend. At a minimum, Contractor’s General Superintendent and Scheduler shall attend these meetings.
  - c. Plan on the meeting taking no less than four hours.

3. Within five Days after monthly Schedule update meeting, Contractor shall submit on compact disc (or DVD, thumb drive, or external hard drive) the updated Schedule, and reports and charts, both in hard copy and on a compact disc (or DVD, thumb drive, or external hard drive).
4. Within 35 Days of receipt of above-noted revised submittals, District will either accept or reject monthly schedule update submittal.
  - a. If accepted, percent complete shown in monthly update will be basis for Application for Payment by Contractor. The schedule update shall be submitted as part of Contractor's Application for Payment and a basis of such payment.
  - b. If rejected, update shall be corrected and resubmitted by Contractor before the Application for Payment is submitted. District may withhold five percent of monthly progress payment amount until acceptable schedule update is received.
5. Neither updating, changing, or revising of any report, curve, schedule, or narrative submitted to District by Contractor under this Contract, District review or acceptance of any such report, curve, schedule, or narrative, nor District failure to review same, shall have the effect of amending or modifying, in any way, the Contract Substantial Completion date or milestone dates or of modifying or limiting, in any way, Contractor's obligations under this Contract. Any District review is solely for District's internal consideration to reasonably ascertain likelihood of Contractor's achieving applicable Contract milestones, and Contractor may not rely thereon.

#### **J. SCHEDULE REVISIONS**

1. Updating the Schedule (Initial and Original) to reflect actual progress shall not be considered revisions to the Schedule. Since scheduling is a dynamic process, however, revisions to activity durations and sequences are expected on a monthly basis.
2. To reflect revisions to the Schedule, provide District with a written narrative with a full description and reasons for each Work activity that is revised. For revisions affecting the sequence of Work, provide a schedule diagram that compares the original sequence to the revised sequence of Work. Contractor shall clearly show and discuss any changes in the critical path, and provide the written narrative and schedule diagram for revisions three Days in advance of the monthly schedule update meeting.
3. Schedule revisions shall not be incorporated into any schedule update until District has reviewed the revisions. District may request further information and justification for schedule revisions and, within three Days, provide District with a complete written narrative response to District request.
4. If District does not accept Contractor's revision, and Contractor disagrees with District position, Contractor has seven Days from receipt of District letter rejecting the revision, to provide a written narrative providing full justification and explanation for the revision. Contractor's failure to respond in writing within seven Days of District written rejection of a schedule revision shall be contractually interpreted as acceptance of District position, and Contractor waives its rights to subsequently dispute or file a claim regarding District position. If Contractor files a timely response as provided in this paragraph, and the Parties are still unable to agree, then District and Contractor's rights shall be as provided in Article 45, Contractor Claims.
5. At District's discretion, Contractor can be required to provide Subcontractor certifications of performance regarding proposed schedule revisions affecting the Subcontractors.

**K. RECOVERY SCHEDULE**

1. District may request a recovery schedule should Contractor show a substantial completion date that is 21 or more Days behind any schedule Contract Substantial Completion date, or individual Milestone, which schedule shall show Contractor's plan and resources committed to retain Contract completion dates.
2. The recovery schedule shall show the intended critical path., Contractor shall submit to District within seven Days the proposed revisions to recover the lost time. As part of this submittal, Contractor shall provide a written narrative for each revision made to recapture the lost time. If the revisions include sequence changes, Contractor shall provide a schedule diagram comparing the original sequence to the revised sequence of Work. If District requests, Contractor shall show the intended critical path; secure appropriate Subcontractor and supplier consent to the recovery Schedule; submit a narrative explaining trade flow and construction flow changes, duration changes, added/deleted activities, and critical path changes; and identify all near critical paths and person hour loading assumptions for major Subcontractors.
3. The revisions shall not be incorporated into any Schedule update until District has reviewed the revisions.
4. If District does not accept Contractor's revisions, District and Contractor shall follow the procedures set forth above regarding schedule revisions.
5. At District discretion, Contractor can be required to provide Subcontractor certifications for revisions affecting Subcontractors.

**L. TIME IMPACT EVALUATION FOR CONTRACT MODIFICATIONS AND OTHER DELAYS**

1. When Contractor is directed to proceed with changed work or Subcontractors, or otherwise requests a time extension, Contractor shall prepare and submit, within 14 Days from the direction to proceed, a TIE.
2. When Contractor requests a time extension for any reason, Contractor shall submit a TIE that provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each TIE shall be in a form and content that is acceptable to District and that includes both a written narrative and a schedule diagram depicting how the changed Work or other impact work affects other schedule activities. The schedule diagram shall show how Contractor proposes to incorporate the changed Work or other impact work in the schedule, and how it impacts the current Schedule critical path or otherwise. Contractor is also responsible for establishing time extensions based on the TIE's impact on the critical path. The diagram shall be tied to the main sequence of scheduled activities to enable District to evaluate the impact of changed Work to the scheduled critical path.
3. Contractor shall comply with the requirements of this Article regarding the submission of TIEs for all types of delays such as, but not limited to, Contractor or Subcontractor delays, adverse weather delays, strikes, procurement delays, fabrication delays, etc.
4. Contractor is responsible for all costs associated with preparing, and the process of incorporating TIE's into the current schedule update. Contractor shall provide District with four copies of each TIE both in hard copy and compact disc (or DVD, thumb drive, or external hard drive).

5. Once agreement has been reached on a TIE, the Contract Time will be adjusted accordingly. If agreement is not reached on a TIE, the Contract Time may be extended in an amount District allows, and Contractor may submit a claim for additional time claimed by Contractor as provided in these General Conditions.

#### **M. TIME EXTENSIONS**

1. Contractor is responsible for requesting time extensions for time impacts that, in the opinion of Contractor, impact the critical path of the current schedule update. Notice of time impacts shall be given in accordance with these General Conditions.
2. Where an event for which District is responsible impacts the projected Substantial Completion date, Contractor shall provide a written mitigation plan, including a schedule diagram, which explains how (*e.g.*, increase crew size, overtime, etc.) the impact can be mitigated. Contractor shall also include a detailed cost breakdown of the labor, equipment, and material Contractor would expend to mitigate District-caused time impact. Contractor shall submit a mitigation plan to District within 14 Days from the date of discovery of the impact. Contractor is responsible for the cost to prepare the mitigation plan.
3. Failure to request time, provide TIE, or provide the required mitigation plan will result in Contractor waiving its right to a time extension and cost to mitigate the delay.
4. No time will be granted under the Contract Documents for cumulative effect of changes.
5. District will not be obligated to consider any time extension request unless requirements of Contract Documents are complied with.
6. Failure of Contractor to perform in accordance with the current schedule update shall not be excused by submittal of time extension requests.
7. Notwithstanding any other provision of this Article, if Contractor does not submit a TIE within the required 14 Days for any issue, Contractor hereby agrees that Contractor does not require a time extension for that issue.

#### **N. PROJECT STATUS REPORTING**

1. In addition to submittal requirements for scheduling identified in this Article, Contractor shall provide a monthly project status report (*i.e.*, written narrative report) to be submitted in conjunction with each Schedule as specified herein. Status reporting shall be in form specified in this paragraph.
2. A progress summary shall be the first page of the Monthly Project Report. The report shall indicate in column format: (a) the original and forecast cost and dates of completion; (b) the original and adjusted contract sums; (c) pending change order requests and claims; and (d) the original and projected completion dates.
3. The Monthly Project Report shall include construction progress and updates. Construction progress: generally since prior report, and percentage completion. Contractor shall include a narrative of the work performed and an updated task list and identify areas of concern, actions and approvals needed, including without limitation:

- a. Contractor schedule: work progress against schedule. The report shall clearly identify actual performance with respect to the current approved version of the schedule, including without limitation:
  - i. Progress made on critical activities indicated on each Schedule, including inspections.
  - ii. Explanations for any lack of work on critical path activities planned to be performed during last month.
  - iii. Explanations for any schedule changes, including changes to logic or to activity durations.
  - iv. List of critical activities scheduled to be performed during the next month.
  - v. Status of major material and equipment procurement.
- b. Problems. The narrative shall include any problems or delays encountered, causes of delays, proposed ways to work around any problems that arise and schedule assessment, and an explanation of how Project will be brought back on schedule if delays have occurred.
- c. Design Status. The Monthly Project Report shall include a section on design status for the Project. The report shall also include a list of any Contract deliverables and identification of areas of concern, actions and approvals needed, and recommendations regarding ongoing design work with respect to value engineering, constructability coordination of design services with other Project items, and any and all design changes affecting appearance, size, function, usage or cost of the Project or any Subproject.
- d. Subcontractor Procurement. The Monthly Project Report shall include a section on Subcontractor procurement, if applicable.
- e. Contractor's Safety Program. The Monthly Project Report shall include a section on Contractor's Safety Program. The narrative shall include incident reports and statistics and other Contractor recommended information to demonstrate and promote the effectiveness of its Safety Program.
- f. Disputes and Claims. The Monthly Project Report shall include a section on disputes and claims. For the Project and each Subproject, the narrative shall include a discussion on disputes, potential claims, and claims made.
- g. Look Ahead Task List. The Monthly Report shall include a 120-day look ahead/task listing for District planning purposes, of District-specific activities, inspections, approvals, tie-ins, connections, consents, and decisions that are needed for District to facilitate Contractor's progress.
- h. Daily Log (electronic copy only). Contractor shall keep a daily log containing a record of weather, Contractor activities, Subcontractors working on the Site, number of workers, work accomplished, problems encountered, impacts on the Work and specific activities, and other relevant data or such additional data as District may require. Contractor shall maintain the log electronically in a format acceptable to District, with each data-point

maintained separately for separate sorting, charting, or study by District if necessary. Contractor shall submit such electronic file monthly with the Monthly Progress Report.

- i. Status reports, and the information contained therein, shall not be construed as claims, notice of claims, notice of delay, or requests for changes or compensation.
4. At the close of each workday provide District with report of Contractor and its Subcontractors' work activities for that day, including trades, equipment, work activities worked on, staff levels, and equipment deliveries. Use form acceptable to District.
5. Unless otherwise indicated, submit all reports and schedule files on compact disc (or DVD, thumb drive, or external hard drive), in addition to printed copies.
6. Submit all DSA and other legally-required reports in the required time, format, and detail.

**O. VERIFIED REPORTS**

1. Contractor shall ensure that the Verified Reports required by Title 24 of the California Code of Regulations be timely completed by Subcontractors and others.
- P. IT IS AGREED THAT DISTRICT OWNS THE "FLOAT" ON THIS PROJECT. IF CONTRACTOR SUBMITS A REVISED SCHEDULE SHOWING AN EARLIER COMPLETION DATE FOR THE PROJECT, DISTRICT'S ACCEPTANCE OF THIS REVISED SCHEDULE SHALL NOT ENTITLE CONTRACTOR TO ANY DELAY CLAIM, DISRUPTION DAMAGES, OR ANY OTHER DAMAGES DUE TO ANY SUCH REVISED SCHEDULE. NOTHING PROVIDED HEREIN SHALL BE CONSTRUED AS A DIRECT, INDIRECT, OR IMPLICIT ACCELERATION ORDER TO CONTRACTOR.

**ARTICLE 24 MATERIALS AND WORK**

- A. Except as otherwise specifically stated in the Agreement, Contractor shall provide and pay for all materials, supplies, tools, equipment, labor transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete the Project within the specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.
- C. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work, and shall be stored properly and protected as required. District has no obligation to pay for any prefabricated material stored offsite until delivered and installed to the jobsite, and inspected and approved by Inspector.
- D. Contractor shall, after issuance of the Notice to Proceed by District, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the work. Contractor shall, upon demand from District, furnish to District documentary evidence showing that orders have been placed.
- E. District reserves the right, for any neglect in not complying with the above instructions, to place orders for such materials and equipment as it may deem advisable in order that the work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of the materials and/or equipment shall be paid for by Contractor.

- F. No materials, supplies, or equipment for work under the Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to District free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by the Agreement shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.
- G. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor that is in the hand of District, and this provision shall be inserted into all subcontracts and material contracts, and notice of its provisions shall be given to all persons furnishing materials or labor when no formal contract is entered into for such materials or labor.
- H. The title to new materials and equipment, and attendant liability or its protection and safety, shall remain in Contractor until incorporated in the work and accepted by District; no part of the materials or equipment shall be removed from its place of onsite or offsite storage except for immediate installation at the Project; Contractor shall keep an accurate inventory of all materials and equipment in a manner satisfactory to District.

## **ARTICLE 25    INTEGRATION OF WORK**

- A. Contractor shall do all cutting, fitting, patching, and preparation of work as required to make its several parts come together properly, and fit it to receive or be received by work of other contractors or existing conditions showing upon, or reasonably implied by, the Drawings and Specifications, and shall follow all directions given by District.
- B. All costs caused by defective or ill-timed work shall be borne by Contractor.
- C. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work, and shall not cut or alter work of any other contractor without the written consent of District. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.
- D. When modifying existing work or installing new work adjacent to existing work, Contractor shall match, as closely as conditions of the Site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work as required, at no additional cost to District.
- E. Contractor is aware that the Project may be split into several phases. If the Project is split into phases, then Contractor has made allowances for any delays or damages which may arise from coordination with other Contractors for other phases. If any delays should arise from a contractor working on a different phase, Contractor's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not District. Contractor shall provide access to other contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

## **ARTICLE 26    OBTAINING OF PERMITS, LICENSES, AND EASEMENTS**

- A. Except as otherwise provided in the Contract Documents, Contractor shall obtain, at Contractor's sole expense, all governmental and private approvals, licenses, and permits required to complete the Work, including but not limited to, all aspects of coordination and approvals of any type from state and local agencies, for example and not by way of limitation, DSA, Fire Marshall, and City building officials. All such approvals, licenses, and permits shall be delivered to District before demand is made for the certificate of final payment. Contractor shall, and shall require Subcontractors, to maintain contractors' licenses in effect as required by law.
- B. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by District, unless otherwise specified.
- C. Permits and charges for installation, and inspection thereof, of utility services by serving utilities shall be secured and paid for by District.

