

SANTA MONICA COMMUNITY COLLEGE DISTRICT
GENERAL CONDITIONS
(REVISED)

GENERAL CONDITIONS
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GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS; GENERAL

- 1.1 Architect.** The Architect is the person or entity identified as such in the Agreement; references to the "Architect" includes the Architect's authorized representative and his, her or its successors.
- 1.2 Beneficial Occupancy.** Notwithstanding any common law principal to the contrary or otherwise, occupancy by the District shall be "beneficial" when occupancy for the intended educational or other purpose is fully usable, safe and convenient, considering all visual, sound, odor and aesthetic factors; the Project is weather-tight, fully functional and aesthetically pleasing; all portions of the Project, including finishes, painting, hardware, services, systems and utilities are complete and fully operational; and any remaining punchlist work may be conveniently and effectively performed at times other than during business hours of the District. Notwithstanding the foregoing, the Contractor shall not be required to exceed the requirements of the Contract Documents to achieve Beneficial Occupancy.
- 1.3 Construction Equipment.** "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 1.4 Contract Document Terms.** The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.
- 1.5 Contract Documents.** The Contract Documents consist of the Agreement between the District and the Contractor, Conditions of the Contract (whether General, Special, Supplemental or otherwise), Drawings, Specifications, including addenda thereto issued prior to execution of the Agreement and any other documents listed in the Agreement. The Contract Documents shall include modifications issued after execution of the Agreement. The Contract Documents form the Contract for Construction.
- 1.6 Contractor.** The Contractor is the person or entity identified as such in the Agreement; references to "Contractor" include the Contractor's authorized representative.
- 1.7 Contractor's Superintendent.** The Contractor's Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work; the Contractor's Superintendent shall not perform routine construction labor.
- 1.8 Days.** Unless otherwise expressly stated, references to "days" in the Contract Documents shall be deemed to be calendar days.
- 1.9 Defective or Non-Conforming Work.** Defective or non-conforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage occurring prior to Final Completion of all of the Work.

- 1.10 Deferred Approval Items.** Deferred approval items are those items that shall not be started until detailed plans, specifications and engineering calculations have been accepted and signed by the Architect and approved by DSA.
- 1.11 Delivery.** The term "delivery" used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition pending incorporation into the Work.
- 1.12 District.** The "District" refers to **SANTA MONICA COMMUNITY COLLEGE DISTRICT** and unless otherwise stated, includes the District's authorized representatives, including the Project Manager, if a Project Manager is designated, the District's Board of Trustees and the District's officers, employees, agents and representatives.
- 1.13 Division of State Architect ("DSA").** The DSA is the California Division of the State Architect including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.
- 1.14 Drawings and Specifications.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent contractors to bid upon the Work and prosecute the same to completion. Large scale Drawings shall take precedence over smaller scale Drawings as to shape and details of construction. Figured dimensions on Drawings shall govern, but Work which is not dimensioned shall be as directed or required by field conditions. Specifications shall govern as to materials, workmanship and installation procedures.
- 1.15 Field Clarifications.** A written or graphic document consisting of supplementary details, instructions or information issued on behalf of the District which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued under the Contract Documents.
- 1.16 Intent and Correlation of Contract Documents.**
- 1.17 Work of the Contract Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. Organization of the Specifications into divisions, sections or articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control.

- 1.18 Technical Terms.** Unless otherwise stated in the Contract Documents, words or terms which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.19 Conflict in Contract Documents.** Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect in accordance with Article 3.1.9 of the General Conditions; where conflicts or inconsistencies arise between the Drawings and the Specifications, in resolving such conflicts or inconsistencies, the Architect will be governed generally by the following standards: the Drawings are intended to describe matters relating to placement, type, quantity and the like; the Specifications are intended to describe matters relating to quality, materials, compositions, manufacturers and the like. If conflicts exist between portions of the Contract Documents regarding the quality of any item, product, equipment or materials, unless otherwise directed or authorized by the District, the Contractor shall provide the item, product, equipment or material of the highest or more stringent quality.
- 1.20 Material Supplier.** A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.
- 1.21 Notice to Proceed.** The Notice to Proceed is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.
- 1.22 Progress Reports; Verified Reports.** Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the District in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to the DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. A material obligation of the Contractor is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same.
- 1.23 Project.** The Project is the total construction of which the Work performed by the Contractor under the Contract Documents which may be the whole or a part of the Project and which may include construction by the District or by separate contractors.
- 1.24 Project Inspector.** The Project Inspector is the individual designated and retained by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.
- 1.25 Project Manager.** The Project Manager is an independent contractor retained by the District and is authorized and empowered to act on behalf of the District as set forth in the Contract Documents. The District reserves the right to remove or replace the Project Manager prior to completion of the Work without adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor's obligations hereunder. The Project Manager for the Work, if one is so designated by the District, is identified in the Special Conditions.
- 1.26 Record Drawings.** The Record Drawings are a set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final

Completion of the Work.

- 1.27 Shop Drawings; Samples; Product Data ("Submittals").** Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as "Submittals".
- 1.28 Site.** The Site is the physical area designated in the Contract Documents for Contractor's performance, construction and installation of the Work.
- 1.29 Special Conditions; Supplemental Conditions.** If made a part of the Contract Documents, Special Conditions and Supplemental Conditions are special or supplemental provisions, not otherwise provided for in the Agreement or the General Conditions.
- 1.30 Subcontractors; Sub-Subcontractors.** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. "Subcontractor" does not include a separate contractor to the District or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site.
- 1.31 Substantial Completion:** Substantial Completion means the point at which, with respect to the Work in its entirety, including all phases: (1) such Work can be fully enjoyed and beneficially occupied, as that term is defined above and utilized by the District for its intended purpose (except for minor items which do not impair the District's ability to so occupy and use such Work); (2) All permits, approvals and certificates by governmental authorities required to occupy and use such work have been issued; and (3) All systems included in such are operational as specified, all designated or required inspections and certifications by governmental authorities have been made and posted, and instructions of District's personnel in the operation of such systems has been completed.
- 1.32 Substantial Completion of Punchlist.** The punchlist will be considered complete when all but a trifling amount of punchlist items are completed and those remaining items are of a minor cost.
- 1.33 Surety.** The Surety is the person or entity that executes, as surety, the Contractor's Labor and Material Payment Bond and/or Performance Bond.
- 1.34 Work.** The "Work" is the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

ARTICLE 2: DISTRICT

2.1 Information Required of District.

2.1.1 Surveys; Site Information.

Information, if any, concerning physical characteristics of

the Site, including without limitation, surveys, soils reports, and utility locations, to be provided by the District are set forth in the Contract Documents. Information not provided by the District or necessary information in addition to that provided by the District concerning physical characteristics of the Site which is required shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.

2.1.2 Permits; Fees. Except as otherwise provided in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities which relate to the Work of the Contractor under the Contract Documents. If permits and fees are designated as the responsibility of the Contractor under the Contract Documents, the Contractor shall be solely responsible for obtaining the same; the cost of such permits or fees and any costs incurred by the Contractor in obtaining such permits shall be included within the Contract Price.

2.1.3 Drawings and Specifications. Except as otherwise provided for in the Contract Documents, the District shall furnish the Contractor, free of charge, access to the electronic copies of the Drawings and Specifications for the Contractor to download and/or print. All costs related to obtaining these materials shall be the responsibility of the contractor. No hard copies will be provided by the District. All of the Drawings and the Specifications provided by the District to the Contractor remain the property of the District; the Contractor shall not use the Drawings or the Specifications in connection with any other work of improvement other than the Work of the Project.

2.1.4 Furnishing of Information. Information or services to be provided by the District under the Contract Documents shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the District under the Contract Documents is obtained from sources believed to be reliable, but the District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District. To the extent that the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements, or the Work involves any tie-in or other connection with any existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist. Contractor shall bear the risk of any variations between conditions or existing improvements depicted in the Contract Documents and those conditions or existing improvements actually encountered in the performance of the Work. Subject to the provisions of Article 4.2.3, the existence of any variations between conditions or existing improvements depicted in the Contract Documents and those actually encountered in the performance of the Work shall not result in any District liability therefor, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

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

Contract Documents or at law.

2.3 Partial Occupancy or Use.

2.3.1 District's Right to Partial Occupancy.

2.3.2 The District may occupy or use any completed or partially completed portion of the Work, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If the Contractor and the District are unable to agree upon the matters set forth in (ii) above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents.

Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the Project Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by the Contractor so that the portion of the Work to be occupied or used by the District is in conformity with the requirements of the Contract Documents and the District's occupancy or use thereof is not impaired. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107. The District's partial occupancy of the Work shall not suspend the imposition of any liquidated damages.

2.3.3 No Acceptance of Defective or Nonconforming Work. Unless otherwise expressly agreed upon by the District and the Contractor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work not complying with the requirements of the Contract Documents or which is otherwise defective.

2.4 The Project Inspector. In addition to the authority and rights of the Project Inspector as provided for elsewhere in the Contract Documents, all of the Work shall be performed under the observation of the Project Inspector. The performance of the duties of the Project Inspector under the Contract Documents shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents.

2.4.1 Access to Work. The Contractor shall provide the Project Inspector with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. The Project Inspector shall have the authority to stop Work if the Work is not in conformity with the Contract Documents.

2.4.2 Limitations on Project Inspector. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the District for the consequences of all Work performed on such basis.

ARTICLE 3: ARCHITECT; ROLE OF PROJECT MANAGER**3.1 Administration of the Contract.**

3.1.1 Role of the Architect and Project Manager. The Architect and the Project Manager will provide administration of the Contract as described in the Contract Documents, and will be the District's representatives during construction until the time that Final Payment is due the Contractor under the Contract Documents. The Architect and Project Manager will advise and consult with the District and the Project Inspector with respect to the administration of the Contract and the Work. The Architect is authorized to act on behalf of the District to the extent provided for in the Contract Documents; and shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations. The Architect and Project Manager are authorized to stop the Work whenever deemed necessary in the sole discretion of the Architect or the Project Manager to insure that the Work is completed in accordance with the Contract Documents.

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

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

3.1.4 Review of Applications for Payment. In accordance with Article 8 hereof, the Architect and Project Manager will review the Contractor's Applications for Progress Payments and for Final Payment, evaluate the extent of Work performed and the amount properly due the Contractor on such Application for Payment.

3.1.5 Rejection of Work. The Architect is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither this authority of the Architect nor a decision made in good faith by the Architect to exercise or not to exercise such authority shall give rise to a duty or responsibility to the Contractor, Subcontractors, Material Suppliers, their agents or employees, or other persons performing portions of the Work.