## **ARTICLE 27    SURVEYS**

- A. Contractor shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Project. Contractor shall take field measurements, verify all field conditions, and compare all of the foregoing and other available information with Contract Documents. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all facilities described in the final plans and specifications shall be the responsibility of Contractor. Contractor shall preserve all permanent survey construction monuments and benchmarks. Prior to the final completion date, Contractor shall accurately correct all Project documents to as-built conditions and deliver to District these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project and shall show all related easements, improvement, utilities and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents also shall show the dimensions and the distances to the nearest benchmarks.

## **ARTICLE 28    EXISTING UTILITIES**

- A. Pursuant to Government Code Section 4215, District assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under the Agreement with respect to any such utility facilities which are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of District to provide for removal or relocation of such utility facilities. If Contractor, while performing Work, discovers utility facilities not identified by District in the Plans and Specifications, Contractor shall immediately notify District and the utility in writing. Contractor shall be compensated according to the provisions in the Contract Documents governing changes in the Work.
- B. This Article shall not be construed to preclude assessment against Contractor for any other delays in completion of the work. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the construction site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site.
- C. Contractor shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3, 4216.4, and 4216.5, and shall pay all fees and penalties charged pursuant to Government Code Sections 4216 *et seq.*

**ARTICLE 29      WORK TO COMPLY WITH APPLICABLE LAWS AND LEGAL REQUIREMENTS**

A. **COMPLIANCE WITH LAWS:** Contractor shall conform to all applicable codes, laws, ordinances, rules, and regulation, which shall have full force and effect as though set forth in full in the Contract Documents. Copies of the codes, laws, ordinances, rules, regulations, and ordinances applicable to the Project (“**Legal Requirements**”) are not furnished to Contractor, because Contractor is assumed to be familiar with these requirements.

1. Any listing of Legal Requirements for hazardous waste abatement Work in the Contract Documents is supplied to Contractor as a courtesy and shall not limit Contractor’s responsibility for complying with the Legal Requirements. Where conflict among the Legal Requirements occurs, the most stringent requirements shall be used.
2. Specific reference in the Contract Documents to Legal Requirements shall mean the latest version at the time of application except as may be otherwise specifically stated in the Contract Documents.

B. **PRECEDENCE:**

1. Where specified requirements in the Contract Documents differ from Legal Requirements, the more stringent requirements shall take precedence. Where Drawings or Specifications require or describe products or execution of better quality, higher standard or greater size than required by Legal Requirements, then Drawings and Specifications shall take precedence so long as such increase is lawful. Where no requirements are identified on Drawings and Specifications, comply with all Legal Requirements.
2. Should any conditions develop not covered by the Contract Documents wherein the finished Work will not comply with current Legal Requirements, a Change Order detailing and specifying the required Work shall be submitted to and approved by District before proceeding with the Work.

C. **LEGAL REQUIREMENTS:** Legal Requirements that apply to the Project include, without limitation, the following:

1. Codes:
  - a. California Building Code as amended by applicable local ordinances.
  - b. California Electrical Code as amended by applicable local ordinances.
  - c. California Plumbing Code as amended by applicable local ordinances.
  - d. California Mechanical Code as amended by applicable local ordinances.
  - e. California Fire Code as amended by applicable local ordinances.
2. Rules of the National Board of Fire Underwriters and the National Fire Protection Associations
3. Local utility regulations.
4. Federal laws:
  - a. OSHA: Hazard Communications Standards

- b. Americans With Disabilities Act of 1990
  - c. 29 CFR, Section 1910.1001, Asbestos
  - d. 40 CFR, Subpart M, National Emission Standards for Asbestos
  - e. Executive Order 11246
  - f. Federal Endangered Species Act
  - g. Clean Water Act
  - h. Immigration Reform and Control Act
  - i. Executive Order N-6-22
5. State of California laws:
- a. Code of Regulations, Titles 5, 8, 15, 17, 19, 21, 22, 24, and 25
  - b. Public Contract Code
  - c. Education Code
  - d. Health and Safety Code
  - e. Government Code
  - f. Labor Code
  - g. Civil Code
  - h. Code of Civil Procedure
  - i. CPUC General Order 95, Rules for Overhead Electric Line Construction
  - j. CPUC General Order 128, Rules for Construction of Underground Electric Supply and Communications Systems
  - k. Cal/OSHA
  - l. California Endangered Species Act
  - m. Water Code
  - n. Fish and Game Code
  - o. Regulations of State of California Agencies:
    - i. Business, Consumer Services, and Housing Agency
    - ii. Office of the State Fire Marshall
    - iii. Office of Statewide Health Planning and Development (if applicable)

- iv. Department of Fish and Game
- v. Air Quality Management Districts
- vi. Regional Water Quality Control Boards
- vii. DSA

**ARTICLE 30**    **ACCESS TO WORK**

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

**ARTICLE 31**    **PAYMENTS BY CONTRACTOR**

- A. Contractor shall pay:
1. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered;
  2. For all materials, tools, and other expendable equipment, to the extent of 90% of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at site of Project and balance of cost thereof not later than the 30th day following completion of that part of Work in or on which such materials, tools, and equipment are incorporated or used; and
  3. To each of its Subcontractors, not later than the 20th day of the calendar month following that in which such services are rendered.
  4. Within seven Days from the time that all or any portion of the retentions are received by Contractor from District, to each of its Subcontractors from whom retention has been withheld, each Contractor's Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor, if the payment is consistent with the terms of the subcontract. Contractor may withhold from a Subcontractor its portion of the retentions if a bona fide dispute exists between the Subcontractor and Contractor. The amount withheld from the retention shall not exceed 150% of the estimated value of the disputed amount.

**ARTICLE 32**    **UTILITIES**

- A. All utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. When it is necessary to interrupt any existing utility service to make connections, a minimum of 48 hours advance notice shall be given to District and Architect. Interruptions in utility services shall be of the shortest possible duration for the work at hand and shall be approved by District and Architect. In the event that any utility service is interrupted without the required 48-hour notice, then Contractor shall be liable for all damage suffered by District due to the interruption. Emergency response in such instances shall be immediate and continuous until service to

campus is restored. Upon completion of Work, Contractor shall remove all temporary distribution systems.

- B. Contractor may, with written permission of District, use District's existing utilities by making prearranged payments to District for utilities used by Contractor for the Project.

**ARTICLE 33**     **SANITARY FACILITIES**

- A. Contractor shall provide sanitary temporary toilet facilities in no fewer numbers than required by law, and such additional facilities as may be directed by Inspector for the use of all workers. The toilet facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by Inspector. Use of toilet facilities in the work under construction is not permitted.

**ARTICLE 34**     **PATENTS, ROYALTIES, AND INDEMNITIES**

- A. Contractor shall hold and save District, and its trustees, 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 Agreement, including its use by District, unless otherwise specifically provided in the Contract Documents, and unless such liability arises from the sole negligence or willful misconduct of District.

**ARTICLE 35**     **WARRANTY**

- A. Contractor warrants that the Work, including any equipment furnished by Contractor, shall: (1) be free from defects in workmanship and material; (2) be free from defects in any design performed by Contractor; (3) be new, and conform and perform to the requirements stated in the Specifications, and where detail requirements are not so stated, shall conform to applicable industry standards; and (4) be suitable for the use stated in the Specifications.
- B. The warranty period for discovery of defective work shall commence on the date stamped on the Notice of Completion verifying County recordation, and shall continue for one year, unless otherwise specified in the Contract Documents. If, during the warranty period, the work is not available for use due to defective work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective work shall continue for a duration equivalent to the original warranty period.
- C. District shall give Contractor written notice within a reasonable time after discovery of any defective work. Contractor shall correct any such defective work, as well as any damage to any other part of the work resulting from such defective work, and provide repair, replacement, or reimbursement, at its sole expense, in a manner approved by District and with due diligence and dispatch as required to make the work ready for use by District, ordinary wear-and-tear, unusual abuse, and neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design (unless of District's design), removal, repair, replacement, or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges, and labor as may be necessary, and cost of removal and replacement of work shall be performed at a time and in such a manner so as to minimize the disruption to District's use of the work.
- D. In the event of failure of Contractor to commence and pursue with diligence the repairs or replacements within ten Days after being notified in writing, District is hereby authorized to proceed to have defects repaired or replaced and made good at expense of Contractor who hereby agrees to pay costs and charges therefore immediately upon demand.

- E. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the written notice required by this Article. If Contractor cannot be contacted or neither complies with District's requirements for correction within a reasonable time as determined by District, District may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against Contractor. Such action by District will not relieve Contractor and Surety of the guarantees provided in this Article or elsewhere in the Contract Documents.
- F. This Article does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates upon completion of the Project or upon request by District.
- G. All guarantees required under this Article shall be in writing on the Guarantee form included in the Contract Documents.
- H. Contractor shall provide to District instruction manuals for all items which require same.
- I. Nothing herein shall limit any other rights or remedies available to District.

**ARTICLE 36 DUTY TO PROVIDE FIT WORKERS**

- A. Contractor shall at all times enforce strict discipline and good order among its employees and those of Subcontractors, and shall not permit the employment of 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.
- B. Any person in the employ of Contractor or Subcontractors whom District or Architect may deem incompetent, unfit, 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.

**ARTICLE 37 PREVAILING WAGE AND WORKING HOURS**

- A. Contractor shall pay to persons performing work on the Project an amount equal to or more than the applicable prevailing rate of wages. The wages shall be an amount equal to or more than the rates contained in a schedule that has been ascertained and determined by the California Department of Industrial Relations (“DIR”) to be the applicable prevailing rate of wages. Contractor shall cause a copy of the determination of the prevailing rate of wages to be posted at the Site.
- B. Contractor shall forfeit, as a penalty to District, \$200 for each laborer, worker, or mechanic employed in performing labor for the Project for each Day, or portion thereof, that such laborer, worker, or mechanic is paid less than the applicable prevailing wage rates. The sums and amounts that are forfeited shall be withheld and retained from payments due to Contractor under the Contract Documents, but no sum shall be so withheld, retained, or forfeited, except from the final payment, without a full investigation by either the DIR or District. The Labor Commissioner, pursuant to Labor Code Section 1775, shall determine the final amount of forfeiture.
- C. Contractor shall insert in every Subcontract which Contractor may make for performance of Work a provision that Subcontractor shall pay persons performing labor or rendering service not less than the applicable prevailing rate of wages and shall comply with provisions of this Article. Contractor is responsible for this compliance of Subcontractors.

- D. Contractor agrees that it shall comply with all applicable wage and hour laws, including without limitation, Labor Code Sections 1776 and 1810 through 1815. Failure to so comply shall constitute a default under this Contract.
- E. Contractor shall be responsible for compliance with Labor Code Sections 1810 through 1815 by Contractor and Subcontractors:
1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any worker employed on the Project is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week.
  2. Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement ("DLSE").
  3. Contractor or its Subcontractors shall, as a penalty to District, forfeit \$25 for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day, or 40 hours in any one calendar week, in violation of the provisions of Labor Code Sections 1810 through 1815.
  4. Work performed on the Project by employees of Contractor or its Subcontractors in excess of eight hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than 1½ times the basic rate of pay.
- F. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776. Further, this Project is subject to prevailing wage compliance monitoring and enforcement by the DIR.
1. Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract Documents. Each payroll record shall be verified by a written declaration as required by Labor Code Section 1776.
  2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor as required by Labor Code Section 1776.
    - a. Contractor shall inform District of the location of records enumerated above, including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.
    - b. Contractor or Subcontractor has ten Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that Contractor or any Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to District on whose behalf the contract is made or awarded, forfeit \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards ("DAS") or the DLSE, these penalties shall be withheld from progress payments then due. Contractor is not subject to

a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.

3. With each application for payment, Contractor shall deliver certified payroll records directly to the Labor Commissioner in the format prescribed by the Labor Commissioner.

G. Contractor shall post all jobsite notices as required by law.

### **ARTICLE 38    APPRENTICES**

- A. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code Section 1777.5, as applicable, for all apprenticing occupations.
- B. Apprentices of any crafts or trades may be employed and, when required by Labor Code Section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of law.
- C. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.
- D. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Labor Code Sections 3070 *et seq.*, are eligible to be employed on the Project. The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.
- E. Pursuant to Labor Code Section 1777.5, Contractor and any Subcontractors employing workers in any apprenticeship craft or trade in performing any work under the Agreement shall employ apprentices in at least the ratio set forth in Labor Code Section 1777.5, and apply to the applicable joint apprenticeship committee for a certificate approving Contractor or Subcontractor under the applicable apprenticeship standards for the employment and training of apprentices.
- F. Contractor and Subcontractors shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.
- G. If Contractor or Subcontractor willfully fails to comply with Labor Code Section 1777.5, then, upon a determination of noncompliance by DAS, Contractor or Subcontractor shall be subject to the penalties imposed under Labor Code Section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- H. Contractor and all Subcontractors shall comply with Labor Code Section 1777.6 which forbids certain discriminatory practices in the employment of apprentices.
- I. Prior to commencement of the Work, Contractor shall become fully acquainted with the law regarding apprentices. Special attention is directed to Labor Code Sections 1777.5, 1777.6, and 1777.7, and Title 8, California Code of Regulations, Sections 200, *et seq.*

**ARTICLE 39**    **LABOR - FIRST AID**

- A. Contractor shall maintain emergency first aid treatment for Contractor's and Subcontractors' workers on the Project which complies with the federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 *et seq.*).

**ARTICLE 40**    **PROTECTION OF PERSONS, PROPERTY, SAFETY, AND EMERGENCIES**

**A. PROTECTION OF PERSONS AND PROPERTY**

1. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by District, or required by state, federal, or local laws and ordinances. Contractor shall be responsible for all damage to Work, property, or structures, all injuries to persons, and all damage and interruptions to District's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by District in writing, Contractor shall at all times perform all Work in a manner which does not interrupt, damage or otherwise adversely impact any facilities, operations, or real or personal property of District, its officers, employees, agents, invitees, licensees, lessees, or contractors.
2. Contractor shall comply with all applicable laws and regulations for safety of persons or property, or to protect them from damage, injury, or loss; and shall establish and maintain all necessary safeguards for such safety and protection.
3. Contractor's obligations shall include, but not be limited to (unless waived by District in writing) the following:
  - a. Taking 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.
  - b. Enclosing working area with a substantial barricade;
  - c. Prohibiting unauthorized individuals on the work site;
  - d. Requiring all workers on the Project to be conspicuously identified either by a firm logo on their clothing or prominent identification badge;
  - e. Arranging work to cause a minimum amount of inconvenience and danger to District students and employees;
  - f. Providing substantial barricades around any shrubs or trees indicated by District to be preserved.
  - g. Delivering materials to Site over routes designated by District.
  - h. Taking preventive measures to eliminate objectionable dust.
  - i. Enforcing all instructions of District and Architect regarding signs, advertising, fires, and smoking, and requiring that all workers comply with all applicable rules and regulations while on the Site.

- j. Taking 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 civil engineer at no cost to District.
4. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
5. Contractor shall remedy all damage, injury, loss, or interruption to any property or operations referred to above, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or entity directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. District and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Work.
6. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
7. District may, at its option, retain such moneys due under the Contract Documents as District deems necessary until all lawsuits or claims against Contractor for injury to persons, property, or operations are settled and District receives satisfactory evidence to that effect.

## **B. RESPONSIBILITY FOR SAFETY AND HEALTH**

1. Contractor shall ensure that its and each tier of Subcontractors' employees, agents, and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970, and rules and regulations issued pursuant thereto, and District's safety regulations as amended from time to time. Contractor shall comply with all District directions regarding protective clothing and gear.
2. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify District, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard. Contractor shall provide protective clothing and gear to all visitors to the Site.
3. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed: District designated routes for ingress and egress thereto and any other District designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

## **C. EMERGENCIES**

1. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from District, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by District. Contractor shall give District prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If District determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action. Emergency contact names & phone numbers, where Contractor's Superintendent and Project Manager can be reached at any time, are to be provided to District, within 10 Days after issuance of a Notice to Proceed with Construction.

#### **ARTICLE 41      NON-DISCRIMINATION**

- A. District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities. District does not discriminate unlawfully in providing educational or employment opportunities to any person on the basis of race or ethnicity, gender, gender identity, gender expression, religion, age, national origin, sexual orientation, marital status, medical condition, pregnancy, physical or mental disability, military or veteran status, or genetic information or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics. Contractor understands, pursuant to the Agreement, that neither Contractor nor its Subcontractors, or any of its respective employees or agents, shall discriminate unlawfully on any of these grounds. Contractor shall ensure that the evaluation and treatment of workers and applicants for employment are free from such unlawful discrimination and harassment.

#### **ARTICLE 42      SEXUAL MISCONDUCT**

- A. Contractor understands, pursuant to the Agreement, that Contractor, its Subcontractors, and all of its respective employees and agents, agree to comply with the prohibition against sexual misconduct pursuant to District's Board Policy 5910.

#### **ARTICLE 43      MODIFICATIONS OF CONTRACT DOCUMENTS**

##### **A. PROCEDURES FOR CONTRACTOR INITIATED CHANGE ORDER**

1. Contractor-Initiated Change Proposal Request (“CPR”) and Procedures
  - a. Contractor may initiate changes by submitting a CPR.
  - b. Whenever Contractor elects or is entitled to submit a CPR, Contractor shall prepare and submit to District for consideration a CPR using the Cost Proposal Form included in this Project Manual. All CPRs must contain a complete breakdown of costs of credits, deducts and extras; itemizing labor, materials, equipment, markup, bonds, insurance and taxes; and any requested changes to Contract Time. All Subcontractor Work shall be so indicated. Individual entries on the CPR form shall include applicable Schedule of Values code, with all amounts determined as provided herein. After receipt of a CPR with a detailed breakdown, District will act promptly thereon.
  - c. If District accepts a CPR, District will prepare a Change Order for District and Contractor signatures.

- d. If CPR is not acceptable to District because it does not agree with Contractor's proposed cost and/or time, District will provide comments thereto. Contractor will then, within seven Days (except as otherwise provided in the Contract Documents), submit a revised CPR.
  - e. When necessity to proceed with a change does not allow District sufficient time to conduct a proper check of a CPR (or revised CPR), District may issue a Change Directive ("CD") as provided below.
2. Contractor-Initiated Request for Information ("RFI") Procedures, Requirements, and Limitations
- a. Contractor may submit RFIs for clarifications to District-prepared Contract Documents which may result in Contractor submitting a CPR.
  - b. Whenever Contractor requires information regarding the Project or District-prepared Contract Documents, or receives a request for such information from a Subcontractor, Contractor may prepare and deliver an RFI to District. Contractor shall use RFI format provided by District. Contractor shall not issue an RFI to District solely to clarify Contractor-prepared documents. Contractor must submit time critical RFIs at least 30 Days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity of Progress Schedule, and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.
  - c. Contractor shall be responsible for its costs to implement and administer RFIs throughout the duration of the Project. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation for the effort required to submit the RFIs. Contractor shall be responsible for District's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by District; at District discretion, such costs may be deducted from progress payments or final payment.
  - d. District will respond within ten Days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors.
  - e. If Contractor is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
  - f. If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating it is a follow-up RFI) to District clarifying original RFI. Additionally, District may return RFI requesting additional information should original RFI be inadequate in describing condition.
3. Time Requirements
- a. If Contractor believes that a District response to an RFI, submittal, or other District direction, results in change in Contract Sum or Contract Time, Contractor shall notify District with the issuance of a preliminary CPR within ten Days after receiving District's response or direction, and in no event after starting the disputed work or later than the

time allowed in the Contract Documents. If Contractor also requests a time extension, or has issued a notice of delay or otherwise requests a time extension with a CPR, then Contractor shall submit the TIE required in these Contract Documents, concurrently with the CPR and in no event later than ten Days after providing the notice of delay.

- b. If Contractor requires more time to accurately identify the required changes to the Contract Sum or Contract Time, Contractor may submit an updated and final CPR and TIE within 14 Days of submitting the preliminary CPR.
  - c. If District agrees with Contractor's CPR or TIE, then District will prepare a Change Order for District and Contractor signatures. If District disagrees with Contractor, then Contractor may give notice of a potential claim as provided in the Contract Documents, and proceed thereunder.
  - d. Contractor must submit all CPRs (preliminary and final), notices of potential claim, Claims, and TIE's within the required time periods. Any failure to do so waives Contractor's right to submit a CPR or file a Claim.
4. Cost Estimate Information
- a. Contractor and Subcontractors shall, upon District's request, permit inspection of the original unaltered cost estimates, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its CPR or Claims arising from changes in the Work.

## **B. PROCEDURES FOR DISTRICT-INITIATED CHANGE ORDERS**

1. District Initiated CD
  - a. District may, by CD, or initially by Instruction Bulletin or by following the procedures for disputed work herein, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with or without adjustment to Contract Sum or Contract Time.
  - b. If at any time District believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, or at any other time, District may issue a CD with its recommended cost and/or time adjustment (if any). Upon receipt of CD, Contractor shall promptly proceed with the change of Work involved and respond to District within ten Days.
  - c. Contractor's response must be any one of following:
  - d. Return CD signed, thereby accepting District response, including adjustment to time and cost (if any).
  - e. Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter "A," "B," etc. for each revision), if District so requests.
  - f. Give notice of intent to submit a Claim as described in these General Conditions, and submit its Claim as provided therein.

- g. If CPR or the CD provides for an adjustment to any Contract Sum, the adjustment shall be based on one of the following methods:
  - i. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
  - ii. Contractor to proceed on cost reimbursable (force account) basis while negotiating towards a firm price.
  - iii. Cost to be determined in a manner agreed.
- h. A CD signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum or the method for determining them. Such agreement shall be effective immediately and shall be finalized as a Change Order. Where District authorizes CD work on a time and materials basis up to a maximum amount, then Contractor shall promptly advise District upon reaching 75% of such maximum amount, otherwise Contractor shall accept fully the risk of completing the CD work without exceeding such maximum amount.
- i. If Contractor does not respond promptly or disagrees with the method for adjustment (or non-adjustment) in the Contract Sum, the method and the adjustment shall be determined by District on the basis of the Contract Documents and the reasonable expenditures and savings of those performing the Work attributable to the change. If the Parties still do not agree on the proper adjustment due to a Change Directive, Contractor may file a Claim per these General Conditions or District may direct the changed work through a unilateral change order. Contractor shall keep and present an itemized accounting in a manner consistent with the SOV, together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided herein.
- j. Pending final determination of cost to District, Contractor may include amounts not in dispute in its Applications for Payment. The amount of credit to be allowed by Contractor to District for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by District. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Markup shall be figured on the basis of net increase, if any, with respect to that change.

**2. District-Initiated Change Order or Request for Proposal (“RFP”)**

- a. District may initiate changes in the Work or Contract Time by issuing a CO or RFP to Contractor.
- b. District may issue an RFP to Contractor. Any RFP will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.
- c. In response to an RFP, Contractor shall furnish a CPR within 21 business days of District’s RFP. Upon approval of CPR, District may issue a Change Directive directing Contractor to proceed with extra Work.
- d. If the Parties agree on price and time for the work, District will issue a Change Order. If the Parties do not agree on the price or time for a CPR, District may either issue a CD or

decide the issue under the Contract Documents. Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.

C. **PROCEDURES THAT APPLY TO CONTRACTOR- AND DISTRICT-INITIATED CHANGE ORDERS**

1. Adjustment of Schedules to Reflect Change Orders or CDs
  - a. Contractor shall revise Schedule of Values and Application for Payment forms to record each authorized Change Order or CD as a separate line item and adjust the Contract Sum as shown thereon prior to the next monthly pay period.
  - b. Contractor shall revise the Progress Schedules prior to the next monthly pay period, to reflect Change Order or CD.
  - c. Contractor shall enter changes in Project Record Documents prior to the next monthly pay period.
2. Required Documentation for Adjustments to Contract Amounts
  - a. For all changes and cost adjustments requested, Contractor shall provide documentation of change in Contract Amounts asserted, with sufficient data to allow evaluation of the proposal.
  - b. In all requests for compensation, cost proposals, estimates, claims and any other calculation of costs made under the Contract Documents, Contractor shall breakout and quantify costs of labor, equipment, and material identified herein, for Contractor and subcontractors of any tier.
  - c. Contractor shall, upon request, provide additional data to support computations for:
    - i. Quantities of products, materials, labor, and equipment.
    - ii. Taxes, insurance, and bonds.
    - iii. Justification for any change in Contract Time and new Progress Schedule showing revision due, if any.
    - iv. Credit for deletions from Contract, similarly documented.
  - d. Contractor shall support each claim or computation for additional cost, with additional information including:
    - i. Origin and date of claim or request for additional compensation.
    - ii. Dates and times Work was performed and by whom.
    - iii. Time records and wage rates paid.
    - iv. Invoices and receipts for products, materials, equipment and subcontracts, similarly documented.
    - v. Credit for deletions from Contract, similarly documented.

3. Responses and Disputes
  - a. For all responses for which the Contract Documents do not provide a specific time period, recipients shall respond within a reasonable time.
  - b. For all disputes arising from the procedures herein, Contractor shall follow these General Conditions.

**D. COST DETERMINATION FOR CHANGES IN CONTRACT AMOUNTS**

1. Calculation of Total Cost of Extra Work
  - a. Total cost of changed Work, extra Work, or of Work omitted shall be the sum of three components defined immediately below as: Component 1 (Direct Cost of Construction or Direct Costs); Component 2 (Markup); and, Component 3 (Bonds, Insurance, Taxes).
  - b. **Component 1:** Direct Costs of labor, equipment and materials, is calculated based upon actually incurred (or omitted) labor costs, equipment rental costs, and material costs, as defined herein;
  - c. **Component 2:** Markup on such actually incurred Direct Costs, is applied in the percentages identified below; and
  - d. **Component 3:** Actual additional costs for any additionally required bonds, insurance, and taxes by Contractor, Subcontractors, or others, defined herein, is calculated without markup.
  - e. All amounts payable to Subcontractors under Components 1, 2, and 3: must be earned under the terms of the applicable Subcontracts; must be properly requested, documented and permitted under the terms of the applicable subcontract(s) and Contract Documents; and shall be payable only if changed Work complies with terms of Contract Documents.