3.1.6 Submittals.

3.1.6.1 Processing of Submittals Through Architect. Submittals required by the Contract Documents shall be prepared by or on behalf of the Contractor in accordance with the requirements of the Contract Documents. Submittals shall be

transmitted by the Contractor to the Architect, with copies of the transmittal cover sheet to the Project Manager and Project Inspector. Upon completion of the Architect's review and approval of a Submittal, the Architect shall transmit the reviewed Submittal to the Contractor (with copies of the reviewed submittal transmitted to the Project Manager and Project Inspector) for the Contractor's distribution to its Subcontractor(s) and other affected parties.

3.1.6.2 Architect's Review. The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect's review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component with the Submittal(s) required and relating to such assembly have been reviewed by the Architect.

3.1.6.3 Time for Architect's Review. The Architect's review of Submittals will be conducted so as not to delay or hinder the progress of the Work or the activities of the Contractor, the District or the District's separate contractors while allowing sufficient time, in the Architect's reasonable professional judgment, to permit adequate review of Submittals. The foregoing notwithstanding, the Architect's review and return of Submittals will conform with the time limits and other conditions, if any, set forth in the Specifications or the Submittal Schedule if the Submittal Schedule is required by other provisions of the Contract Documents.

3.1.7 Changes to the Work; Change Orders. The Architect and Project Manager will prepare Change Orders, and with the written approval of the Project Manager, may authorize minor Changes in the Work which do not result in adjustment of the Contract Time or the Contract Price.

3.1.8 Completion. The Architect will conduct observations to determine the date(s) of Substantial Completion and the date(s) of Final Completion, will receive and forward to the District, for the District's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

3.1.9 Interpretation of Contract and RFIs. The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor. The Architect's response to such requests will be made with reasonable promptness and within the time limits agreed upon, if any. If no agreement is reached establishing the time for the Architect's review and response to requests under this Article 3.1.9, the Architect shall be afforded a fifteen (15) day period after receipt of such request to review and respond thereto. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents

and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the District and the Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. If there is any disagreement, dispute or other matter in controversy between the District and the Contractor, in addition to other requirements established by the Contract Documents or by law, the submission of the same to the Architect for its decision shall be a condition precedent to initiation of dispute resolution procedures.

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

3.1.11 RFI Scope. The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. CONTRACTOR shall make suggestions and interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents.

3.1.12 Response Time. The Architect shall respond to a RFI within a reasonable time after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written Change Order or Construction Change Directive, if appropriate. If the Architect cannot respond to the RFI within a reasonable time, not to exceed five (5) working days, the Architect shall notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond. In addition, the architect may request additional information from contractor to obtain the information needed to respond to the Request. Where needed, a portion of the Weekly Progress Meetings shall be reserved for addressing and resolving RFIs.

3.1.13 RFI Costs Incurred. The Contractor shall be responsible for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. District, at its sole discretion, shall invoice Contractor for all such professional services arising from this Article.

3.2 Communications; Role of Project Manager and Architect. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; oral communications, unless reduced to writing, are not binding on the parties. Communications between the Contractor and the District or the Architect shall be through the Project Manager. Communications between separate contractors, if any, shall be through the Project Manager. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available to the District, the Project Manager and the Architect for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the Contractor to permit the District, the Project Manager, Project Inspector or Architect to review, inspect or reproduce such written communications may be deemed a default of Contractor hereunder.

3.3 Termination of Architect or Project Manager; Substitute Architect or Project Manager. In case of termination of employment of the Architect or the Project Manager, the District shall

appoint a substitute architect or substitute Project Manager whose status under the Contract Documents shall be that of the Architect or the Project Manager, as applicable.

ARTICLE 4: THE CONTRACTOR

4.1 Contractor Review of Contract Documents.

4.1.1 Examination of Contract Documents. Commencing immediately after the award of the contract, Contractor shall begin to carefully study and compare the Contract Documents with each other and with information furnished by the District pursuant to the Contract Documents and shall at once report to the Architect any errors, inconsistencies or omissions discovered. These inquiries shall be submitted electronically in a format and in the manner to be subsequently determined by the Project Manager. If the Contractor performs any Work knowing, or with reasonable diligence should have known that, it involves an error, inconsistency or omission in the Contract Documents without prior notice to the Architect of the same, the Contractor shall assume full responsibility for such performance and shall bear all attributable costs for correction of the same.

4.1.2 Drawing Meetings. Prior to the commencement of work on the Project, the Contractor, District and Architect shall hold a Design Meeting to discuss the drawings and to provide Contractor with any needed analysis or interpretation to commence work. The parties shall thereafter have quarterly Drawing Meetings.

4.1.3 Field Measurements. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

4.1.4 Dimensions; Layouts and Field Engineering. Unless otherwise expressly provided, dimensions indicated in the Drawings are intended for reference only. The Drawings are intended to be diagrammatic and schematic in nature; the Contractor shall be solely responsible for dimensioning and coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by the an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work. Upon commencement of any item of the Work, the Contractor is responsible for dimensions of such item of Work and related Work; without adjustment of the Contract Time or Contract Price, the Contractor is responsible for making component parts of the Work fit together properly.

4.1.5 Work in Accordance With Contract Documents. The Contractor shall perform all of the Work in strict conformity with the Contract Documents and approved Submittals.

4.2 Site Investigation; Subsurface Conditions.

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

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

4.2.2 Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. Subsurface data or other soils investigation report provided by the District hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades, or below grade elevations are approximate only and is neither guaranteed or warranted by the District to be complete and accurate. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered.

4.2.3 Subsurface Conditions.

4.2.3.1 Procedures. If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the Project Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Contractor prior to award of the Contract; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the District of the conditions described above and upon the District's investigation thereof, the District determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to Article 15.2 hereof should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above.

4.2.3.2 Trenching. For all excavations in excess of five (5) feet involving an estimated expenditure in excess of \$25,000, Contractor shall submit to the District for acceptance a detailed Drawing showing the design of shoring, bracing, sloping or

other provisions to be made for the protection of workmen from the hazard of caving ground. If such design varies from the standards established by the Construction Safety Orders of the California Division of Industrial Safety, the Drawing shall be prepared by a registered civil or structural engineer. None of the aforementioned trenching shall be started before Contractor receives notification of acceptance from the District. Contractor shall comply with all other applicable requirements of California Labor Code §6705, and as therein provided, no provisions of that Section or this Section shall be construed to impose tort liability upon the District. In any event, Contractor shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Project premises prior to commencement of any excavation.

4.3 Storm Water Permitting.

4.3.1 Contractor's Contractor Responsibility. If and to the extent storm water permitting, control, mitigation or discharge control is required by Applicable Laws, the Contractor shall (1) file and obtain the Storm Water Permit; (2) furnish all notices required under the Storm Water Permit; (3) prior to starting any Work at the Site prepare the Storm Water Management Plans and Storm Water Pollution Prevention Plans; and (4) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans and Storm Water Pollution Prevention Plans and all Applicable Laws pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, Regional Water Quality Control Board and municipal storm water management programs.

4.3.2 Copies of Reports. The Contractor shall provide copies of all reports and monitoring information to the District Project Manager.

4.3.3 Violations. The Contractor recognizes and understands that failure to comply with the requirements of the Storm Water Permit is a violation of federal and state law.

4.3.4 Condition of Payment. Compliance by the Contractor with the requirements of this Section shall be a condition to the Contractor's right to payment under its Applications for Payment.

4.3.5 Costs of Compliance. The Contractor represents and warrants that it has included in the Contract Sum all costs of compliance with the requirements of this Section. ____.

4.4 Supervision and Construction Procedures.

4.4.1 Supervision of the Work. The Contractor shall supervise and direct performance of the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

4.4.2 Responsibility for the Work; Coordination of the Work.

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

Schedules and "Look-Aheads". The Contractor shall be responsible for all necessary or appropriate coordination of the Work and component parts thereof so that Substantial Completion of the Work will be achieved within the Contract Time and the Work will be completed for the Contract Price. The coordination of the Work is a material obligation of the Contractor hereunder and shall include without limitation, conducting regular coordination meetings with its Subcontractors and Material Suppliers, sequencing the operations of Subcontractors and Material Suppliers, and adapting its planned means, methods and sequences of construction operations as necessary to accommodate field or changed conditions at the Site. It shall be a regular and continuing obligation of the Contractor to prepare, on a regular basis, 3-week look ahead schedules, copies of which will be provided to the Project Inspector, Architect and Project Manager. The Contractor shall hold regular coordination meetings with pertinent subcontractors. Contractor shall also provide the Project Inspector with estimated inspection dates.

4.4.3 Layouts. The Contractor is solely responsible for laying-out the Work so that construction of the Work conforms to the requirements of the Contract Documents and so that all component parts of the Work are coordinated. The Contractor shall be responsible for maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of maintenance and preservation of benchmarks, reference points and stakes shall be included within the Contract Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

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

4.4.5 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code §4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings, Specifications and other Contract Documents with reasonable accuracy, and for equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the District of the utility to provide for removal or relocation of such utility facilities. Nothing in this Article 4.3.5 shall be deemed to require the District to indicate the presence of existing

service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified by the District in the Drawings, Specifications, or other Contract Documents, the Contractor shall immediately notify, in writing, the District, the Project Inspector, the Architect, the Project Manager and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

4.4.6 Existing Utilities. Except as otherwise required by California Government Code §4215, Contractor shall contact all relevant utility providers and arrange for obtaining all available information, concerning location of subsurface utility lines particularly for off-site work. Prior to commencement of any digging, Contractor shall make its own investigation, including exploratory excavations, to determine the locations and type of Work which could result in damage to such utilities. In accordance with California Government Code §§4216 et seq., except in an emergency, Contractor shall contact the appropriate regional notification center at least two (2) working days, but not more than fourteen (14) Days, prior to commencing any excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain sub-service installations, and shall obtain an inquiry identification number from the regional notification center. Contractor shall not assume, unless actual observed surface conditions at the Site indicate otherwise, that utilities are located in the same location as indicated on the as-built records or other information obtained by Contractor. Contractor shall conduct potholing in advance of digging in any areas where there are not apparent surface conditions at the Site indicating the actual location of underground utilities and be at all times vigilant in watching for any conditions encountered, above or below the surface of the ground, that might indicate that underground utilities are at locations other than those indicated by the as-built records or other information obtained by Contractor. Contractor shall perform its digging operations in a slow and meticulous manner so as to avoid wherever possible damaging existing underground utilities.

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

4.4.7.1 Pre-Construction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by the District) shall attend a Pre-Construction Conference at such time and place as designated by the District. The Pre-Construction Conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the Pre-Construction Conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, Architect, Project Manager, Contractor, Subcontractor, Project Inspector and others performing any part of the Work or services relating to the Work; (b) Establishing a date for the drawing meetings described in Section 4.1.2 above; (c) Submittals; (d) Changes and Change Order processing; (e) employment practices, including

Certified Payroll preparation and submission and prevailing wage rate responsibilities of the Contractor and Subcontractors; (f) Progress Schedule development and maintenance; (g) development of Schedule of Values and payment procedures; (h) communication procedures, including the handling of Requests for Information; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Contractor/Subcontractor personnel at the Site; and (l) punchlist/close-out procedures.