**E. MEASUREMENT OF DIRECT COST OF CONSTRUCTION (COST COMPONENT 1)**

1. Composition of Component 1 (Direct Cost of Construction)
  - a. Component 1 has three subcomponents, also referred to as “labor, equipment, and materials” (“**LEM**”):
    - i. Labor (**Component 1A**)
    - ii. Equipment (**Component 1B**)
    - iii. Materials (**Component 1C**)
2. Measurement of Cost of Labor (Component 1A)
  - a. Cost of Labor shall be calculated as: Cost of labor for workers (including forepersons when authorized by District) used in actual and direct performance of the subject work, whether employer is Contractor, Subcontractor, or others, in the sum of the following:

- i. Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
    - ii. Labor surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined, such as workers' compensation insurance. Such labor surcharge shall not exceed generally accepted standards for labor rates in effect on date upon which extra Work is accomplished.
    - iii. Cost of labor shall include no other costs, fees, or charges.
  - b. Labor cost for operators of equipment owned and operated by Contractor or any Subcontractor, shall be no more than rates of such labor established by collective bargaining agreements for type of worker and location of Work, whether or not District-operator (*i.e.*, Contractor or Subcontractor) is actually covered by such an agreement.
  - c. Cost of labor shall be recorded and documented in certified payroll records, maintained in the form required, and delivered to District weekly.
3. Measurement of Cost of Equipment (Component 1B)
  - a. Measurement of Component 1B (Cost of Equipment). Cost of Equipment shall be calculated as: Cost of equipment used in actual and direct performance of the subject work, whether by Contractor, Subcontractor or other forces. Cost of Equipment shall be calculated as herein described.
  - b. For rented equipment, cost will be based on actual rental invoices, appropriate for the use and duration of the work. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by District.
  - c. Equipment rental cost for Contractor or Subcontractor-owned equipment, shall be determined by reference to, and not in excess of, the generally accepted standards in the State for equipment rental rates in effect on date upon which extra Work is accomplished. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Caltrans Standard Schedules and Specifications, and absent a rental rate therein, then the Association of Equipment Distributors (“AED”) book.
  - d. In all cases, rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, and maintenance of any kind, depreciation, storage, insurance, and all incidentals.
  - e. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment or tools not listed and having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore as payment is included in payment for labor. Rental time will not be allowed while equipment is inoperative due to breakdowns.

- f. For equipment on Site, rental time to be paid for equipment shall be time equipment is in operation on extra Work being performed or on standby as approved by District. The following shall be used in computing rental time of equipment:
    - i. When hourly rates are listed, less than 30 minutes of operation shall be considered to be a half hour of operation.
    - ii. When daily rates are listed, less than four hours of operation shall be considered to be a half day of operation.
    - iii. Rates shall correspond to actual rates paid by Contractor, *i.e.*, if Contractor pays lower weekly or monthly rates, then same shall be charged to District.
  - g. For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
    - i. District will pay for costs of loading and unloading equipment.
    - ii. Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
    - iii. Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission or California Department of Transportation.
    - iv. District will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
    - v. Rental period may begin at time equipment is unloaded at Site of extra Work and terminate at end of the performance of the extra Work or Day on which District directs Contractor to discontinue use of equipment, whichever first occurs. Excluding Saturdays, Sundays, and District legal holidays, unless equipment is used to perform extra Work on such days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less number of hours equipment is inoperative due to breakdowns.
  - h. Employee vehicles are not part of Component 1A, but rather, are included within Component 2 (Markup).
  - i. Cost of equipment shall include no other costs, fees, or charges.
4. Measurement of Cost of Material (Component 1C)
- a. Cost of material shall be calculated as herein described. Cost of such materials will be cost to purchaser (Contractor, Subcontractor, or others) from supplier thereof, except as the following are applicable:
  - b. If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to District notwithstanding fact that such discount may not have been taken.

- c. For materials salvaged upon completion of Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
- d. If cost of a material is, in opinion of District, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is available in quantities concerned delivered to Site, less any discounts as provided herein.
- e. Cost of material shall include no other costs, fees, or charges.

**F. MEASUREMENT AND PAYMENT OF MARKUP (COST COMPONENT 2)**

- 1. Markup Percentages for Changed Work (Component 2)
  - a. Markup on Direct Cost of labor, materials, and equipment for extra Work pursuant to the Contract Documents performed by Contractor shall be 15%.
  - b. When extra Work is performed by Subcontractors, regardless of the number of tiers, total Markup on Component 1 Direct Costs shall be 20%. Contractor and its Subcontractors shall divide the 20% as they may agree.
  - c. Under no circumstances shall the total Markup on any extra Work exceed 20%, stated as a percent of the Direct Cost of labor, equipment, and materials. This limitation shall apply regardless of the actual number of subcontract tiers.
  - d. On proposals covering both increases and decreases in Contract Sum, Markup shall be allowed on the net increase only as determined above. When the net difference is a deletion, no percentage for Markup shall be allowed, but rather an appropriate percentage deduction shall be issued in the amount of the net difference.
- 2. Measurement and Payment of Markup (Component 2)
  - a. Markup (Component 2) provides complete compensation to Contractor and all Subcontractors for:
    - i. All Contractor and Subcontractor Profit;
    - ii. All Contractor and Subcontractor home-office overhead;
    - iii. All Contractor and Subcontractor assumption of risk assigned to Contractor under the Contract Documents;
    - iv. Subject to the qualifications below regarding self-performed work, all General Conditions and General Requirements of Contractor (and, if applicable, Subcontractors).
  - b. Profit. Compensation for profit included within Component 2 (Markup), includes without limitation: fees of all types, nature, and description; and Profit and margins of all types, nature, and description.
  - c. Home Office Expenses. Compensation for home office expenses included within Component 2 (Markup), includes without limitation: salaries and other compensation of any type of Contractor's and Subcontractor's personnel (management, administrative, and clerical), and all direct and indirect operating, travel, payroll, safety, storage, quality

control, maintenance, and overhead costs of any nature whatsoever, incurred by Contractor and Subcontractors at any location other than the Project-specific site office; insurance premiums other than those for Project-specific insurance directed by District in a Change Order; all hardware, software, supplies, and support personnel necessary or convenient for Contractor's capture, documentation, and maintenance of its costs, cost accounting data, cost accounting control systems, and work progress reporting.

- d. **Assumption of Risk.** Compensation for Contractor's and Subcontractors' assumption of risk under the Contract Documents, included within Component 2 (Markup), includes, without limitation, loss, cost, damage, expense, or liability resulting directly or indirectly from any of the following causes which are unallowable costs for Contractor and Subcontractors of any tier: noncompliance with the Contract Documents, fault or negligence, or defective or non-conforming Work by Contractor or any Subcontractor or Vendor of any tier or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents; cost overruns of any type; costs in excess of any lump sum, not to exceed amount or GMP; costs resulting from bid or "buy out" errors, unallocated scope, or incomplete transfer of scope or contract terms to Subcontractors; any costs incurred by Contractor relating to a Change in the Work without a Change Order or Change Directive in accordance with the Contract Documents; costs for work or materials for which no price is fixed in the Contract Documents, unless it is expressly specified that such work or material is to be paid for as extra work.
- e. **General Conditions and Division 1 General Requirements.** Compensation for Contractor's (and, if applicable, Subcontractors') General Requirements Costs included within Component 2 (Markup) includes compensation for: Contractor's direct costs, without overhead or profit, for salaries and related forms of compensation and employer's costs for labor and personnel costs of Contractor's employees and Subconsultant's employees (if any) while and only to the extent they are performing Work at the Site, and all "General Requirements Costs" below. Personnel and Work compensated by this Component include, without limitation: all required Project management responsibilities; all on-site services; monthly reporting and scheduling; routine field inspection of Work; general superintendence; general administration and preparation of cost proposals, schedule analysis, change orders, and other supporting documentation as necessary; salaries of project superintendent, project engineers, project managers, safety manager, other managers, timekeepers, and secretaries; all cost estimates and updates thereto; development, validation, and updates to the Project schedule; surveying; and estimating. General Requirements Costs within Component 2 (Markup) include, without limitation: all scheduling hardware, software, licenses, equipment, materials, and supplies; purchase, lease, rental, build out, procurement, supporting equipment, and maintenance of temporary on-Site facilities, Project field and office trailers, and other temporary facilities, office equipment and supporting utilities; platforms, fencing, cleanup, and jobsite security; temporary roads, parking areas, temporary security or safety fencing and barricades, etc.; all Contractor's motor vehicles used by any of Contractor's personnel, and all costs thereof; all health and safety requirements required by law or District procedures; all surveying; all protection of Work; handling and disposal fees; final cleanup; repair or maintenance; other incidental Work; all items, activities, and function similar to any of those described above; all travel, lodging, board, and the like.

- f. Personnel compensated by the Markup Component do not include workers of foreman level or below in the case of self-performed work; rather, such personnel shall be treated as a Direct Cost of Construction. Costs compensated by Component 2 (Markup) do not include temporary measures specifically required by the changed work, not otherwise required or ongoing in the prosecution of the Work, that commence specifically to support the changed work and conclude with the completion of the changed work. Such costs shall be treated as Direct Costs of Construction. Examples of General Requirements costs that this component may not cover are the following: temporary barricades or fencing of specific areas required specifically for the changed work; cranes required specifically for the changed work; and extra security required specifically for the changed work.

**G. MEASUREMENT AND PAYMENT OF BONDS, INSURANCE, TAXES (COMPONENT 3)**

1. Measurement of Bonds, Insurance, Taxes (Component 3)
  - a. Component 3 (Bonds, Insurance, Taxes) consists of the cost of bonds, insurance and taxes (also referred to as “BIT”). All State sales and use taxes, applicable County and applicable City sales taxes, shall be included. Federal and excise tax shall not be included.
  - b. There is no markup on BIT.

**H. EFFECT OF PAYMENT**

1. Change Order Compensation is All Inclusive
  - a. Except as provided expressly below regarding changes that extend the Contract Time, payment of calculated cost of extra work constitutes full and complete compensation for costs or expense arising from the extra Work, and is intended to be all inclusive.
  - b. Payment for Direct Cost of Construction (Component 1 or LEM) is intended to be all-inclusive. Any costs or risks not delineated within cost of labor, equipment or materials herein, shall be deemed to be within the costs and risks encompassed by the applicable Markups and unallowable in any separate amount.
  - c. Payment of Markup (Component 2) is intended to be all-inclusive. Contractor waives claims for any further or different payment of cost and risk items delineated herein, other than the allowable percentage markup on costs set forth in the Contract Documents; such separate, further, or different cost or risk items shall be unallowable, waived, and liquidated within the allowable percentage markup.
  - d. Contractor shall recover no other costs or markups on extra work of any type, nature, or description.
2. Exception for Changes Extending Contract Time
  - a. When a change in the Work extends the Contract Time, Contractor may request and recover additional, actual direct LEM costs provided that Contractor can demonstrate that such additional costs are (i) actually incurred performing the Work; (ii) not compensated by Component 2 (Markup); and (iii) directly result from the extended Contract Time.

Contractor shall make such request and provide such documentation following all required procedures, documentation, and time requirements in the Contract Documents, and subject to all contract limitations of liability. Contractor may not seek or recover such costs using formulas (*e.g.*, Eichleay).

3. Limits of Liability/Accord and Satisfaction

- a. The foregoing limits of compensation apply in all cases of claims for changed Work, whether calculating CPRs, Change Orders, or CDs, or calculating claims and damages of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature.
- b. Under no circumstances may Contractor claim or recover special, incidental, or consequential damages against District, its representatives, or agents, whether arising from breach of contract, negligence, strict liability, or other tort or legal theory, unless specifically and expressly authorized in the Contract Documents.
- c. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as expressly provided for in Contract Documents.
- d. Accord and Satisfaction: Every Change Order and accepted CD shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractors) claims for additional time, money, or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay, and any other type of claim. Contractor may elect to reserve its rights to disputed claims arising from or relating to the changed Work at the time it signs a Change Order or approves a CD, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved CD, and must also submit a Claim for the reserved disputed items pursuant to these General Conditions no later than 30 Days after Contractor's first written notice of its intent to reserve rights. Execution of any Change Order or CD shall constitute Contractor's representation of its agreement with this provision.

**I. MISCELLANEOUS REQUIREMENTS**

1. District-Furnished Materials

- a. District reserves right to furnish materials as it deems advisable, and Contractor shall have no claims for costs and Markup on such materials.

2. Records and Certification

- a. All charges shall be recorded daily and summarized in Change Proposal Request form attached hereto. Contractor or authorized representative shall complete and sign form each day. Contractor shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; and a list by size type and identification number of equipment and hours operated.
- b. District shall have the right to audit all records in possession of Contractor relating to activities covered by Contractor's claims for modification of Contract, including CD

Work. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to these General Conditions.

## **ARTICLE 44    TIME ALLOWANCES**

### **A.    TIME ALLOWANCES**

1. Time is of the essence. Contract Time may be changed only by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.
2. Time extensions will not be granted unless substantiated by the CPM Schedule, and then not until the CPM project float becomes zero. If Contractor fails to submit a TIE, as required in these Contract Documents, within the required time period, then Contractor shall be deemed to have agreed that there is no time impact and that Contractor has irrevocably waived its rights to any additional Contract Time.

### **B.    EXCUSABLE DELAY AND INEXCUSABLE DELAY DEFINED**

1. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
  - a. Changes in the Work ordered by District (“**Changes in Work**”);
  - b. Acts or neglect by District, any District Representative, utility owners, or other contractors performing other work not permitted or provided for in the Contract Documents, provided that Contractor has performed its responsibilities under the Contract Documents (including, without limitation, pre-bid investigations) (“**Acts or Neglect**”); or
  - c. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil or labor disturbances, or acts of God (together, “**Force Majeure**” events), provided damages resulting therefrom are not the result of Contractor’s failure to protect the Work as required by Contract Documents.
2. Inexcusable Delay. Contract Time shall not be extended for any period of time where Contractor (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a cause that is within Contractor’s risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Contractor.