4.4.7.2 Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the Project Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress Schedule and Submittals. Progress meetings will also be the time to submit Notice of Claim applications and Documented Claim Applications, as set forth in Article 9 below.

4.4.7.3 Special Meetings. As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.

4.4.7.4 Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the Architect or the Project Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect and the Project Manager in writing of objections or corrections to minutes prepared hereunder within five (5) dates of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Project Manager; such objections or corrections shall be submitted to the Architect and the Project Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

4.4.8 Temporary Sanitary Facilities. At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site.

4.4.9 Noise and Dust Control.

4.4.9.1 Noise Control. The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment noise at the Site shall be limited and only as permitted by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal

operation of the District, at the District's request, the Contractor shall schedule the performance of all such Work around normal District hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

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

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

4.5 Labor and Materials.

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

4.5.2 Employee Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor or Sub-

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

4.5.3 Contractor's Project Staff. The Contractor shall employ a competent superintendent, project manager and all necessary assistants who shall be in attendance at the Site at all times during performance of the Work. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor's superintendent. The superintendent shall represent the Contractor and communications given to the superintendent shall be binding as if given to the Contractor. The Contractor shall dismiss the superintendent or any member of the Project Staff, including but not limited to the project manager, if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approve of the replacement superintendent, project manager or assistant.

4.5.4 Prohibition on Harassment.

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

4.5.4.2 Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.4.4.

4.5.4.3 Prohibition on Harassment at the Site.

4.5.4.4 Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, Sub-subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate

sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.4.4.2 above. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work.

4.5.4.5 Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof.

4.5.4.6 Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, board of trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this Article 4.4.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person.

4.5.4.7 The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

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

4.7 Permits, Fees and Notices; Compliance With Laws.

4.7.1 Payment of Permits, Fees. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for the proper execution and completion of the Work. The foregoing includes, as applicable, fees, costs or other expenses associated with or arising in connection with Deferred Approval Items. The District and Architect shall assist the Contractor in obtaining needed information to secure licenses and permits.

4.7.2 Compliance With Laws. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

4.7.3 Notice of Variation From Laws. If the Contractor knows, or has reason to believe,

that any portion of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, regulations or rules, the Contractor shall promptly notify the Architect, Project Manager and the Project Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to laws, statutes, ordinances, building codes, rules or regulations applicable to the Work without such notice to the Architect and the Project Inspector, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

4.8 Submittals.

4.8.1 Purpose of Submittals. Shop Drawings, Product Data, Samples and similar submittals (collectively "Submittals") are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.

4.8.2 Contractor's Submittals.

4.8.2.1 Prompt Submittals.

4.8.2.2 The Contractor shall review, approve and submit to the Architect or such other person or entity designated by the District, the number of copies of Submittals required by the Contract Documents. All Submittals required by the Contract Documents shall be prepared, assembled and submitted by the Contractor to the Architect within the time frames set forth in the Submittal Schedule incorporated and made a part of the Approved Construction Schedule prepared and submitted by the Contractor pursuant to Article 7 of these General Conditions. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor.

4.8.2.3 In the event of Contractor's failure or refusal to deliver Submittals to the Architect in accordance with the Submittal Schedule, the Contractor shall be subject to per diem liquidated damages in the amount set forth in the Special Conditions for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule for Contractor's submission of such Submittal.

4.8.2.4 Notwithstanding Contractor's submission of all required Submittals in accordance with the Submittal Schedule, in the event that the District or the Architect reasonably determines that all or any portion of such Submittals fail to comply with the requirements of these General Conditions and/or such Submittals are not otherwise complete and accurate so as to require re-submission, Contractor shall bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Architect's fees incurred in connection therewith; provided that such costs are in addition to, and not in lieu of, any per diem amounts imposed under this Article for Contractor's delayed submission of Submittals. The District may deduct all such amounts from any portion the Contract Price then or thereafter due the Contractor. Submittals not required by the Contract Documents or which do not otherwise conform to the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to make timely submission of any

Submittal.

4.8.2.5 Approval of Subcontractor Submittals. All Submittals prepared by Subcontractors, of any tier, Material Suppliers, manufacturers or distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment to the Contract Time or the Contract Price.

4.8.2.6 Information Included in Submittals. All Submittals shall be accompanied by a written transmittal and each set of plans shall carry a "wet stamp" or other writing by the Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) project name; (iii) name of submitting Subcontractor; and (iv) the revision number. The foregoing information is in addition to, and not in lieu of, any other information required for the Architect's review, evaluation and approval of the Contractor's Submittals. Each Submittal shall be complete with its required number of copies, no piecemeal documentation is allowed. Any Submittal not bearing the required wet stamp as stated herein, shall be rejected until the appropriate wet stamp information is provided on each submittal.

4.8.2.7 Verification of Submittal Information. By approving and submission of Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Each Submittal shall include within the "wet stamp" field the following certification duly executed by the Contractor's Superintendent or Project Manager for the Work:

"The Contractor has reviewed and approved the field dimensions and construction criteria of the attached Submittal. The Contractor has verified that the Submittal includes notations of any portion of the Work depicted in the Submittal which is not in strict conformity with the Contract Documents. The information in the attached Submittal has been reviewed and coordinated by the Contractor with information included in other Submittals."

Contractor to provide a sample of "wet stamp" to project manager for approval prior to the start of construction.

4.8.2.8 Contractor Responsibility for Deviations. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's review of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's review or comments thereon.

4.8.2.9 No Performance of Work Without Architect Review. The Contractor shall perform no portion of the Work requiring the Architect's review of Submittals until the

Architect has completed its review and returned the Submittal to the Contractor indicating "No Exception Taken" to such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the Architect in review of Submittals and other applicable portions of the Contract Documents.

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

4.8.4 Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

4.9 Materials and Equipment.

4.9.1 Specified Materials, Equipment. References in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be deemed to establish a minimum standard of quality or performance, and shall not be construed as limiting competition.

4.9.2 SUBSTITUTIONS. Within a period of thirty-five (35) days after Award of Contract, Project Manager and Architect/Engineer will consider Requests for Substitution ("RFS") from Contractor. After that period, requests will be considered only when product becomes unavailable due to no fault of Contractor. Requests for review of proposed substitute items will not be accepted from anyone other than Contractor. The RFS will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with CLPCCD for work on the Project).

4.9.3 Submit separate RFS for each product and support each request with: (1) Product identification; (2) Manufacturer's literature; (3) Samples, as applicable; (4) Name and address of similar projects on which product has been used, and date of installation; and (5) Name, address and telephone number of manufacturer's representative or sales engineer.

4.9.4 Where required, itemize a comparison of the proposed substitution with product specified and list significant variations. If variation from product specified is not pointed out in submittal, variation will be rejected even though submittal was favorably reviewed.

4.9.5 State whether the substitute will require a change in any of the Contract documents (or

provisions of any other direct contract with CLPCCD for work on the Project) to adapt the design of the proposed substitute, and whether or not incorporation or use of the substitute in connection with Work is subject to payment of any license fee or royalty. Submit data relating to changes in construction schedule.

4.9.6 All variations of the proposed substitute from that specified will be identified in the RFS and available maintenance, repair and replacement service will be indicated.

4.9.7 Include accurate cost data comparing proposed substitution with product and amount of net change in Contract price, including but not limited to, an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors effected by the resulting change, all of which will be considered by Construction Manager and Architect/Engineer in evaluating the proposed substitute. Construction Manager and Architect/Engineer may require Contractor to furnish additional data about the proposed substitute.

4.9.8 Substitutions will not be considered for acceptance when:

1. They will result in delay meeting construction milestones or completion dates.
2. They are indicated or implied on submittals without formal request from Contractor.
3. They are requested directly by subcontractor or supplier.
4. Acceptance will require substantial revision of Contract Documents.
5. They disrupt Contractor's job rhythm or ability to perform efficiently.

4.9.9 Substitute products shall not be ordered without written acceptance of Construction Manager and Architect/Engineer.

4.9.10 Construction Manager and Architect/Engineer will determine acceptability of proposed substitutions and reserve right to reject proposals due to insufficient information.

4.9.11 Accepted substitutions will be evidenced by a change order or Supplemental Instruction. All Contract requirements apply to Work involving substitutions.

4.9.12 Substitution products must meet the LEED performance requirements for the product as specified in Section 01352 and throughout the specification.

4.9.13 Placement of Material and Equipment Orders. Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the District, Project Manager or the Architect, the Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.

4.9.14 District's Right to Place Orders for Materials and/or Equipment.

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

4.10 Safety.

4.10.1 Safety Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, the Contractor shall provide the Project Manager with the Contractor's safety program for the Work. The Project Manager and the Project Inspector are authorized to enforce the Contractor's obligation to implement Contractor's safety program.

4.10.2 Safety Precautions. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. Without adjustment of the Contract Price or the Contract Time, the Contractor shall repair, replace or restore any

damage or destruction of the foregoing items as a result of performance or installation of the Work.

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

4.10.4 Safety Notices. The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

4.10.6 Emergencies; First Aid. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss. The Contractor shall maintain stocked emergency first aid kits at the Site which comply with applicable law, rule or regulation.

4.10.7 Hazardous Materials.

4.10.7.1 General. In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

4.10.7.2 Prohibition on Use of Asbestos Construction Building Materials ("ACBMs"). Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the Architect and the Project Inspector of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under

the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor's completion of the Work or the District's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.

4.10.7.3 Disposal of Hazardous Materials. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from the Contractor's performance of Work and other activities. The Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

4.10.7.4 Encountering of Hazardous Materials. If the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for their containment, removal, abatement or handling, the Contractor shall immediately stop the Work in the affected area and shall immediately notify the District, in writing, of such condition. The Contractor shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the Project Inspector and the Architect, in writing, of such condition. The Contractor shall proceed with the Work in the affected area only after the Hazardous Materials have been rendered harmless, contained, removed or abated. In the event such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time in accordance with Articles 7 and 9 to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Contract Price solely on account of the Contractor encountering such Hazardous Materials

4.10.7.5 Material Safety Data Sheets. Contractor is required to insure that Material Safety Data Sheets (MSDS) for any material requiring a MSDS pursuant to the federal "hazard communication" standard or employee's right-to-know law are available in a readily accessible place on the Work premises. The Contractor is also required to insure (i) the proper labeling of any substance brought onto the Work premises, and (ii) that the persons working with the material, or within the general area of the material, are informed about the hazards of the substance and follow proper handling and protection procedures.

4.10.7.6 Compliance with Proposition 65. Contractor is required to comply with the provisions of California Health and Safety Code § 25249.5, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with such statutory provisions and to fully comply with the requirements set forth therein.