### **C.    NOTICE OF DELAY**

1. Within seven Days of the beginning of any delay (excepting adverse weather delays), Contractor shall notify District in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. If Contractor requests an extension of time, Contractor shall submit a TIE, within ten days of the notice of delay. District will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this subparagraph. In cases of substantial compliance with the seven-day notice requirement here (but not to exceed 21 days from the beginning of the delay event), District may in its sole

discretion recognize a claim for delay accompanied with the proper TIE, provided that Contractor also shows good faith and a manifest lack of prejudice to District from the late notice.

**D. COMPENSABLE TIME EXTENSIONS**

1. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Sum in addition to Contract Time for:
  - a. Excusable delay caused solely by Changes in Work ordered by District, as provided above, and/or
  - b. Excusable delay caused solely by Acts or Neglect by District or other person, as provided above.

**E. NON-COMPENSABLE TIME EXTENSIONS**

1. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for
  - a. Periods of excusable delay caused solely by weather or Force Majeure events as provided above in this Article, or
  - b. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Work, or Acts or Neglect, as set forth above in this Article), and the other of which is non-compensable or unexcusable, such as: acts or neglect of Contractor, Subcontractors, or others for whom Contractor is responsible; other acts, omissions, and conditions which would not entitle Contractor to adjustment in Contract Time; adverse weather; of Force Majeure events.

**F. ADVERSE WEATHER**

1. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds the parameters listed or referenced immediately below in this subparagraph, and Contractor proves that adverse weather actually caused delays to work on the critical path. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.
2. Claims for extension of time for rain delay will not be granted unless the number of days work is prevented by rain exceeds 100% of the historical average number of rain days for the period of the Contract Time, based on the records of the National Oceanic & Atmospheric Administration (“NOAA”) weather station closest to the Project Site, as measured and reported by NOAA. (For example, for California, Oregon, and Washington, these figures are contained in the “>=0.10 inch” column at the applicable weather station’s “General Climate Summary Table” for “Precipitation” at <http://www.wrcc.dri.edu/climate-summaries/>), pro-rated in the individual month that Contractor starts and finishes Work. Delays due to adverse weather conditions will not be allowed for weather conditions that fall within these parameters.
3. In order to qualify as an adverse weather delay with respect to the foregoing parameters, daily rainfall must exceed 0.1 inch at the NOAA station located closest to the Project site, as measured and reported by NOAA. Notwithstanding these allowances, Contractor shall at all times employ

all available mitigation measures to enable Work to continue, Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for District to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

4. Contractor shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Contractor shall notify District and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float available to either District or Contractor.
5. Adverse weather delay for precipitation shall be recognized for the actual period of time Contractor proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Contractor's progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves to District's satisfaction that precipitation exceeding the specified parameters causes delay to Contractor for a period longer than the number of precipitation days incurred (*e.g.*, if it rains or snows during grading work), then Contractor shall be entitled to a time extension equal to the actual period of such delay.
6. During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Contractor, with copy to District representative and Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes Contractor responsible, at no increase in Contract Sum, for corrections District may require. Commencement of Work constitutes acceptance of surface.

## **G. LIQUIDATED DAMAGES**

1. Time is of the essence. Execution of Contract Documents by Contractor shall constitute its acknowledgement that District will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.
2. Contractor and District agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by District because of a delay in completion of all or any part of the Work. Contractor and District agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by District, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
3. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by District as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from District (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. District may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and

extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

4. Contractor and District agree that the Key Personnel identified with Contractor's Bid were a material factor in District's assessment of Contractor's experience and the adequacy of Contractor's supervisory personnel. Accordingly, Contractor and District agree that Contractor shall not remove, reassign or make changes to any of the Key Personnel without District's prior written approval. In the event that any Key Personnel leaves the Project, is reassigned, or is removed and replaced by Contractor before Project Final Completion, for any reason whatsoever, Contractor agrees to pay District liquidated damages as set forth in the Agreement, unless Contractor can demonstrate to District's satisfaction that the Key Personnel were reassigned, or removed and replaced, for reasons beyond Contractor's control.

## **ARTICLE 45      CONTRACTOR CLAIMS**

### **A. OBLIGATION TO FILE CLAIMS FOR DISPUTED WORK**

1. Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that Contractor may be required to perform, time extensions, payment to Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time or compensation for any reason whatsoever (collectively, "**Disputed Work**"), then Contractor shall first follow procedures set forth in these Contract Documents. If a dispute remains, then Contractor shall give written notice to District that expressly invokes this section. District shall decide the issue in writing within 15 Days; and District's written decision shall be final and conclusive. If Contractor disagrees with District's decision, or if Contractor contends that District failed to provide a decision timely, then Contractor's sole and exclusive remedy is to file a written Claim within the time limits set below setting forth Contractor's position as required herein.

### **B. DUTY TO WORK DURING DISPUTES. NOTWITHSTANDING ANY DISPUTE OR DISPUTED WORK**

1. Contractor shall continue to prosecute the Work and the Disputed Work in accordance with District's determinations. Contractor's sole and exclusive remedy for Disputed Work is to submit a Claim within the time limits set forth below setting forth Contractor's position as required herein.

### **C. FORM AND CONTENTS OF CLAIM**

1. Contractor's written Claim must be submitted via certified mail with return receipt requested, must identify itself as a "**Claim**" under this Article, and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a time impact analysis of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to District within 30 Days of receiving District's written decision, or the date Contractor contends such decision was due, and shall be priced like a Change Order according to the Contract Documents, and must be updated monthly as to cost and entitlement if a continuing Claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or

payment requests shall not constitute a Claim. Contractor shall bear all costs incurred in the preparation and submission of a Claim.

2. Upon receipt of a Claim, District shall conduct a reasonable review of the Claim. Within 45 Days, or such extended period as District and Contractor may agree, District shall provide Contractor with a written statement identifying what portion of the Claim is disputed and what portion is undisputed.
3. If the Board is to approve or ratify District's response to the Claim, and the Board has not met within the 45-Day (or extended) period, then District shall provide its written statement within three Days of the Board's meeting.
4. District shall pay the undisputed portions of the Claim within 60 Days of the issuance of a written statement identifying an undisputed portion.
5. Claims must be submitted on or before the day of Final Payment. Claims not submitted before final payment are deemed waived.
6. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the Disputed Work to final completion in accordance with District's determination.

**D. INFORMAL CONFERENCE AFTER CLAIM SUBMISSION**

1. If Contractor disputes District's response to its Claim, including a failure to respond, it may submit via certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute. District shall schedule such a meet-and-confer conference within 30 Days for settlement of the dispute.
2. Within ten Days of the meet-and-confer conference, District shall provide Contractor with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.
3. District shall pay the undisputed portions of the Claim within 60 Days of the issuance of a written statement identifying an undisputed portion.

**E. MEDIATION**

1. If Contractor disputes District's statement, it shall inform District and the Parties shall mutually agree to a mediator within ten business days of the written statement. 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.
2. Mediation shall be confidential and non-binding. Unless otherwise agreed, by the Parties or as provided herein, the mediation shall be pursuant to the construction mediation procedures of JAMS and held at the JAMS office closest to the Project Site.
3. The cost of mediation shall be equally shared by each of the Parties. The Parties shall, prior to the commencement of mediation upon notice of the other Party, exchange relevant, non-privileged project documents in compliance with Code of Civil Procedure Sections 2031.010 *et seq.* The Parties may agree mutually to engage in additional discovery prior to mediation.

Should the Parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019 *et. seq.* The mediator will undertake to resolve any discovery disputes relating to the mediation.

4. For Claims under \$375,000, unless the Parties agree otherwise in writing, mediation pursuant to this provision shall satisfy the mediation obligation under Public Contract Code Section 20104.4(a).
5. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be resolved as otherwise provided by the Contract Documents and applicable law.
6. Following receipt of a Claim, the Parties may mutually agree, in writing, to waive the mediation requirements herein and proceed to the commencement of a civil action or binding arbitration, whichever is set forth in the Contract Documents.
7. All applicable statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion.

**F. OTHER MATTERS**

1. The provisions of this Article constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid claim under the Government Code. Contractor shall bear all costs incurred in the preparation, submission, and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein, and the previous dispositions of the claims asserted. No lawsuit may be brought against District arising out of or in connection with the Project unless and until Contractor presents to District a statutory Government Code claim, in accordance with Government Code Sections 910 *et seq.* Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 shall be reduced to 150 Days from either accrual of the cause of action, substantial completion, or termination of the Contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.
2. Failure to submit and administer claims as required in this Article shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claims or issues not raised in a timely claim submitted under this Article may not be asserted in any subsequent litigation, Government Code claim, or legal action.
3. Contractor shall submit Subcontractor claims in the same manner as other Claims. In the event a Subcontractor (on behalf of the Subcontractor or a lower-tier Subcontractor) requests Contractor in writing to present a claim to District and furnishes reasonable documentation supporting the claim, Contractor shall, within 45 Days of receipt of the written request, notify the Subcontractor in writing as to whether Contractor presented the claim to District and, if Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not doing so.
4. All waivers or modifications of this Article may be made only by a writing signed by District and Contractor, and approved as to form by legal counsel for both; oral or implied modifications shall be ineffective.
5. Any failure by District to respond within any time frame contained in this Article shall result in the Claim being deemed rejected in its entirety. No failure to meet a time requirement shall

constitute an adverse finding with regards to the merits of the claim or the responsibility or qualifications of Contractor.

**G. COMPLIANCE WITH STATUTORY PROCEDURES**

The foregoing provisions of this Article are intended to comply with Public Contract Code Section 9204 and, to the extent applicable, Public Contract Code Sections 20104 *et seq.* In the event of any conflict, the applicable Public Contract Code provision will apply.

**H. ARBITRATION**

If the dispute is not otherwise resolved pursuant to the terms of this Article, then the Parties may seek to have the dispute resolved by arbitration in accordance with the following procedures:

1. Upon the written request of either Contractor or District, the dispute shall be submitted to binding arbitration in accordance with this subsection.
2. The arbitration shall be held before a JAMS arbitrator in Orange County, California, or at such other location as is mutually agreeable to the Parties.
3. The arbitration shall be administered in accordance with the JAMS Engineering and Construction Arbitration Rules & Procedures (or if those rules no longer exist, the closest equivalent) as modified by the provisions of this Article. Service of any document on the Parties may be made and shall be effective as provided in such rules.
4. Each Party shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the arbitrator.
5. Subject to the provisions of this Section, the arbitrator shall be empowered to grant compensatory and declaratory relief only.
6. The decision of the arbitrator shall be in writing, and the arbitrator shall give reasons for the decision.

**ARTICLE 46    PAYMENTS**

**A. SUMMARY**

1. This Article includes a description of requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.

**B. COMPOSITION AND SCOPE OF CONTRACT SUM**

1. Scope of Contract Sum
  - a. Contract Sum for performance of the Work under Contract Documents, or under any Bid item, allowance, or Alternate, shall include full compensation for all Work required under the Contract Documents, including without limitation, all labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated, incidental work and unexpected expenses, and all terms, conditions, requirements and limitations set forth in the Contract Documents.

- b. Contract Sum may be expressed as lump sum, unit price, GMP, allowance, or combination thereof. Contract Sum, whether lump sum, unit price, or otherwise, shall be deemed to include all costs necessary to complete required Work, including Contractor overhead and Profit, all costs (if any) for loss or damage arising from nature of Work or prosecution of the Work, and from action of elements like the weather.
- c. Unless Contract Documents expressly provide otherwise, Contract Sum shall be deemed to include:
  - i. All costs arising from any unforeseen difficulties which may be encountered during, and all risks of any description connected with, prosecution of Work or any Work item (whether lump sum, unit price, or otherwise) until acceptance by District;
  - ii. All expenses incurred due to suspension or discontinuance of Work or any Work item (whether lump sum, unit price, or otherwise) as provided in Contract Documents; and
  - iii. Escalation to allow for cost increases between time of Contract Award and completion of Work or any Work item (whether lump sum, unit price, or otherwise).

## 2. Unit Price Items

- a. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be determined by District based on, so far as practicable, actual number of units satisfactorily completed, as determined by District and certified by Contractor, within prescribed or ordered limits, and no payment will be made for Work unsatisfactorily performed or done outside of limits.
- b. Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities bid or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect Contractor's incremental cost differential resulting from increased or decreased economies of scale.

## 3. Lump Sum Items

- a. When estimated quantity for specific portion of Work is not indicated and/or Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
- b. Payment for lump sum Work, or items of Work subject to a lump sum (*e.g.* without limitation, change order work), shall be made on the basis of satisfactory completion of such Work or work item, earned in progressive stages in accordance with the Contract Documents, up to but not exceeding Contractor's percentage completion of the Work or item.
- c. Lump sum items shall be paid based upon the approved Schedule of Values, which shall be used to measure progressive payments based upon satisfactory progress towards completion of the item.

## C. PAYMENT PROCEDURES

### 1. Work Breakdown Structure/Schedule of Values

- a. Within ten Days from issuance of Notice of Award and prior to Contractor's first Application for Payment, Contractor shall submit a detailed breakdown of its Bid by scheduled Work items and/or activities, including coordination responsibilities and Project Record Documents responsibilities. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedule of Values shall show a separate line item for each subcontract. Contractor shall furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. This breakdown may be referred to as the Schedule of Values, Work Breakdown Structure or both.
- b. Contractor's overhead, profit, insurance, cost of bonds (except to the extent expressly identified in a Bid item) and/or other financing, as well as "general conditions costs," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), shall be prorated through all activities so that the sum of all the Schedule of Values line items equals Contractor's total Contract Sum, less any allowances designated by District. Scheduling, record documents and quality assurance control shall be separate line items.
- c. District will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, reasonable cost allocations for the Work items listed. Upon favorable review by District, District will accept this Schedule of Values for use. District shall be the sole judge of fair market cost allocations.
- d. District will reject any attempt to increase the cost of early activities, *i.e.*, "front loading," resulting in a complete reallocation of moneys until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work for default, or refusal to process progress payments until such time as the Schedule of Values is acceptable to District.

### 2. Contractor's Requests for Progress Payments

- a. If requested by Contractor, progress payments will be made monthly, under the following conditions:
- b. On or before the 25th Day of each month, Contractor shall submit to District five copies of an Application for Payment for the cost of the Work put in place during the period from the last Day of the previous month to the end of the current month, along with one copy of an updated Progress Schedule. Such Applications for Payment shall be for the expected total value of activities completed or partially completed, based upon Schedule of Values prices (or Bid item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. District and Contractor will reconcile any differences in the field, based on the reconciled monthly report sheets. If Contractor is late submitting its Application for Payment, that Application may be processed at any time during the

succeeding one-month period, resulting in processing of Contractor's Application for Payment being delayed for more than a Day for Day basis.

- c. Except as otherwise provided in a labor compliance program applicable to the Work (if any) or as otherwise required by District, concurrently with each Application for Payment, Contractor shall maintain Contractor's and its Subcontractors' certified payroll records required to be maintained pursuant to Labor Code Section 1776 for all labor performed during pay periods ending during the period covered by the Application for Payment.
- d. No progress payment will be processed prior to District receiving all requested, acceptable schedule update information, and in District's sole and absolute discretion, District may deny the entire Application for Payment for noncompliance.
- e. Each Application for Payment shall list each Change Order and Construction Change Directive ("CCD") executed prior to date of submission, including the Change Order/CCD Number, and a description of the Work activities, consistent with the descriptions of original Work activities. Contractor shall submit a monthly Change Order/CCD status log to District.
- f. If District requires substantiating data, Contractor shall submit information requested by District, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Contractor shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
- g. If Contractor fails or refuses to participate in monthly Work reconciliations or other construction progress evaluation with District, Contractor shall not receive current payment until Contractor has participated fully in providing construction progress information and schedule update information to District.

### 3. District's Review of Progress Payment Applications

- a. District will review Contractor's Application for Payment following receipt and during the Progress Schedule and Billing Meeting. If adjustments need to be made to percent of completion of each activity, District will make appropriate notations and return to Contractor. Contractor shall revise and resubmit. Each Party shall update percentage of completion values in the same manner, *i.e.*, express value of an accumulated percentage of completion to date.
- b. If District determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then District may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.
- c. Pursuant to Public Contract Code Section 20104.50, if District fails to make any progress payment within 30 Days after receipt of an undisputed and properly submitted Application for Payment from Contractor, District shall pay interest to Contractor equivalent to the legal rates set forth in Code of Civil Procedure Section 685.010 (a). The 30-Day period shall be reduced by the number of Days by which District exceeds the seven-Day return requirement set forth herein.

- d. As soon as practicable after approval of each Application for Payment for progress payments, District will pay to Contractor in manner provided by law, an amount equal to 95 percent of the amounts otherwise due as provided in Contract Documents, or a lesser amount if so provided in Contract Documents and by law, provided that payments may at any time be withheld if, in judgment of District, Work is not proceeding in accordance with the Contract, or Contractor is not complying with requirements of the Contract, or to comply with stop notices or to offset liquidated damages accruing or expected. In District's sole discretion, if Contractor has failed to comply with either its Progress Schedule update or project record documents requirements, District may retain an additional five percent of any earned amounts until such requirements are satisfied.
  - e. Before any progress payment or final payment is due or made, Contractor shall submit satisfactory evidence that Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work.
4. Payment for Material and Equipment Not Yet Incorporated Into the Work
- a. No payment shall be made for materials or equipment not yet incorporated into the Work, except as specified elsewhere in the Contract Documents or as may be agreed to by District in its sole discretion. Where Contractor requests payment on the basis of materials and equipment not incorporated in the Work, Contractor must satisfy the following conditions:
  - b. The materials and/or equipment shall be delivered and suitably stored at the Site or at another local location agreed to in writing, for example, a mutually acceptable bonded and insured warehouse.
  - c. Full title to the materials and/or equipment shall vest in District at the time of delivery to the Site, warehouse or other storage location. Obtain a negotiable warehouse receipt, endorsed over to District for materials and/or equipment stored in an off-site warehouse. No payment will be made until such endorsed receipts are delivered to District.
  - d. Stockpiled materials and/or equipment shall be available for District inspection, but District shall have no obligation to inspect them and its inspection or failure to inspect shall not relieve Contractor of any obligations under the Contract Documents. Materials and/or equipment shall be segregated and labeled or tagged to identify these specific Contract Documents.
  - e. After delivery of materials and/or equipment, if any inherent or acquired defects are discovered, defective materials and/or equipment shall be removed and replaced with suitable materials and/or equipment at Contractor's expense.
  - f. At Contractor's expense, insure the materials and/or equipment against theft, fire, flood, vandalism, and malicious mischief, as well as any other coverages required under the Contract Documents.
  - g. Contractor's Application for Payment shall be accompanied by a bill of sale, invoice or other documentation warranting that District has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect District interest therein, all of which must be satisfactory to District. This documentation shall include, without limitation, conditional releases of mechanics' liens and stop notices from all those

providing materials and equipment as to which the Application for Payment relates, as well as unconditional releases of the same from the same as to the previous Application for Payment for which they have not already been provided. Amounts previously paid for materials and equipment prior to incorporation into the Work shall be deducted from amounts otherwise due Contractor as they are incorporated.

**D. FINAL PAYMENT**

1. Final Payment
  - a. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, record documents and Contractor maintenance after Final Acceptance, Contractor shall submit its Application for Final Payment.
  - b. Provided Contractor has met all conditions required for Final payment, District will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.
2. Final Accounting
  - a. Prior progress payments and change orders shall be subject to audit and correction in the final payment.
  - b. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, the Agreement and Release of Claims included with these Contract Documents.

**E. SUBSTITUTION OF SECURITIES**

1. Pursuant to Public Contract Code Section 22300, Contractor has the option to deposit securities as a substitute for retention earnings in the form included with the Contract Documents. In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under Contract Documents to ensure performance is permitted under following conditions:
  - a. At request and expense of Contractor, securities listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and District which are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such moneys to Contractor. Upon satisfactory completion of Contract, securities shall be returned to Contractor.
  - b. Alternatively, Contractor may request and District shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the work of the Contract Documents, Contractor shall receive from escrow agent all securities, interest, and

payments received by the escrow agent from District. Consistent with Public Contract Code Section 7107(d), Contractor shall then pay to each Subcontractor, not later than seven Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Contractor.

- c. Contractor shall be beneficial District of securities substituted for moneys withheld and shall receive any interest thereon.
- d. Contractor may enter into an escrow agreement, form included in Contract Documents, as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of Contract Documents.
- e. Public Contract Code Section 22300, in effect on Bid Day, is hereby incorporated in full by this reference and shall supersede anything inconsistent therewith.

**F. BASIS AND EFFECT OF PAYMENT**

- 1. Payment will be made by District, based on District observations at the Site and the data comprising the Application for Payment. Payment will not be a representation that District has:
  - a. Made exhaustive or continuous on-Site inspections to check the quality or quantity of Work;
  - b. Reviewed construction means, methods, techniques, sequences, or procedures;
  - c. Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by District to substantiate Contractor's right to payment; or
  - d. Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.
- 2. District does not expressly, or by implication, agree, warrant, or represent in any manner, that actual amount of Work will correspond with amount shown or estimated, and reserves right to increase or decrease amount of any class or portion of Work, to leave out entire Work Item or Items, or to add work not originally included in Bid or Contract Documents, when in its judgment such change is in best interest of District. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as otherwise expressly provided for in Contract Documents, because of any differences between the amount of Work actually done and estimated amount as set forth herein, or for elimination of Work Items.

**G. INCREASED RETENTION FOR SUBSTANTIALLY COMPLEX PROJECT**

- 1. Board may make a finding that the Project is "substantially complex" within the meaning of Public Contract Code Section 7201(b)(4). In this case, the retention would be increased from 5% to 10%."

## **ARTICLE 47    CLEANING AND WASTE MANAGEMENT**

### **A.    PROGRESS CLEANING**

1. Contractor shall perform periodic and regular cleaning to ensure that any streets and other District and public properties are maintained free from accumulation of waste materials, dust, mud, and debris.
2. Whenever and wherever required, Contractor shall wet down surfaces to lay dust and prevent the blowing of dust to nearby residences or public properties.
3. Contractor shall keep all streets and campus roads clean and free of dust, mud, and debris resulting from Contractor's operations. Daily cleanup throughout the job will be necessary as Contractor progresses with Work, but extra attention to cleanup shall be made prior to weekends and holidays. Without limiting the foregoing, Contractor shall remove trench spoil along traveled ways daily; grade and vacuum broom surfaces initially where applicable, and later water flush with high-pressure sprays, being careful to avoid downstream contamination.
4. All dust, mud, spoils, and construction debris shall be removed daily from all roadways, ditches, shoulders, and private property (fills or spoils placed on private property at District's written request excepted).
5. Disposal of Materials:
  - a. As part of the scope of Work included within the Contract Sum, Contractor shall be fully responsible for disposing of all construction debris, dirt, and spoils resulting from the Work.
  - b. All waste materials, debris, dirt, and rubbish shall be disposed of at sites to be chosen by Contractor in accordance with applicable local, state, and federal regulations.
  - c. Contractor is cautioned that County and cities within the County may have regulations governing the disposal of rubble, broken pavement, and similar materials.
  - d. Contractor shall become familiarized with the requirements of governmental agencies having jurisdiction over any contemplated disposal site and shall comply with all such requirements.
6. Contractor will estimate and report to District an estimate of quantities (*e.g.*, tonnage) of waste materials disposed of for compliance with AB75 (1999). Reporting requirements include the nature of materials, destination, volume, and tonnage.
7. All excess soil from performance of Work shall be disposed at sites to be chosen by Contractor in accordance with applicable local, state, and federal regulations. If Contractor elects to dispose of soil on any private property, prior to any dumping, a letter allowing such dumping shall be obtained from the property owner and presented to District. Contractor is advised that the property owner is required to obtain a fill permit from the applicable government agency. In addition, placement of fill in wetland areas is subject to permit procedures of the U.S. Army Corps of Engineers. At the completion of Work, a letter from each affected property owner will

be required releasing Contractor, County, District and any District consultant from future liability.

8. If Contractor does not properly clean the Site, in District's opinion, then District shall have the option of using outside equipment to perform the cleanup, and such cost will be withheld from the Contract Sum.

**B. FINAL CLEANING**

1. Contractor shall execute final cleaning prior to final inspection, using only properly skilled workers.
2. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from exposed interior and exterior finished surfaces.
3. Repair, patch, and touch-up marred surfaces to match adjacent finishes.
4. Clean interior and exterior surfaces exposed to view; remove temporary labels, stains and foreign substances, polish transparent and glossy surfaces, vacuum carpeted and soft surfaces.
5. Clean equipment and fixtures to a sanitary condition, clean or replace filters of mechanical equipment operated during construction, clean ducts, blowers, and coils of units operated without filters during construction.
6. Clean Site; mechanically sweep paved areas.
7. Remove waste and surplus materials, rubbish, and construction facilities from Site.

**ARTICLE 48    COMPLETION**

**A. SUMMARY**

1. This Section describes requirements and procedures for:
  - a. Removal of Temporary Construction Facilities
  - b. Equipment and Systems
  - c. Substantial Completion
  - d. Final Completion
  - e. Warranties
  - f. Release of Claims
  - g. Fire Inspection Coordination
  - h. Building Inspection Coordination

**B. REMOVAL OF TEMPORARY CONSTRUCTION FACILITIES**

1. Prior to Substantial Completion, Contractor shall remove temporary materials, equipment, services, and construction; clean all areas affected by the Work; clean and repair damage caused

by installation or use of temporary facilities; and restore permanent facilities used during construction to specified condition.

**C. EQUIPMENT AND SYSTEMS**

1. Prior to Substantial Completion, Contractor shall:
  - a. Start up, run for periods prescribed by District, operate, adjust, and balance all manufactured equipment and Project systems, including but not limited to, mechanical, electrical, safety, fire, and controls.
  - b. Demonstrate that such equipment and systems conform to contract standards and manufacturer's guarantees. Where applicable, use testing protocols specified, and if the contract is silent, then consistent with manufacturer's recommendations and industry standards.

**D. SUBSTANTIAL COMPLETION**

1. When Contractor considers Work or designated portion of the Work as Substantially Complete, Contractor shall submit written notice to District, with list of items remaining to be completed or corrected and explanation of why such items do not prevent District's beneficial use and occupancy of the Work for its intended purposes. Within reasonable time, District will inspect to determine status of completion.
2. Should District determine that Work is not Substantially Complete, District will promptly notify Contractor in writing, listing all defects and omissions. Contractor shall remedy deficiencies and send a second written notice of Substantial Completion. District will re-inspect the Work. If deficiencies previously noted are not corrected on re-inspection, then pay the cost of the re-inspection.
3. When District concurs that Work is Substantially Complete, District will issue a written notice or certificate of Substantial Completion, accompanied by Contractor's list of items to be completed or corrected as verified by District.
4. Manufactured units, equipment, and systems that require startup must have been started up and run for periods prescribed by District before a Certificate of Substantial Completion will be issued.
5. A punch list examination will be performed upon Substantial Completion. One follow-up review of punch list items for each discipline will be provided. If further Site visits are required to review punch list items due to incompleteness of the Work by Contractor, Contractor will reimburse District for costs associated with these visits.