4.11 Maintenance of Documents.

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

4.11.2 Maintenance of Record Drawings.

4.11.3 During its performance of the Work, the Contractor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work.

4.11.4 The Record Drawings shall be continuously maintained by the Contractor during the performance of the Work. At any time during the Contractor's performance of the Work, upon the request of the District, the Project Inspector or the Architect, the Contractor shall make the Record Drawings maintained here under available for the District's review and inspection. The District's review and inspection of the Record Drawings during the Contractor's performance of the Work shall be only for the purpose of generally verifying that Contractor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the District's approval or verification of the completeness or accuracy thereof. The failure or refusal of the Contractor to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review by the District may be deemed by the District to be Contractor's default of a material obligation hereunder.

4.11.5 Without waiving, restricting or limiting any other right or remedy of the District for the Contractor's failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that the Contractor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to the Contractor and the District may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In accordance with Article 8 of these General Conditions, prior to receipt of the Final Payment, Contractor shall

deliver the Record Drawings to the Project Manager for transmittal of the District.

- 4.12 Use of Site.** The Contractor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. In accordance with City of Santa Monica Municipal ordinances, all construction and delivery activities shall be restricted to the hours set forth in the Special Conditions, or as otherwise modified or amended. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor shall be solely responsible for providing security at the Site with all such costs included in the Contract Price. All construction vehicles shall park only in those parking spaces designated and approved by the District's Representative for the Contractor's use. The District shall at all times have access to the Site.
- 4.13 Clean-Up.** The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the Site in a "broom-clean" standard on a daily basis. In the event that the Work of the Contract Documents includes painting and/or the installation of floor covering, prior to commencement of any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition.
- 4.14 Removal of Rubbish.** Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material and any other items which are not the property of the District under the Contract Documents. At completion of the Work, the Contractor shall clean the building interior and exterior, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal surfaces, areas where debris, dust and similar items have collected, clean and polish all glass, plumbing fixtures, finish hardware, metal/wood/stone finishes.
- 4.15 Fencing.** As directed by the Project Manager, District or Architect, the Contractor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. The Project Inspector or Project Manager shall be authorized to direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.
- 4.16 Access to the Work.** The Contractor shall provide the DSA, the District, the Project Manager, the Project Inspector, the Architect and the Architect's consultant(s) with access to the Work, whether in place, preparation and progress and wherever located.
- 4.17 Information for the Project Inspector.** The Contractor shall furnish the Project Inspector access to the Work for obtaining such information as may be necessary to keep the Project Inspector fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein. The Contractor shall provide, without adjustment of the Contract Price, for use by the Project Inspector, the District and Project Manager the facilities, equipment, furnishings and services set forth in the Special Conditions. If the Contractor does not provide the facilities, furnishings, equipment and services set forth in the Special Conditions, or fails to pay timely any charges or fees arising

out of the use of the same, the District may, as applicable, procure facilities, furnishings, equipment and services required by the Contract Documents or pay outstanding charges. Contractor shall reimburse the District for all costs, including the District's administrative costs, incurred by the District pursuant to the preceding sentence; in lieu of the Contractor's reimbursement and at the sole and exclusive discretion of the District, such costs may be deducted by the District from any portion of the Contract Price or thereafter due the Contractor.

4.18 Patents and Royalties. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work under the Contract Documents.

4.19 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, the Contractor shall match, as closely as conditions of the Site and materials will allow, the finishes, textures and colors of the existing structure/facility and refinish elements of the existing structure/facility. The Contractor shall submit RFIs to the District if it believes that by performing work on an existing structure/facility will help protect or accomplish the purpose of the installed work within the scope of this Project. The Contractor shall not cut, patch or otherwise alter the construction by the District or separate contractor without the prior written consent of the District or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.

4.20 Wage Rates; Employment of Labor.

4.20.1 Determination of Prevailing Rates. Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. These rates are on file at the District's principal office. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

4.20.2 Payment of Prevailing Rates. This Project is a public works project as defined in Labor Code §1720, and must be performed in accordance with the requirements of Labor Code §§1720 to 1815 and Title 8 California Code of Regulations §§16000 to 17270, which govern the payment of prevailing wage rates on public works projects. The Contractor, and any Subcontractor, of any tier, shall pay their workers engaged in the Work not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such worker. Contractor, consistent with California Public Contract Code §6109, is prohibited from performing a portion of work with a Subcontractor who is debarred pursuant to Labor Code §§1777.1 or 1777.7.

4.20.3 Prevailing Wage Penalty. The Contractor shall, as a penalty, forfeit up to Fifty Dollars (\$50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work

by the Contractor or by any Subcontractor, of any tier. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4.20.4 Sufficient Contract Price. Contractor represents and warrants that the Contract Price includes sufficient funds to allow Contractor and all Subcontractors to comply with all applicable laws and contractual agreements. Contractor shall defend, indemnify and hold the District harmless from and against any and all claims, demands, losses, liabilities and damages arising out of or relating to the failure of Contractor or any Subcontractor to comply with any applicable law in this regard, including, but not limited to Labor Code §2810. Contractor agrees to pay any and all wages, penalties, forfeitures and liquidated damages, made or asserted against the District in relation to any such failure.

4.20.5 Payroll Records.

4.20.5.1 Submission of Certified Payroll Records to District. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate certified payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. If there is no work in a given week or on a given day, Contractor and each Subcontractor must keep a certified Non-Performance payroll record, indicating “no work” for that week or day(s). Contractor shall submit all certified payroll records to the District’s Labor Compliance Administrator or designee Program Manager in complete, unredacted form with an original signature on the Statement of Compliance along with, and as a condition to, its Application for Payment.

4.20.5.2 Inspection of Certified Payroll Records. Additionally, the certified payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working

days, provide a notice of a change or location and address.

4.20.5.3 Submission of Payroll Records. Contractor shall provide, and shall cause all Subcontractors to provide, payroll records as defined in Title 8 California Code of Regulations §16000 to the District, within ten (10) days of written request, at no cost to the District. The District will not return documents to Contractor.

4.20.5.4 Penalty for Noncompliance. In the event of noncompliance with the requirements of this Article , the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the District, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The responsibility for compliance with the foregoing provisions shall rest upon the Contractor.

4.20.5.5 Liquidated Damages. Should Contractor neglect, fail or refuse to submit any documents pursuant to this Article , Contractor agrees to pay to the District the sum of twenty-five (\$25) dollars per worker per day in liquidated damages, not as a penalty but as liquidated damages, for every day beyond ten (10) days after such documents are due. The liquidated damages amounts are agreed upon by and between the Contractor and the District because of the difficulty of fixing the District's actual damages in the event of failure to submit such documents. The Contractor and District specifically agree that said amounts are reasonable estimates of the District's damages in such event, and that such amounts do not constitute a penalty. The Contractor and District acknowledge and agree that the liquidated damages contained in this provision are reasonable under the circumstances existing at the time of the Contractor's execution of the Contract.

4.20.6 Hours of Work

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

4.20.6.2 Penalty for Excess Hours. The Contractor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of Labor Code §1810 et seq.

4.20.6.3 Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District.

4.20.7 Apprentices.

4.20.7.1 Employment of Apprentices. Labor Code §1777.5 and Title 8 California Code of Regulations §200 et seq. provide detailed requirements for employing apprentices on public works projects. Contractor is responsible for compliance with Labor Code §1777.5 and applicable regulations on the Project. This responsibility includes, but is not limited to, the obligation to employ properly registered apprentices and pay such apprentices at least the prevailing wage rate for their appropriate apprentice classification. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. This Article 4.21.7 shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contract involves less than Thirty Thousand Dollars (\$30,000.00). The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

4.20.7.2 Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for and obtain a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards for that craft or trade.

4.20.7.3 Contract Award Information. Contractor shall submit contract award information using the Division of Apprenticeship Standards (DAS 140) Form to the applicable apprenticeship committee within ten (10) days of the date of execution of contract and no later than the first day of work as per Title 8 California Code of Regulations §230. Contractor shall submit a copy of the completed DAS 140 Form to the District's Labor Compliance Program at the same time.

4.20.7.4 Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be no higher than the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one

hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. Any ratio shall apply during any day or portion of a day when any journeyman is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract, and Subcontractors before the end of the subcontract. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Any Work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the hourly ratio required by this Article. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. Upon proper showing by the Contractor or Subcontractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code §1777.5.

4.20.7.5 Exemption from Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under a public works contract would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

4.20.7.6 Contractor's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is that of the Contractor. In the event the Contractor knowingly fails to comply with the provisions of this Article and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall forfeit, as a civil penalty, not more than One Hundred Dollars (\$100.00) for each calendar day of noncompliance. A contractor or subcontractor that knowingly commits a second or subsequent violation of this Article and California Labor Code §1777.5 shall forfeit as a civil penalty not more than Three Hundred Dollars (\$300.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of a determination that a civil penalty has been assessed by the Chief of the Division of Apprenticeship Standards, the District shall

withhold such amount from the Contract Price then due or to become due. In the event a Contractor or Subcontractor is determined by the Chief to have knowingly committed a serious violation of Labor Code §1777.5, the Chief may also deny the Contractor or Subcontractor and its responsible officers the right to be on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one (1) year for a first violation and up to three (3) years for a second or subsequent violation.

4.20.7.7 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractor's license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Article 4.21.8 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 15.1 of these General Conditions. The Contractor shall require any Subcontractor of any tier performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

4.21 Assignment of Antitrust Claims. Pursuant to California Public Contract Code §7103.5, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Public Contract Code §7103.5, the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

4.22 Limitations Upon Site Activities. Except in the circumstances of an emergency, no construction activities shall be permitted at or about the Site except during the District's hours and days set forth in the Special Conditions. Work performed outside of the hours and days noted in the Special Conditions will not result in adjustment of the Contract Time or the Contract Price; unless Work outside of the hours and days noted in the Special Conditions is expressly authorized by the District.

ARTICLE 5: SUBCONTRACTORS

5.1 Subcontracts. Any Work performed for the Contractor by a Subcontractor shall be pursuant

to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions and the termination provisions of Article 15, and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District, the Project Inspector, DSA, the Project Manager and the Architect. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 15.1 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract. The Contractor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor's execution of the Agreement. During performance of the Work, the Contractor shall, from time to time, as and when requested by the District, the Architect or the Project Manager provide the District with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor's default of a material term of the Contract Documents.

5.2 Substitution of Listed Subcontractor.

5.3 Subcontractor "Look-Ahead Schedule": In order to facilitate the coordination of the work of the subcontractors, Contractor shall provide Subcontractors with regular three week "Look Ahead" schedules. Copies of these schedules will also be provided promptly to the District Project Manager and to the Project Inspector.

5.3.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in conformity with this Article 5.2 and California Public Contract Code §4107. All costs incurred by the District, including without limitation, costs of the Project Inspector, the Architect, the Project Manager or attorneys fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due the Contractor.

5.3.2 Responsibilities of Contractor Upon Substitution of Subcontractor. The District's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution. In the event of the District's consent to the substitution of a listed Subcontractor, the Architect shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor. In the event that the Architect determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Architect shall notify the Contractor, in writing, of such requirement.

5.3.3 Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Project Manager, Architect and/or any design consultant to the Architect or the District and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article ; the District may

deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article , such requirement shall not result in an increase to the Contract Time or the Contract Price.

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

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

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

authority, sonic boom, collapse and flood upon the entire Work which is the subject of the Contract Documents, and including completed Work and Work in progress to the full insurable value thereof. Contractor's Builders Risk Insurance shall include coverage and insurance against the perils of earthquake. Such insurance shall include the District as an additional named insured, and any other person with an insurable interest designated by the District as an additional named insured. The risk of damage to the Work due to the perils covered by the Builder's Risk "All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no claims for any loss or damage covered by the District's insurance shall be recognized by the District, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

6.4 Insurance Policy Requirements. Each policy of insurance required by the Contract Documents shall confirm the following requirements.

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

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

6.5 Evidence of Insurance; Subcontractor's Insurance.

6.5.1 Certificates of Insurance. Prior to commencing the Work, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents

shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Contractor hereunder shall also name the District, the Architect and the Project Manager as additional insureds as their interests may appear. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to charge Contractor such costs. The Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Contractor to comply with the District's request may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.

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

6.6 Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after the District's Final Acceptance of all of the Work for the full one year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and the Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the Contractor's obligation to pay Liquidated Damages. In no instance will the District's exercise of its option to occupy and use completed portions of the Work relieve the Contractor of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

6.7 Contractor's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Contractor's Builder's Risk Insurance or the Comprehensive General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all

Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price. The District and its Project Manager shall be endorsed on all policies provided by Contractor, as appropriate, as additional insureds as respects liability arising out of Contractor's or Subcontractors' performance of the terms and conditions of these Contract Documents.

6.8 Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the District, the Architect, the Project Inspector or the Project Manager, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the Project Inspector); (ii) the Architect and its consultants for the Work and their respective agents and employees; and (iii) the Project Manager and its agents and employees. The Contractor's obligations hereunder include indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor, any Subcontractor or any person or entity engaged by them for the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. The obligations of the Contractor, as set forth in (v) above shall include, without limitation losses, costs, expenses, damages and other claims asserted by any other Contractor to the District in connection with the Work or in connection with a work of improvement related to or affected by the Work. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are subject to, or bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract, or by an Exit Agreement.

6.9 Payment Bond; Performance Bond. Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor's faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor's performance of the Work under the Contract Documents. Unless otherwise stated in the Special Conditions, the amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this

Article may be deemed by the District as a default by the Contractor of a material obligation hereunder. Upon request of the Contractor, the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

ARTICLE 7: CONTRACT TIME

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

7.2 Progress and Completion of the Work.

7.2.1 Time of Essence. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of the Work within the Contract Time.

7.2.2 Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so the District can take Beneficial Occupancy as well as the other conditions found in Section 1.31 and 1.32, above. Substantial Completion shall be determined by the Architect, the Project Manager and the Project Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector, the Project Manager and the Architect shall be controlling and final.

7.2.3 Correction or Completion of the Work After Substantial Completion.

7.2.3.1 Punchlist. Upon achieving Substantial Completion of the Work, the District, the Project Inspector, the Project Manager, the Architect and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor ("the Punchlist"). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.

7.2.3.2 Time for Completing Punchlist Items. In addition to setting forth items for correction or completion pursuant to Article 7.2.3.1, the Project Manager, if any, Contractor and Architect shall, after the joint inspection, establish a reasonable time for Contractors' completion of all Punchlist items. If mutual agreement is not reached for the Contractor's completion of Punchlist items, the Architect shall determine such time, and in such event, the time determined by the Architect shall be final and binding upon the District and Contractor so long as the Architect's determination is made in good faith. The Contractor shall promptly and diligently proceed to complete all

Punchlist items within the time established. In the event that the Contractor shall fail or refuse, for any reason, to substantially complete all Punchlist items within the time established, Contractor shall be subject to Punchlist Liquidated Damages in accordance with Article 7.4 hereof. The foregoing notwithstanding, if the Contractor fails or refuses to complete all Punchlist items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining Punchlist items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete Punchlist items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith and the District may deduct such costs from the Contract Price then or thereafter due the Contractor. If these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs.

7.2.4 Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector and the Architect shall be controlling and final.

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

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

7.3 Schedules.

7.3.1 Preliminary Construction Schedule.

7.3.2 Contractor shall prepare and submit to the District, the Project Manager and the Architect a Preliminary Construction Schedule as set forth in Section 01 32 13 of the Contract Specifications. The Contractor may submit a Preliminary Construction Schedule depicting completion of the Work in a duration shorter than the Contract Time; provided that such Preliminary Construction Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time depicted therein, nor shall such Preliminary Construction Schedule be the basis for any extension of the Contract Time.

7.3.3 The Contractor's entitlement to any extension of the Contract Time shall be based upon the Contract Time and not on any shorter duration which may be depicted in the Contractor's Preliminary Construction Schedule. If the Construction Schedules required under this Article 7.3 incorporate therein any "float" time, such float shall be deemed to jointly belong to and owned by the District and the Contractor. As used herein, "float time" shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

7.3.4 Review of the Preliminary Progress Schedule and any comments thereto by the District, the Project Manager and/or the Architect shall not be deemed to be the assumption of construction means, methods or sequences by the District, the Project Manager or the Architect, all of which remain the Contractor's obligations under the Contract Documents.

7.3.5 Approved Construction Schedule.

7.3.6 Contractor shall prepare and submit a Construction Schedule as set forth in Section 01 32 13 of the Contract Specifications. Upon the District's approval of the form and content of a Construction Schedule, the same shall be deemed the "Approved Construction Schedule." The District's approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of the Contractor in accordance with the terms of the Contract Documents.

7.3.7 The Approved Construction Schedule shall not operate to limit or restrict any of Contractor's obligations under the Contract Documents nor relieve the Contractor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by the Contractor without the prior consent, or direction, of the District and the Architect.

7.3.8 Updates to the Approved Construction Schedule shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by the Contractor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may be depicted in the Approved Construction Schedule.

7.3.9 Submittal Schedule. Within thirty (30) days after the approval of the Contract by the District, the Contractor shall prepare and submit a separate submittal schedule for the District's information and Project Manager's approval. The Submittal Schedule shall be coordinated with the underlying Project Schedule and allow time for a reasonable review of the submittals.

7.3.10 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that

indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct the Contractor to revise the Approved Construction Schedule; within fifteen (15) days of the District's direction, the Contractor shall prepare and submit to the Architect and the Project Manager a revised Approved Construction Schedule, for review and approval by the District. The Contractor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth the Contractor's proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of the Contractor to revise the Approved Construction Schedule in its reasonable discretion.

7.3.11 Recovery Construction Schedule. If the progress of the Work is behind the Approved Construction Schedule, the Contractor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to the Contractor's Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to the Contractor's Performance Bond Surety shall not limit the Contractor's obligations under the Contract Documents.

7.3.12 Contractor Responsibility for Construction Schedule. The Contractor shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, including Look Ahead schedules referenced elsewhere in this Agreement, and any failure of the Contractor to do so may be deemed by the District as the Contractor's default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of the Contractor and no such cost or expense shall be charged to the District. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, submittal, and maintenance or updating of the Construction Schedules.

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

7.4.1 Excusable Delays.

7.4.2 If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Architect; Excusable Delays shall not result in any increase in the Contract Price. Requests for additional compensation from a delay are addressed elsewhere in this Contract at Article 9.

7.4.3 Definition: Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions.

7.4.4 Exclusions. Neither the financial resources of the Contractor or any person or entity

directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

7.4.5 Rain Days. The foregoing provisions notwithstanding, if the Special Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work shall exceed those noted in the Special Conditions and such additional Rain Days shall have directly and adversely impacted the critical path of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of such additional Rain Days.

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

7.4.7 Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.3 and 7.4.5 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

7.4.8 Adjustment of Contract Time.

Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract

Documents. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same. The Notice provisions of a non-compensated excusable delay claim shall be the same as a compensable claim for delay and is stated in Article 9, and claims for non-compensable excusable delay are subject to the same time limitation and prohibitions.

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

7.5 Liquidated Damages. Pursuant to Government Code §53069.85, should the Contractor not achieve Substantial Completion of the Work within the Contract Time, as adjusted, or to complete a Milestone in accordance with the times specified or provided for in the Contract Documents, the Contractor shall forfeit and pay to the District the amount of per diem Liquidated Damages set forth in the Special Conditions, for every day beyond the Contract Time, as adjusted, or Milestone, the Work is achieved. In addition, Liquidated Damages shall be assessed for the failure to substantially complete the punchlist in the time indicated in the Special Conditions. Any such Liquidated Damages are automatically and without notice of any kind forfeited by Contractor upon the accrual of each day of delay. The District may at any time deduct Liquidated Damages from any payments due or to become due to the Contractor. Neither the District's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor the District's failure or delay in notifying Contractor of the forfeiture of Liquidated Damages, shall be deemed a waiver of the District's right to Liquidated Damages. The Contractor and the Surety shall be liable for and pay to the District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by the District. The Contractor and District acknowledge and agree that the Liquidated Damages and the provisions of this Article 7.5 are reasonable and necessary under the circumstances existing at the time this Contract is made because of the difficulty of fixing the District's actual damages in the event of delayed completion of the Work. The Contractor and the District agree that the Liquidated Damages do not constitute a penalty.

- 7.6 District Right to Take-Over Work.** Unless caused by the District, Architect, Project Manager or the Project Inspector, if the Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with the then current Construction Schedule after twenty-four (24) hour advance written notice from the Project Manager to the Contractor of its failure or refusal, the District may thereafter furnish or cause to be furnish such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All costs, expenses or other charges (whether direct, indirect and administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of the Contractor and the District may deduct the same from the Contract Price then or thereafter due the Contractor. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents.