**E. FINAL COMPLETION**

1. Requirements and Completion.
  - a. Final Completion occurs when Work meets requirements for District's Final Acceptance.
  - b. When Contractor considers Work is Finally Complete, Contractor shall submit written certification that:

- i. Contractor has inspected Work for compliance with Contract Documents, and all requirements for Final Acceptance have been met.
  - ii. Except for Contractor maintenance after Final Acceptance, Work has been completed in accordance with Contract Documents and deficiencies listed with Certificate of Substantial Completion have been corrected. Equipment and systems have been tested in the presence of District, and are operative.
  - iii. Project Record Documents are completed and turned over to District as required by the Contract Documents, and Work is complete and ready for final inspection.
- c. In addition to submittals required by Contract Documents, Contractor shall provide submittals required by governing authorities and submit final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.
  - d. Should District determine that Work is incomplete or Defective, District promptly will so notify Contractor, in writing, listing the incomplete or Defective items. Contractor shall promptly remedy the deficiencies and notify District when it is ready for re-inspection.
2. Final Adjustments of Accounts.
- a. Contractor shall submit a final statement of accounting to District, showing all adjustments to the Contract Sum and complete and execute the Agreement and Release of Claims included with these Contract Documents.
  - b. If so required, District shall prepare a final Change Order for submittal to Contractor, showing adjustments to the Contract Sum that were not previously made into a Contract Modification.

**F. WARRANTIES**

1. Contractor shall:
- a. Execute Contractor's Submittals and assemble warranty documents, and Installation, Operation, and Maintenance Manuals, executed or supplied by Subcontractors, suppliers, and manufacturers. Provide table of contents and assemble in 8½ inches by 11 inches three-ring binder with durable plastic cover, appropriately separated and organized. Assemble in order as specified.
  - b. Submit material prior to final Application for Payment. For equipment put into use with District's permission during construction, submit within 14 Days after first operation. For items of Work delayed materially beyond Date of Substantial Completion, provide updated Submittal within 14 Days after acceptance, listing date of acceptance as start of warranty period.
    - i. Warranties are intended to protect District against failure of Work and against deficient, defective, and faulty materials and workmanship, regardless of sources.
    - ii. Limitations: Warranties are not intended to cover failures that result from the following:
      - Unusual or abnormal phenomena of the elements

## Vandalism after Substantial Completion

### Insurrection or acts of aggression including war

- iii. Related Damages and Losses: Contractor shall remove and replace Work which is damaged as result of defective Work, or which must be removed and replaced to provide access for correction of warranted Work.
  - iv. Warranty Reinstatement: After correction of warranted Work, Contractor shall reinstate warranty for corrected Work to date of original warranty expiration or to a date not less than one year after corrected Work was done, whichever is later.
  - v. Replacement Cost: Contractor shall eplace or restore failing warranted items without regard to anticipated useful service lives.dd
- c. Warranty Forms: Contractor shall submit drafts to District for approval prior to execution. Forms shall not detract from or confuse requirements or interpretations of Contract Documents. Warranty shall be countersigned by manufacturers. Where specified, warranty shall be countersigned by Subcontractors and installers.
  - d. Rejection of Warranties: District reserves right to reject unsolicited and coincidental product warranties that detract from or confuse requirements or interpretations of Contract Documents.
  - e. Term of Warranties: For materials, equipment, systems, and workmanship, warranty period shall be one year minimum from date of Final Completion of entire Work except where:
    - i. Detailed Specifications for certain materials, equipment, or systems require longer warranty periods.
    - ii. Materials, equipment, or systems are put into beneficial use of District prior to Final Completion as agreed to in writing by District.

## 2. Warranty of Title.

- a. No material, supplies, or equipment for Work under Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work, and agrees upon completion of all Work to deliver premises, together with improvements and appurtenances constructed or placed thereon by Contractor, to District free from any claim, liens, security interest, or charges, and further agrees that neither Contractor nor any person, firm, or corporation furnishing any materials or labor for any Work covered by Contract shall have right to lien upon premises, improvement, or appurtenances thereon. Nothing contained in this paragraph, however, shall defeat or impair right of persons furnishing materials or labor under bond given by Contractor for their protection or any rights under law permitting persons to look to funds due Contractor in hands of District.

3. Contract Documents will not be closed out and final payment will not be made until all keys issued to Contractor during prosecution of Work and letters from property owners, pursuant to Contract Documents, are turned in to District.

**G. RELEASE OF CLAIMS**

1. Contract Documents will not be closed out and final payment will not be due or made until the Release of Claims provided with these Contract Documents is completed and executed by Contractor and District.

**H. FIRE INSPECTION COORDINATION**

1. Contractor shall coordinate fire inspection and secure sufficient notice to District to permit convenient scheduling (if applicable).

**I. BUILDING INSPECTION COORDINATION**

1. Contractor shall coordinate with District a final inspection for the purpose of obtaining an occupancy certificate (if applicable).

**ARTICLE 49 PROJECT RECORD DOCUMENTS**

**A. SUMMARY**

1. This Section includes administrative and procedural requirements for Project Record Documents.
2. Project Record Documents required include:
  - a. Marked-up copies of Drawings
  - b. Marked-up copies of Shop Drawings
  - c. Newly prepared Drawings
  - d. Marked-up copies of Specifications, Addenda, Change Orders, and Contract Change Directives (“CCDs”)
  - e. Marked-up Product Data submittals
  - f. Record Samples
  - g. Field records, such as photographs, for variable and concealed conditions
  - h. Maintenance forms for major equipment
  - i. Record information on Work that is recorded only schematically
3. Specific Project Record Documents requirements that expand requirements of this Section are included elsewhere in the Contract Documents.
4. General Project closeout requirements are included in these General Conditions.
5. Maintenance of Documents and Samples: Contractor shall:

- a. Store Project Record Documents and Samples in the field office apart from Contract Documents used for construction.
  - b. Do not permit Project Record Documents to be used for construction purposes.
  - c. Maintain Project Record Documents in good order and in a clean, dry, legible condition.
  - d. Make Documents and Samples available at all times for inspection by District.
6. Dedicate one full size set of the Drawings and one Project Manual for use for recording as-built conditions.

**B. PROJECT RECORD DRAWINGS**

1. Mark-up Procedure: During the construction period, Contractor shall maintain a set of blueline or blackline prints of Contract Drawings and Shop Drawings for Project Record Documents purposes; label each document (on first sheet or format page) "Project RECORD" in 2-inch high printed letters; and keep record documents current. Note: A reference by number to a Change Order, CCD, RFI, RFQ, RFP, Field Order, or other such document is not acceptable as sufficient record information on any record document. Contractor shall not permanently conceal any Work until required information has been recorded.
  - a. Mark these Drawings to indicate the actual installation where the installation varies appreciably from the installation shown originally. Give particular attention to information on concealed elements that would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
    - i. Dimensional changes to the Drawings
    - ii. Revisions to details shown on the Drawings
    - iii. Depths of various elements of foundation in relation to main floor level or survey datum
    - iv. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements
    - v. Location of internal utilities and appurtenances concealed in construction referenced to visible and accessible features of structure
    - vi. Locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stub outs, invert elevations, and similar items
    - vii. Actual numbering of each electrical circuit
    - viii. Field changes of dimension and detail
    - ix. Revisions to routing of piping and conduits
    - x. Revisions to electrical circuitry
    - xi. Actual equipment locations

- xii. Duct size and routing
  - xiii. Changes made by Change Order or CCD
  - xiv. Details not on original Contract Drawings
- b. Mark completely and accurately Project Record Drawing prints of Contract Drawings or Shop Drawings, whichever is the most capable of showing actual physical conditions. Where Shop Drawings are marked, show cross-reference on Contract Drawings location.
  - c. Mark Project Record Drawing sets with red, erasable colored pencil; use other colors to distinguish between changes for different categories of the Work at the same location.
  - d. Mark important additional information that was either shown schematically or omitted from original Drawings.
  - e. Note CCD numbers, alternate numbers, Change Order numbers, and similar identification.
  - f. Responsibility for Mark-up: Where feasible, the individual or entity who obtained Project Record Drawing data, whether the individual or entity is the installer, Subcontractor, or similar entity, is required to prepare the mark-up on Project Record Drawings.
    - i. Accurately record information in an understandable and legible drawing technique.
    - ii. Record data as soon as possible after it has been obtained. In the case of concealed installations, record and check the mark-up prior to concealment.
2. Preparation of Record Drawings: Immediately prior to inspection for Certification of Substantial Completion, Contractor shall review completed marked-up Project Record Drawings with District, Project Inspector and Architect to consolidate and ensure accuracy of information. Once accuracy of information is confirmed, prepare and submit a full electronic set, in AutoCAD format, of as-built. When authorized, Contractor shall prepare a full set of correct transparencies of Contract Drawings and Shop Drawings. Contractor also shall:
    - a. Incorporate changes and additional information previously marked on print sets. Delete, redraw, and add details and notations where applicable. Identify and date each Drawing; include the printed designation "Project RECORD DRAWING" and date prepared in a prominent location on each Drawing.
    - b. Refer instances of uncertainty to District for resolution.
    - c. Distribution: Whether or not changes and additional information were recorded, organize and bind original marked-up set of prints that were maintained during the construction period into manageable sets. Bind the set with durable paper cover sheets, with appropriate identification, including titles, dates, and other information on cover sheets, and submit to District.
  3. Distribution of Marked-Up Drawings: Submit the marked-up Project Record Drawings set to District for District's records.

4. Shop Drawings and Samples: Maintain as record documents; legibly annotate Shop Drawings and Samples to record changes made after review.
5. In addition to requirements of this Section, comply with supplemental requirements set forth elsewhere in the Contract Documents.

**C. PROJECT RECORD SPECIFICATIONS.** Contractor shall:

1. During the construction period, Contractor shall maintain one copy of the Project Specifications, including addenda and modifications issued, for Project Record Documents purposes.
2. Mark the Project Record Specifications to indicate the actual installation where the installation varies substantially from that indicated in Specifications and Modifications issued. Note related Project Record Drawing information, where applicable. Give particular attention to substitutions, selection of product options, Change Order and CCD work, and information on concealed installation that would be difficult to identify or measure and record later.
  - a. In each Specification section where products, materials, or units of equipment are specified or scheduled, mark the copy with the proprietary name and model number of the product furnished.
  - b. Record the name of the manufacturer, catalog number, supplier, and installer, and other information necessary to provide a record of selections made and to document coordination with Project Record Product Data submittals and maintenance manuals.
  - c. Note related Project Record Product Data, where applicable, for each principal product specified, indicate whether Project Record Product Data has been submitted in maintenance manual instead of submitted as Project Record Product Data.
  - d. Upon completion of mark-up, submit Project Record Specifications to District for District's records.

**D. ADDITIONAL REQUIREMENTS FOR FINAL PROJECT RECORD DOCUMENTS**

1. Note all changes for the final Project Record Documents and provide one set of mylar reproducibles, one set of revised Specifications, and one set of compact discs (or DVDs, thumb drives, or external hard drives) to be submitted to District.
2. After Substantial Completion and before Final Completion, carefully transfer all data shown on the job set of Record Drawings to the corresponding computer files, coordinating the information as required.
3. Using a distinct AutoCAD layer, clearly indicate at each affected detail and other drawings a full description of changes made during construction, and the actual location of items as previously specified.
4. "Cloud" all affected areas using a distinct AutoCAD layer.
5. Submit duplicate electronic files of all drawings in Tag Image File Format (.tif).
6. In the event that Contractor utilizes Building Information Modeling ("**BIM**") software or an alternate computerized application to AutoCAD to design and record its design and construction services, Contractor shall submit as Project Record Documents the equivalent files, computer

software, and any other relevant items, and train District personnel in its use, to allow District to receive and fully utilize the alternate method to meet the intent of the requirements of this Section

7. Stamp each Record Drawing with the following information:
  - a. Project Record Document.
  - b. Prepared by: Contractor's name, permanent address.
  - c. Date prepared.
  - d. Contractor's signature.
  - e. District Contract Number.

**E. PROJECT RECORD PRODUCT DATA**

1. During the construction period, maintain one copy of each Project Record Product Data submittal for Project Record Document purposes.
  - a. Mark Project Record Product Data to indicate the actual product installation where the installation varies substantially from that indicated in Project Record Product Data submitted. Include significant changes in the product delivered to the Site, and changes in manufacturer's instructions and recommendations for installation.
  - b. Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.
  - c. Note related Change Orders and mark-up of Project Record Drawings, where applicable.
  - d. Upon completion of mark-up, submit a complete set of Project Record Product Data to District for District's records.
  - e. Where Project Record Product Data is required as part of maintenance manuals, submit marked-up Project Record Product Data as an insert in the manual, instead of submittal as Project Record Product Data.
  - f. Contractor is responsible for mark-up and submittal of Project Record Product Data for its own Work.
2. Material, Equipment, and Finish Data:
  - a. Provide data for primary materials, equipment and finishes as required under each Specification Section.
  - b. Submit three hard copy sets and one digital copy, on compact disc (or DVD, thumb drive, or external hard drive) prior to final inspection, bound in 8½ inches by 11 inches three-ring binders with durable plastic covers; provide typewritten table of contents for each volume. Provide project identification information on binder covers and spines.
  - c. Arrange by Specification Section Number and give names, addresses, and telephone numbers of Subcontractors and suppliers. List:

- i. Trade names.
- ii. Model or type numbers.
- iii. Assembly diagrams.
- iv. Operating instructions.
- v. Cleaning instructions.
- vi. Maintenance instructions.
- vii. Recommended spare parts.
- viii. Product data.