ARTICLE 8: CONTRACT PRICE

- 8.1 Contract Price.** The Contract Price is the amount stated in the Agreement as such, and subject to any authorized adjustments thereto in accordance with the Contract Documents, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents. The District's payment of the Contract Price to the Contractor shall be in accordance with the Contract Documents.
- 8.2 Cost Breakdown (Schedule of Values).** In accordance with the provisions of Section 01 32 13 of the Contract Specifications, Contractor shall furnish a detailed and complete tabular Cost Breakdown (Schedule of Values) of the Contract Price consistent with the cost-loaded work activities included in the Approved Construction Schedule. In preparing the Cost Breakdown, Contractor shall carefully list the true cost of each activity or item for which payment will be requested. The Contractor shall not "front-load" the Cost Breakdown with false dollar amounts for activities to be performed in the early stages of the Project. The District may, in its sole discretion, utilize the costs listed in the Cost Breakdown (Schedule of Values) as the true cost of items to be deducted from the Contract Price through credit or deductive Change Order. The values for each line item shall include the amount of overhead and profit applicable to each item of work and shall include, at a minimum, a breakdown between rough and finish Work for the basic trades as well as individual dollar figures for large dollar equipment and materials to be installed or furnished for the Project.
- 8.3 List Restriction.** No individual line item or scope of work in the Cost Breakdown shall exceed \$50,000, except with the express, written consent of the District. Exceptions will be given by the District for a single item of Equipment for which the true cost exceeds \$50,000. The Cost Breakdown shall be subject to the District's review and approval of the form and content thereof. Upon request, Contractor shall provide District with data and documentation substantiating the accuracy of the proposed line items. In the event that the District shall reasonably object to any portion of the Cost Breakdown, within ten (10) days of the District's receipt of the Cost Breakdown, the District shall notify the Contractor, in writing of the District's objection(s) to the Cost Breakdown together with any request for substantiating data or documentation. Within five (5) days of the date of the District's written objection(s) and request for substantiating data and documentation, Contractor shall submit a revised Cost Breakdown to the District for review and approval together with the requested data and documentation. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District has approved of the entirety of the Cost Breakdown. Once the Cost Breakdown is approved by the District, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole reasonable discretion

of the District. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as such items are reflected in the Cost Breakdown, shall be made incrementally as included in the activities included in the Approved Construction Schedule.

8.4 Progress Payments.

8.4.1 Applications for Progress Payments. During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the Project Manager, Project Inspector and the Architect, Applications for Progress Payments, on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments thereon. Values utilized in the Applications for Progress Payments shall be based upon the District approved Cost Breakdown pursuant to Article 8.2 above and such values shall be only for determining the basis of Progress Payments to Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price, or for determining the extent of Work actually completed.

8.4.2 District's Review of Applications for Progress Payments. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the District shall cause the same to be reviewed by the Project Inspector, the Project Manager, if one is designated by the District, and the Architect, as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.4, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the form approved by the District, with all of the requested information of such form of Application for Progress Payment completely and accurately provided by the Contractor and such completed Application for Progress Payment is accompanied by: (i) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (ii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment; (iii) a certification by the Contractor that it has continuously maintained, or caused to be maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed for which the Progress Payment is requested, it being understood that such certification is subject to verification by the District, Architect or the Project Manager prior to disbursement of the Progress Payment; and (iv) an updated Construction Schedule in accordance with Article 7.3 of the General Conditions and Section 01 32 13; (v) Certified Payroll records of the Contractor for all laborers of the Contractor providing labor for the period covered by the Application for Progress Payment; (vi) Certified Payroll records of all Subcontractors, of any tier, for their laborers providing labor for the period covered by the Application for Progress Payment. In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

8.4.3 Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the Architect, Project Manager and the Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is properly due to the Contractor under the terms of the Contract Documents.

8.4.4 Progress Payments Generally: On or before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the Project Manager an itemized Application for Progress Payment for operations completed in accordance with the Schedule of Values. Such application shall be signed and certified and supported by the following or such portion thereof as the Project Program Manager requires:

- (a) The amount paid to the date of the Application to the Contractor, to all of its subcontractors and all others furnishing labor, material or equipment for its contract:
- (b) The amount being requested under the Application for Payment by the Contractor
- (c) The balance that will be due to each of the entities after said payment is made.
- (d) A certification that the Record drawings and Annotated Specifications are current.
- (e) Itemized breakdown of work done for the purpose of requesting partial payment.
- (f) The additions to and subtractions from the Contract Price and Contract Time.
- (g) Updated Schedule of Values showing the percentage of completion for each line item.
- (h) Any required update to the Project Schedule.
- (i) Material invoices, evidence of equipment purchases, rentals, and other support and details of costs the District may require from time to time.
- (j) Adequate and certified payroll records.
- (k) Submission of: (1) Forms of conditional releases of stop notice and bond rights upon progress payments, complying with California Civil Code section 3262(d)(1), for all work performed during the time period covered by the current Application for Payment, signed by Project Manager, Contractor and the appropriate subcontractor; and (2) Forms of unconditional release of stop notice and bond rights upon progress payment, complying with California Civil Code section 3262(d)(2), for all Work performed during the time period covered by the Application for Payment, signed by the Project Manager, Contractor and appropriate subcontractor.
- (l) In the event the Contractor does not submit the certified payrolls or waivers for itself or for a particular subcontractor, the District may elect to release a partial payment to the Contractor, withholding the amount represented by the missing waiver or certified payroll.

8.4.5 Requirements for First Progress Payment: In addition to the following items above (if applicable) the following items, if applicable, must also be completed before the payment request will be accepted for processing:

- (a) Receipt of Project Manager of all due submittals.
- (b) Installation of field office.
- (c) Subcontractor information sheet.
- (d) Schedule of Values.
- (e) Copies of necessary permits.
- (f) All bonds and insurance endorsements.

8.4.6 Reasons to Withhold Payment: District may elect to withhold payment, in whole or in part, to the extent reasonably to protect the District' interest, which may include, but is not limited to the following occurrences:

- (a) Failure to submit the documents or information required of Progress Payment Applications, as stated above.
- (b) Payment made to indemnify, defend, or hold harmless the District.
- (b) The cost of remedying defective work or performing delayed or incomplete work, in accordance with the other provisions of these General Conditions.
- (c) Failure to pay prevailing wages.
- (d) Stop notices serve upon the District.
- (e) Amounts necessary to complete the punchlist.
- (f) Damage to the Project site or other District property.
- (g) Failure to pay subcontractors or suppliers.

8.4.7 District Nullification. District reserves the right to nullify any prior approval by Project Manager of an Application for Payment that is later found to have not complied with the requirements of the Contract Documents, whether or not such noncompliance was observed or apparent on the face of the Application for Payment, and based on such nullification District may take either of the following actions, as applicable: (1) if the Application for Payment has not yet been paid by District, disapprove of that portion of the Application for Payment that is not in compliance and withhold payment of that sum until the noncompliance is fully rectified, or (2) if the Application for Payment has been paid by District, nullify the Project Manager's prior approval and withhold payment of such disputed amounts in response to future Applications for Payment; provided, however, that in either case the amount of the District's nullification shall be limited to that portion of the amount requested in the Application for Payment that is in dispute and the amount of its withholding from the current or any future Application for Payment shall be limited to the amount nullified plus any additional withholding permitted under Section 9.6, below, to protect District from Loss or threatened Loss.

8.4.8 No Waiver by District. Neither approval by District, Program Manager, or failure by District to exercise its right of nullification with respect to, non-payment by Program Manager or District upon an Application for Payment or any portion thereof shall be interpreted as or constitute a waiver or release of any of District's rights to require Contractor's full compliance with the Contract Documents.

8.4.9 No Representation. Neither approval by District or Project Manager or failure by District to exercise its right of nullification with respect to, non-payment by District upon, an Application for Payment or any portion thereof shall be interpreted as a representation that District, Program Manager has: (1) made exhaustive or continuous on-site inspections to check the quality of the Work, (2) reviewed Design-Builder's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the General Contractor, Subcontractors and Subconsultants and other data requested by District, Program Manager or College Project Manager to substantiate Design-Builder's right to payment, or (4) made examination to ascertain how or for what purpose Design-Builder has used money previously paid by District.

8.4.9.1 District's Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, there shall be paid, by District, to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Application for Progress Payment which is actually in place as of the date of the Application for Progress Payment and as verified and approved by the Project Inspector and the Architect and the pro rata portion of the Contractor's overhead, supervision and general conditions costs and profit for that month; provided, however, that the District's obligation to disburse any Progress Payment shall be subject to the District's receipt of all documents set forth in Article 8.4.2 above, each and all of which are conditions precedent to the District's obligation to disburse Progress Payments. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of the Contractor to submit documents with the Application for Progress Payment, as required by Article 8.4.2, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress Payment shall be deemed to commence on the date that the District is actually in receipt of documents not submitted with the Application for Progress Payment, or corrections to documents with the Application for Progress Payment so as to render them complete and accurate, or the date upon which the Contractor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

8.4.9.2 Untimely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, in the event that the District shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the District shall pay the Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, in the event that the District shall determine that any Application for Progress Payment is not proper, pursuant to Article 8.4.2 above, and the District does not return such Application for Progress Payment within the seven (7) day period provided for in Article 8.4.2, the period of time for the District's disbursement of the

Progress Payment on such Application for Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.

8.4.9.3 District's Right to Disburse Progress Payments by Joint Checks. Provided that the District is in receipt of the applicable Subcontract or Purchase Order, the District, may in its sole discretion, issue joint checks to the Contractor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

8.4.9.4 No Waiver of Defective or Non-Conforming Work. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

8.4.10 Progress Payments for Changed Work. The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the Project Inspector, the Architect and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

8.4.11 Materials or Equipment Not Incorporated Into the Work.

8.4.11.1 Limitations Upon Payment. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which, at the time of the Contractor's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

8.4.11.2 Materials or Equipment Delivered and Stored at the Site. The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of the Contractor's submittal of a an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder's Risk insurance obtained by the District pursuant to the Contract Documents; and (c) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements shall be borne solely and exclusively by the

Contractor and no payment shall be made by the District on account of such costs and expenses.

8.4.11.3 Materials or Equipment Not Delivered or Stored at the Site. No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site.

8.4.11.4 Materials or Equipment in Fabrication or Transit. The provisions of this Article 8.3.6 notwithstanding, the District shall not make any payment on account of any materials or equipment which are in the process of being fabricated or which are in transit to the Site or other storage location.

8.4.12 Exclusions From Progress Payments. In addition to the District's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither the Contractor's Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Contract Price for amounts which the Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

8.4.13 Title to Work. The Contractor warrants that title to all Work covered by an Application for Progress Payment will pass to the District no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and the Contractor has received payment from the District therefor shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of the Contractor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

8.4.14 Substitute Security for Retention. In accordance with the provisions of California Public Contract Code §22300, eligible and equivalent securities may be substituted for any monies withheld by the District to ensure the Contractor's performance under the Contract Documents at the request and expense of the Contractor and in conformity with the provisions of California Public Contract Code §22300. The foregoing and the provisions of California Public Contract Code §22300 notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following award of the Contract to Contractor shall be deemed a waiver of such right.