**F. MISCELLANEOUS PROJECT RECORD SUBMITTALS**

- 1. Contractor shall refer to other Specification Sections for miscellaneous record keeping requirements and submittals in connection with various construction activities. Immediately prior to Substantial Completion, complete miscellaneous records and place in good order, properly identified and bound or filed, ready for use and reference. Submit to District for District's electronic records, in Adobe pdf format. Categories of requirements resulting in miscellaneous records include, but are not limited to, the following:
  - a. Field records on excavations and foundations
  - b. Field records on underground construction and similar work
  - c. Survey showing locations and elevations of underground lines
  - d. Invert elevations of drainage piping
  - e. Surveys establishing building lines and levels
  - f. Authorized measurements utilizing unit prices or allowances
  - g. Records of plant treatment
  - h. Ambient and substrate condition tests
  - i. Certifications received in lieu of labels on bulk products
  - j. Batch mixing and bulk delivery records
  - k. Testing and qualification of tradespersons
  - l. Documented qualification of installation firms
  - m. Load and performance testing
  - n. Inspections and certifications by governing authorities
  - o. Leakage and water-penetration tests

- p. Fire resistance and flame spread test results
- q. Final inspection and correction procedures
- r. Final As-Built Construction Schedule

**G. INSTALLATION, OPERATIONS AND MAINTENANCE MANUALS**

1. Contractor shall compile O&M manuals for every piece of equipment and building operating or electrical system, commissioned or not, with the following formats:

Quantity: [specify]

- a. Hard Media Format: [specify]

- i. Size: 8½ x 11 inch, three-ring loose-leaf binders. Use as many binders as required for each element as listed below. Do not overload binders.
- ii. Binding: Bind in stiff, metal-hinged, three-ring binder(s) with standard three-hole punching. Binders shall be 3-inch maximum. Use white or black colored binders with integrated clear plastic covers to enable insertion of binder titles.
- iii. Sheet lifters: Provide plastic sheet lifters prior to first page and following last page.
- iv. Binder titles: Include the following title on front and spine of binder:
- v. Name of Project and Year

- b. Manuals

- i. Sheet Size: 8½ x 11 inch
- ii. Drawing Size: Reduce drawings or diagrams to an 8½ x 11 inch or 11 x 17 inch size. However, where reduction is not practical to ensure readability, fold larger drawings separately and place in vinyl envelopes bound into the binder. Identify vinyl envelopes with drawing numbers.
- iii. Dividers: Use dividers with permanently marked tabs of card stock to separate each section and sub section. Tab labels shall not be handwritten. Use a main tab for each specification section. Behind the section number tab there shall be the equipment ID tag sub-tab for each piece of major equipment (or group, if small or numerous). These sub-tabs shall be similar to the specification number tabs but of a different color.
- iv. Contents
  - a) Title page, which shall be a duplicate of front binder title
  - b) Table of Contents
  - c) Equipment Sections and Subsections

- i. Contractor. The first page behind the equipment tab shall be Contractor's name, address and telephone number of the manufacturer and installing Contractor and the 24-hour number for emergency service for all equipment in this section, identified by equipment.
- ii. Submittal and Product Data. This section shall include all approved submittal data, cut sheets, data base sheets and appropriate shop drawings. If submittal was not required for approval, descriptive product data shall be included.
- iii. Operation and Maintenance Instructions. These shall be the written manufacturer's data with the model and features of this installation clearly marked and edited to omit reference to products or data not applicable to this installation. This section shall include data on the following:
  - a) Model number, serial number and nameplate data for each piece of equipment and any subcomponent.
  - b) Installation, startup, and break-in instructions.
  - c) All starting, normal shutdown, emergency shutdown, manual operation and normal and emergency operating procedures and data, including any special limitations.
    - i. Step-by-step procedure for system startup, including a pre-start checklist. Refer to controls and indicators by nomenclature consistent with that used on panels and in control diagrams.
    - ii. Sequence of operation, with detailed instruction in proper sequence, for each mode of operation (*i.e.*, day-night; staging of equipment).
    - iii. Emergency operation: If some functions of the equipment can be operated while other functions are disabled, give instructions for operations under these conditions. Include here only those alternate methods of operations (from normal) which the operator can follow when there is a partial failure or malfunctioning of components, or other unusual condition.
    - iv. Shutdown procedure: Include instructions for stopping and securing the equipment after operation. If a particular sequence is required, give step-by-step instructions in that order.
  - d) O&M and installation instructions that were shipped with the unit.

- e) Preventative and corrective maintenance, with service procedures and schedules:
- i. Provide a schedule for preventive maintenance in a printed format and an electronic format compatible with District's system. State, preferably in tabular form, the recommended frequency of performance for each preventive maintenance task, cleaning, inspection and scheduled overhauls.
  - ii. Cleaning: Provide instructions and schedules for all routine cleaning and inspection with recommended lubricants.
  - iii. Inspection: If periodic inspection of equipment is required for operation, cleaning or other reasons, indicate the items to be inspected and give the inspection criteria for: motors; controls; filters and any other maintenance items.
  - iv. Provide instructions for minor repairs or adjustments required for preventive maintenance routines. Identify test points and give values for each. Include sensor calibration requirements and methods by sensor type.
  - v. Corrective maintenance instructions shall be predicated upon a logical effect-to-cause troubleshooting philosophy and a rapid replacement procedure to minimize equipment downtime.
  - vi. Troubleshooting: Troubleshooting tables, charts, or diagrams shall be used to present specified procedures. A guide to this type shall be a three-column chart. The columns shall be titled: malfunction, probable cause and recommended action.
  - vii. Repair and Replacement: Indicate repair and replacement procedures most likely to be required in the maintenance of the equipment.
  - viii. A list of recommended spare parts with a price list and a list of spare parts provided under this Contract.
  - ix. Outline, cross-section, and assembly drawings; engineering data; and electrical diagrams, including elementary diagrams, labeled wiring diagrams, connection diagrams, word description of wiring diagrams and interconnection diagram

- x. Safety Precautions: This subsection shall comprise a listing of safety precautions and instructions to be followed before, during and after making repairs, adjustments or routine maintenance.
  - f) Manufacturers' brochures (including controls): Manufacturers' descriptive literature covering devices and equipment used in the system, together with illustrations, exploded views and renewal parts lists. Manufacturers' standard brochures and parts list shall be corrected so that information applying to the actual installed equipment is clearly defined.
  - g) Supply any special tools required to service or maintain the equipment.
  - h) Performance data, ratings, and curves.
  - i) Warranty and guarantee, which clearly lists conditions to be maintained to keep warranty in effect and conditions that would affect the validity of the warranty.
  - j) Any service contracts issued.
- d. Supplemental Data. Contractor shall prepare written text and/or special drawings to provide necessary information, where manufacturer's standard printed data is not available and information is necessary for a proper understanding and operation and maintenance of equipment or systems, or where it is necessary to provide additional information to supplement data included in the manual or project documents.
  - e. Control Diagrams/Drawings. Contractor shall include the as-built control diagrams/drawings for the piece of equipment and its components, including full points list, full print out of all schedules and set points after testing and acceptance of the system, and copies of all checkout tests and calibrations performed by Contractor (not commissioning tests).
  - f. Specifications. This section is comprised of the component or system specification section copied and inserted complete with all addenda.
  - g. System Description. This section shall include the individual equipment portion of the overall system Design Basis Narrative.
- c. Electronic Media Format: Electronic media format shall be Adobe pdf, with chapter markers and/or bookmarks inserted in place of the equivalent hard copy section tabs. Electronic copy shall include all tables, charts, drawings, codes and all other matters reflected in hard copies. Electronic media files shall be delivered on a unique CD-ROM.
  - d. A separate manual or chapter shall be provided for each applicable system as follows:
    - i. Chillers

- ii. Cooling Towers
- iii. Boilers
- iv. Pumps
- v. Air Handling Units (include sequence of operation, one line diagram and area served in a plastic pouch for mounting on equipment or in equipment room)
- vi. Exhaust Fans
- vii. Supply Air Fans (excluding Air Handling Units)
- viii. Plumbing and Drainage Systems/Equipment
- ix. Emergency Generator Systems
- x. UPS
- xi. Fire Protection Systems
- xii. Fire Alarm System
- xiii. Valves and Pipe Specialties (include valve identification chart)
- xiv. Variable Frequency Drives (VFD)
- xv. Smoke Control Systems
- xvi. Water Treatment System
- xvii. Elevator Systems
- xviii. Lighting Systems and Controls (interior, exterior and airfield)
- xix. Switchgear, Transformers, Panel boards, Motor Control Centers and Motor Starters
- xx. Lightning Protection and Surge Suppression Systems
- xxi. Public Address, Closed Circuit TV, Communication and Telephone Systems
- xxii. Security System
- xxiii. Building Management/Temperature Control System (BMS)
- xxiv. Fuel System
- xxv. Doors and Hardware.
- xxvi. Power monitoring systems
- xxvii. HVAC, Testing Adjusting, and Balancing

## **H. COMPUTER PROGRAMS**

1. When any equipment requires operation by computer programs, Contractor shall submit a copy of the program on appropriate compact disc (or DVD, thumb drive, or external hard drive) plus a printed copy and an electronic copy (Adobe .PDF format) of all user manuals and guides for operating the programs and making changes in the programs for upgrading and expanding the databases. Program shall be Windows XP compatible. Contractor shall provide required licenses to District at no additional cost.

## **I. DISTRICT'S RECOURSE**

1. If Contractor is not able to provide Project Record Documents in specified formats, District and Contractor shall negotiate a credit back to District for this work.
2. Post changes and modifications to the Contract Documents as they occur. Do not wait until the end of the Project. District may periodically review Project Record Documents to assure compliance with this requirement.
3. Submittal. Contractor shall:
  - a. At completion of Project, deliver Project Record Documents to District.
  - b. Accompany submittal with transmittal letter containing:
    - i. Date
    - ii. Project title and number
    - iii. Contractor's name and address
    - iv. Number and title of each Project Record Document
    - v. Certification that each document as submitted is complete and accurate, and signature of Contractor or Contractor's authorized representative.

## **ARTICLE 50 CORRECTION OF WORK**

- A. Contractor shall promptly remove all work identified by District as failing to conform to the Contract Documents, whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with the Contract Documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- B. If Contractor does not remove such work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten Days, District may, upon ten 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.
- C. 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 Days written notice to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies.

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 not done in accordance with the Contract Documents, an equitable reduction in the Contract Price shall be made therefor

**ARTICLE 51    TAXES**

- A. Contractor will pay all applicable federal, state, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents.
- B. 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 government entity for its exclusive use, District, upon request, will execute documents necessary to show that District is a political subdivision of the State for the purposes of such exemption, and that the sale is for the exclusive use of District. No excise tax for such materials shall be included in any bid price.

**ARTICLE 52    NO ASSIGNMENT**

- A. Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Agreement, or of its rights, title, or interest in or to the Agreement or any part thereof. If Contractor shall assign, transfer, convey, sublet, or otherwise dispose of the Agreement or its right, title, or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease, or other disposition shall be null, void, and of no legal effect whatsoever; and the Agreement may, at the option of District, be terminated, revoked, and annulled, and District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to Contractor, or to its purported assignee or transferee.

**ARTICLE 53    NO WAIVER**

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

**ARTICLE 54    NON-UTILIZATION OF ASBESTOS MATERIAL**

- A. Contractor will be required to execute and submit the required Certification regarding non-asbestos materials.
- B. Should asbestos-containing materials be installed by Contractor in violation of this certification, or if removal of asbestos-containing materials is part of the Project, decontaminations and removals will meet the following criteria:
- C. 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”).
- D. 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.
- E. The asbestos consultant shall be chosen and approved by District who shall have sole discretion and final determination in this matter.

- F. The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- G. Cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal Contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays, and additional costs as may be incurred by District, shall be borne entirely by Contractor.
- H. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by Contractor at its risk and at its discretion with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, Contractor acknowledges the above and agrees to hold harmless District, its trustees, employees, and agents, and Architect, for all asbestos liability which may be associated with this work. Contractor further agrees to instruct its employees with respect to these standards, hazards, risks, and liabilities.

**ARTICLE 55    LEAD**

- A. Pursuant to the Lead-Safe Schools Protection Act, Education Code Sections 32240 *et seq.* and other applicable law, Contractor shall not use lead-based paint, lead plumbing or solders, or other potential sources of lead contamination in its work on the Project.

**ARTICLE 56    TOBACCO-FREE AND DRUG-FREE WORK SITE**

- A. Contractor understands that neither Contractor nor its Subcontractors, or any of its respective employees or agents, may smoke or use tobacco products anywhere on District property. Contractor shall be responsible for the enforcement of this Article. Contractor understands and agrees that should any employee or agent of a Subcontractor or Contractor violate this Article after having been warned, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation or time for completing the Project due to such removal.
- B. Contractor shall also provide a drug-free workplace pursuant to the requirements of Government Code Sections 8350 *et. seq.*, and will perform the specified acts required under this Section before commencing the Work and for the duration of the Project.

**ARTICLE 57    STUDENTS**

- A. Considering the educational mission of District, Contractor, in consultation with District, shall make good faith efforts to provide employment and apprenticeship opportunities to students of the Colleges.

**ARTICLE 58    EMPLOYMENT OF DISTRICT RESIDENTS**

- A. In further recognition of District's mission to serve its residents, Contractor agrees, to the fullest extent allowed by law, and so long as these workers have the requisite skills and qualifications, to use its best efforts to hire residents of District as workers on the Project, in terms of both employees of Contractor and employees of Subcontractors.
- B. The Board may adopt a Resolution concerning specific local hiring goals, identifying the specific parameters of these hiring goals, including a breakdown of the percentages of workers to be residents Orange County and of District, and this Resolution shall be applicable to Contractor.

**ARTICLE 59**    **HIRING VETERANS**

- A. Contractor and its Subcontractors, to the fullest extent allowed by law, and so long as these workers have the requisite skills and qualifications, to use its best efforts to utilize veterans as workers on the Project, in terms of both employees of Contractor and employees of Subcontractors.