8.5 Final Payment.

8.5.1 Application for Final Payment. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the Architect and the Project Inspector will promptly make a final inspection of the Work and when the Architect and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect and the Project Inspector will thereupon promptly approve the Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by

the District.

8.5.2 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect; (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) consent of the Surety on the Labor and Material Payment Bond and Performance Bond, to Final Payment if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Drawings; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (x) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (xi) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.

8.5.3 Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items in Article 8.4 above as conditions precedent to the District's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

8.5.4 Claims Asserted After Final Payment. Any lien, stop notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor who further agrees to indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys fees incurred by the District in connection therewith. In the event any lien, stop notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop notice or other claim, including, without limitation all costs and reasonable

attorneys fees incurred by District in connection therewith.

8.6 Withholding of Payments. The District may decline to pay the Contractor, or reduce or withhold any portion of a payment otherwise due the Contractor for any Progress Payment or the Final Payment on account of:

- 8.6.1** In the District's opinion, the Work cannot be completed for the unpaid balance of the Contract Price;
- 8.6.2** In the District's opinion, the Work will not be completed within the Contract Time and the unpaid balance of the Contract Price would not be adequate to cover liquidated damages resulting from the anticipated delay;
- 8.6.3** Any damage has occurred to the District or any Subcontractor, Material Supplier or another contractor, and the Contractor may be liable for such damage;
- 8.6.4** The Contractor fails to perform any portion of the Work in accordance with the Contract Documents or otherwise violates any provision of the Contract Documents or fails to discharge any Contractor obligation thereunder;
- 8.6.5** Any claims, liens, labor compliance withholds, or stop notices are filed in connection with the Work or asserted against the District, the Project or the Site;
- 8.6.6** The Contractor fails to reimburse the District for any costs or expenses incurred by the District, or amounts advanced by the District, on behalf of the Contractor as may be provided or permitted in this Contract;
- 8.6.7** Notification has been given that a penalty will be assessed by any State, local or municipal agency or by the District for violations of any applicable laws, including, without limitation, tax laws, labor laws and/or fair employment laws;
- 8.6.8** Any current and non-resolved non-compliance notices issued by any public agency;
- 8.6.9** Failure to satisfy any of the requirements of the Labor Compliance Program;
- 8.6.10** Defective Work or Work not in conformity with the Contract Documents which is not remedied as required in Article 12 herein;
- 8.6.11** Stop Notices or other liens or third party claims served upon the District as a result of the Contract;
- 8.6.12** Liquidated damages incurred by the District for delays to the Project;
- 8.6.13** Unsatisfactory prosecution of the Work by the Contractor;
- 8.6.14** Failure to store and properly secure materials;
- 8.6.15** Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, monthly progress schedules, Shop Drawings, Product Data and samples, proposed product lists, executed Change Orders, and/or verified reports;

- 8.6.16** Failure of the Contractor to maintain Record Drawings;
- 8.6.17** Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 8.6.18** Unauthorized deviations from the Contract Documents;
- 8.6.19** Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- 8.6.20** The failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- 8.6.21** Failure to properly pay prevailing wages as defined in Labor Code §§1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's LCP, if one is in force on this Project;
- 8.6.22** Failure to properly maintain or clean up the Site;
- 8.6.23** Failure to indemnify, defend, or hold harmless the District;
- 8.6.24** Failure to make payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;
- 8.6.25** Failure of the Contractor to make payments when due Subcontractors or Material Suppliers for materials or labor;
- 8.6.26** Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.
- 8.6.27** In addition to the foregoing, the District shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the Project Inspector, the Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld. If the District elects to withhold payment from the Contractor pursuant to this Article 8.5, then the District will be permitted to withhold such amounts as the District may, in its reasonable discretion, deem necessary to (A) protect the District against any and all liabilities to Subcontractors, Material Suppliers or any other persons as a result of the Work or any of the Contractor's acts or omissions, (B) correct any defective Work or remedy any breach of the Contract Documents, (C) recover and collect liquidated damages in the event completion of the Project is delayed, (D) recover and collect any costs or expenses paid by, or amounts advanced by, the District on behalf of Contractor, (E) collect any penalty that may be assessed against the Contractor for violations of any applicable laws, including, without limitation, labor laws and/or fair employment laws, and/or (F) recover any testing/inspections costs incurred by the District in connection with failed tests or inspections. The District may apply any such withheld amount or amounts to the payment and satisfaction of such claims or obligations at its discretion. In so doing, the District shall be deemed the agent of Contractor and any

payment so made by the District shall be considered as a payment made under the Contract by the District to the Contractor and shall be so deducted from the Contract Price otherwise due the Contractor. The District shall not be liable to Contractor for any such payments made in good faith. Such payments may be made without prior judicial determination of the claim or the obligation to make such payment. The District will render the Contractor a proper accounting of any such amounts retained or disbursed by the District on behalf of the Contractor.

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

8.8 Computerized Job Cost Reporting System.

8.8.1 Job Cost Reporting. The Contractor and each Subcontractor with a Subcontract valued at Three Hundred Thousand Dollars (\$300,000) or greater shall maintain a computerized job cost reporting system conforming to the requirements set forth herein. The computer program(s) utilized by the Contractor and applicable Subcontractors shall be subject to the review and acceptance by the District. The job cost reporting systems for the Work shall be updated in regular intervals of not more than one (1) calendar month.

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

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

ARTICLE 9. CHANGES IN THE WORK

9.1 CHANGES

General. District is authorized to make Changes in the Work in accordance with the provisions of this Article 9.

Contract Adjustments. Contract Adjustments shall only be permitted as follows: (1) the Contract Sum Payable shall only be adjusted by means of a Change Order or Unilateral Change Order for Compensable Change, Deleted Work or Compensable Delay; and (2) the Contract Time shall only be adjusted by means of a Change Order or Unilateral Change Order for Excusable Delay, Compensable Delay or Deleted Work. All Contract Adjustments to the Contract Sum Payable shall conform, without limitation, to the requirements of this Article 9. All Contract Adjustments to the Contract Time shall conform, without limitation, to the applicable requirements of this Article 9 and to the requirements of Article 9, below.

Exclusive Rights. The rights expressly set forth in the Contract Documents for Contract Adjustments constitute Contractor's exclusive rights for additional compensation or extensions of time and are intended to be in lieu of and wholly replace any other such rights and remedies that Contractor has under Applicable Laws for recovery or relief on account of Loss or Delay in connection with performance of the Work, it being the intent of the District and Contractor by so agreeing that if circumstances arise for which the Contract Documents do not provide to Contractor an express right to a Contract Adjustment, then such omission of an express right shall conclusively be deemed to mean that no right to a Contract Adjustment was intended and, consistent with that intent, no right to a Contract Adjustment on account of such circumstances shall by any means, legal or equitable, of interpretation, construction, inference, implication or application be considered, found or adjudged to exist.

Written Authorization. Without limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at Contractor's Own Expense, any Change performed by Contractor pursuant to any direction other than a duly authorized and executed Change Order, Unilateral Change Order or Field Order shall be paid for by Contractor at Contractor's Own Expense.

Prompt Performance. Subject to the procedures set forth in this Article 9 and elsewhere in the Contract Documents, all Changes shall be performed promptly and without Delay.

DSA Approval. Changes to the DSA-approved Drawings and Specifications shall be made by revised Drawings and Specifications that have been approved by DSA and incorporated in an Addendum, Change Order or Unilateral Change Order, as required by §4-338, Part I, Title 24 of the California Code of Regulations.

9.2 SIGNATURES AND AUTHORIZATIONS

- 9.2.1 Parties.** A Change Order shall be executed by and between the District and Contractor. A Unilateral Change Order shall be executed by the District. Field Orders shall be executed in accordance with Section 9.5, below.
- 9.2.2 Form.** Change Orders, Unilateral Change Orders and Field Orders shall be executed using forms furnished by College Project Manager or, if requested by College Project Manager, using forms furnished by Contractor that are approved by College Project Manager.
- 9.2.3 Written Authorization.** Contractor shall not be entitled to Contract Adjustment by Change Order or Unilateral Change Order except as authorized in a writing that is signed as follows:
- 9.2.3.1 Under 3%/\$100,000:** Contract Adjustments to the Contract Sum Payable that, in the gross aggregate (as defined in Subparagraph 9.2.3.5, below), are less than or equal to the lesser of either: (1) three percent (3%) of the Contractor's Base Bid as adjusted for Alternates accepted by the District; or (2) One Hundred Thousand Dollars/no cents (\$100,000.00), must be authorized in writing, prior to performance of the Work affected thereby, in a Change Order, Unilateral Change Order or Field Order that is signed by the Project Manager, Program Director and Facilities Planning Director or that is authorized by means of either of the methods for authorization set forth in Subparagraph 9.2.3.2 or Subparagraph 9.2.3.3, below.
- 9.2.3.2 Under 5%/\$250,000:** Contract Adjustments to the Contract Sum Payable that, in the gross aggregate (as defined in Subparagraph 9.2.3.5, below), exceed the limit set forth in Subparagraph 9.2.3.1, above, and are less than or equal to the lesser of either: (1) five percent (5%) of the Contractor's Base Bid as adjusted for Alternates accepted by the District; or (2) Two Hundred Fifty Thousand Dollars/no cents (\$250,000.00), must be authorized in writing, prior to performance of the Work affected thereby, in a Change Order, Unilateral Change Order or Field Order that is signed by the Program Director and Facilities Planning Director or that is authorized in the manner set forth in Subparagraph 9.2.3.3, below.
- 9.2.3.3 Over 5%/\$250,000:** Contract Adjustments to the Contract Sum Payable that, in the gross aggregate (as defined in Subparagraph 9.2.3.5, below), exceed the limit set forth in Subparagraph 9.2.3.2, above, must be authorized in writing, prior to performance of the Work affected thereby, in a Change Order, Unilateral Change Order or Field Order that is signed by Program Director, Facilities planning Director and College Executive Vice-President.
- 9.2.3.4 California Education Code §81655.** Nothing stated in this Section 9.2 or elsewhere in the Contract Documents shall be interpreted as altering the requirements of California Education Code §81655 pertaining to approval or ratification by the Board of Trustees of contracts and modifications to contracts entered by the District. Such approval or ratification by the Board of Trustees shall not, however, constitute a condition to the Contractor's obligation to perform the Work, including any Extra Work, that Contractor is directed to perform by a Change Order or Unilateral Change Order that is signed in the manner required by the applicable provisions of Subparagraphs 9.2.3.1 through 9.2.3.3, above, or that Contractor is directed to perform by Field Order that is signed in the manner required by Section 9.5, below.
- 9.2.3.5 "Gross Aggregate" Defined.** For purpose of calculating the threshold percentages set forth in Subparagraphs 9.2.3.1 through 9.2.3.3, above, "gross aggregate" means the total obtained by taking the deductive Contract Adjustments to the Contract Sum Payable by Change Order, Unilateral Change Order and Field Order for Deleted Work and adding them to (rather than

subtracting them from) the additive Contract Adjustments to the Contract Sum Payable by Change Order, Unilateral Change Order and Field Order for Compensable Changes.

9.2.3.6 Changes to Authorizations. The District reserves the right, exercised in its sole discretion by and through its Executive Vice-President, to unilaterally change the list of persons or entities set forth in this Paragraph 9.2.3 as having authority to authorize Contract Adjustments and/or to specify a separate list of persons or entities having authority to authorize Contract Adjustments. Such right shall be exercised by written notice to the Contractor specifying the of such changes or additions affecting authorizations by District.

9.2.4 Written Authorization of Essence.

IT IS OF THE ESSENCE TO THE CONSTRUCTION CONTRACT BETWEEN THE CONTRACTOR AND THE DISTRICT THAT ALL CONTRACT ADJUSTMENTS MUST BE AUTHORIZED IN ADVANCE, IN WRITING, AS REQUIRED BY THIS ARTICLE 9. ACCORDINGLY, NO VERBAL DIRECTIONS, COURSE OF CONDUCT BETWEEN THE PARTIES, OR EXPRESS OR IMPLIED ACCEPTANCE OF CHANGES OR OF THE WORK, AND NO CLAIM THAT THE DISTRICT HAS BEEN UNJUSTLY ENRICHED (WHETHER OR NOT THERE HAS BEEN SUCH ENRICHMENT) SHALL BE THE BASIS FOR A CONTRACT ADJUSTMENT IF THE CONTRACTOR HAS NOT OBTAINED ADVANCE WRITTEN AUTHORIZATION IN THE MANNER REQUIRED BY THIS ARTICLE 9.

9.3 CHANGE ORDERS

9.3.1 Purpose. The purpose of a Change Order is to establish the terms of the District's and Contractor's mutual agreement to a Contract Adjustment.

9.3.2 Content. A Change Order is a written instrument, prepared by the District, stating:

- .1 a Compensable Change or Deleted Work;
- .2 a Compensable Delay or Excusable Delay;
- .3 the amount of the Contract Adjustment, if any, to the Contract Sum Payable; and/or
- .4 the extent of the Contract Adjustment, if any, to the Contract Time.

9.4 UNILATERAL CHANGE ORDERS

9.4.1 Purpose. The purpose of a Unilateral Change Order is to establish the District's estimate of a disputed Contract Adjustment.

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

9.4.3 Claim by Contractor. If Contractor disputes any portion of the District's Good Faith Determination of the Contract Adjustment that is set forth in a Unilateral Change Order, Contractor shall file within thirty (30) Days after issuance of the Unilateral Change Order by District a Claim pursuant to Section 9.4, above. The amount of the Contract Adjustment

requested in the Claim shall not exceed the difference between the amount (either in terms of dollar amount or amount of time extension) of the Contract Adjustment requested by Contractor and the amount (either in terms of dollar amount or amount of time extension) of the Contract Adjustment granted in the Unilateral Change Order. Contractor shall have no reserved right, and hereby waives any such right that may exist under Applicable Laws, to seek in such Claim a Contract Adjustment or recovery that is based upon any amount (either in terms of dollar amount or amount of time extension) that is in excess of such difference.

9.4.4 Waiver by Contractor.

FAILURE BY CONTRACTOR TO SUBMIT A CLAIM PURSUANT TO SECTION 9.4, ABOVE, WITHIN THIRTY (30) DAYS AFTER ISSUANCE OF A UNILATERAL CHANGE ORDER BY DISTRICT SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 9.7 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY, EITHER BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS, BASED ON AN ASSERTION THAT THE AMOUNT OF THE CONTRACT ADJUSTMENT ON ACCOUNT OF THE CHANGE OR DELAY DESCRIBED IN SUCH UNILATERAL CHANGE ORDER SHOULD BE DIFFERENT THAN THE AMOUNT OF THE CONTRACT ADJUSTMENT SET FORTH IN SUCH UNILATERAL CHANGE ORDER.

9.5 FIELD ORDERS

9.5.1 Purpose. The purpose of a Field Order is to: (1) direct the performance of a Minor Change; (2) direct performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment; or (3) establish a mutually agreed basis for compensation to Contractor for a Compensable Change under circumstances where performance of the Compensable Change needs to proceed in advance of complete substantiation and evaluation of the Contract Adjustment therefor.

9.5.2 Authorization.

.1 Contract Adjustments. Field Orders setting forth an agreement between District and Contractor on a Contract Adjustment must be authorized as provided in Paragraph 9.2.3, above.

.2 ROM Equal to or Under \$25,000. A Field Order that includes a Reasonable Order of Magnitude Estimate equal to or less than Twenty-Five Thousand Dollars (\$25,000) must be signed by the College Project Manager.

.3 ROM Over \$25,000. A Field Order that includes a Reasonable Order of Magnitude Estimate greater than Twenty-Five Thousand Dollars (\$25,000) must be signed by the College Project Manager and the Program Director.

.4 Minor Change. A Field Order for a Minor Change may be authorized by either the College Project Manager or College President.

.5 No Change. A Field Order for the performance of Extra Work that sets forth the Contractor's agreement that the Field Order is not a Change to the Work and does not involve a Contract Adjustment to the Contract Sum Payable or Contract Time may be authorized by either the College Project Manager or College President.

9.5.3 Content.

.1 Undisputed Changes. Each Field Order involving a Compensable Change or Deleted Work with respect to which District does not dispute that the Compensable Change or Deleted Work constitutes a ground for a Contract Adjustment shall, in order to be binding in any respect upon District, comply with the following:

(1) Statement of Agreement. A statement shall be included of whether the District and Contractor are in complete agreement on all of the terms of the Contract Adjustment related to performance of such Compensable Change. To the extent the Contractor and District reach agreement, in whole or in part, on the terms of the Contract Adjustment, such agreement shall be deemed to be final and binding upon the Contractor. However, in recognition of the fact that Field Orders may be issued under circumstances in which the District may not have had access to pertinent information, expert assistance, time or the opportunity to fully evaluate the circumstances giving rise to the Change, it is agreed that neither the issuance nor execution of, nor any statement contained in, nor any course of conduct in connection with, a Field Order (including, without limitation, a full or partial agreement by District) shall be interpreted as a waiver, release or settlement of any of District's rights relating to the subject matter of the Field Order, or as creating or implying any obligation on the part of District to a Contract Adjustment on account of a Change described in the Field Order, if it is found by District upon further investigation that the circumstances giving rise to the execution of the Field Order do not in fact form the basis for a right of Contractor to a Contract Adjustment or a Contract Adjustment in the amount set forth therein.

(2) Complete Agreement. If the Field Order states that there is a complete agreement on all of the terms of the Contract Adjustment, then it shall further state a full description of the terms of the Contract Adjustment, including, without limitation, its effect on the Contract Sum Payable and Contract Time.

(3) Incomplete Agreement. If the Field Order states that there is not complete agreement on all the terms of the Contract Adjustment, then it shall further state the following:

(a) Resolved Terms. The Field Order shall state those terms of the Contract Adjustment as to which there is agreement.

(b) Open Terms. With respect to those terms of the Contract Adjustment as to which there is not agreement, the Field Order shall comply with the following:

(i) ROM Estimate. A statement shall be included of whether a Reasonable Order of Magnitude Estimate is or is not required by District and, if required, the Field Order shall include a Reasonable Order of Magnitude Estimate prepared by Contractor, or prepared by College Project Manager and acknowledged in writing as accepted by Contractor, of the probable amount of the Contract Adjustment to the Contract Sum Payable and Contract Time associated with performance of the Compensable Change. Unless otherwise expressly stated in the Field Order and except as otherwise provided in Subparagraph 9.5.3.1 (3), (b), (ii), below, a Reasonable Order of Magnitude Estimate does not constitute a guarantee by Contractor that the amount of the Contract Adjustment to the Contract Sum Payable or Contract Time that may be associated with the Compensable Change or Deleted Work covered by such Field Order may not exceed the Reasonable Order of Magnitude Estimate nor does it constitute authorization or agreement by District to a Contract Adjustment based on the amounts set forth in such Reasonable Order of Magnitude Estimate.

(ii) Time and Materials. In the event that the District and Contractor agree to the "time and materials" method of calculation set forth in Subparagraph 9.7.1.1 (4), below, but do not agree upon a maximum price, then the total cost to District for the Work covered by the Field Order shall under no circumstances exceed a price that is reasonable, competitive and fair to District given the amount and type of Work involved and the circumstances under which the Compensable Change is performed.

.2 Disputed and Unresolved Changes. Each Field Order involving a Change with respect to which there is a dispute or lack of complete agreement as to the method of calculation or amount of the Contract Adjustment shall, if Contractor is ordered to do so in a Field Order signed by Executive Director, be performed by Contractor without Delay. Both District and Contractor shall thereafter be deemed to have reserved their respective rights and contentions with regard to the Contractor's right, or lack of right, to a Contract Adjustment on account of such Change. If and to the

extent that it is ultimately determined or adjudged that Contractor is entitled to a Contract Adjustment on account of such Change, such Contract Adjustment shall be computed pursuant to the time and materials method of calculation of Contract Adjustments to the Contract Sum Payable set forth in Subparagraph 9.7.1.1 (4), below.

9.5.4 Other Notices. Excepting only in cases where the Field Order includes a statement that it constitutes the complete agreement of the parties on all of the terms for a Contract Adjustment, neither issuance nor execution of a Field Order shall be interpreted as relieving Contractor of its obligation to comply with the requirements of these General Conditions for timely submission of notices required by the Contract Documents, including, without limitation, Notice of Change, Change Order Request, Notice of Delay or Request for Extension.

9.5.5 Contractor's Own Expense. **Without limitation to other provisions of the Contract Documents**, costs incurred by Contractor or any Subcontractor for either of the following categories of Changes shall be paid by Contractor at Contractor's Own Expense: (1) any Change or portion of a Change (including, but not limited, to a Compensable Change) performed before or after Contractor having first obtained a Change Order or Unilateral Change Order prepared and signed in the manner required by Paragraph 9.2.3, above, or a Field Order prepared and signed in the manner required by Paragraphs 9.5.2 and 9.5.3, above; or (2) excepting a Compensable Change with respect to which the District and Contractor have acknowledged in writing their complete agreement in accordance with the requirements of Paragraph 9.5.3, above, any Change or portion of a Change (including, without limitation, a Compensable Change) described in a Field Order that is performed prior to receipt by the College Project Manager of a timely and complete Notice of Change or Notice of Delay under circumstances where, respectively, a Notice of Change or Notice of Delay was required.

9.6 PROCEDURES

9.6.1 Notice of Change.

9.6.1.1 Submission. Contractor shall submit a written Notice of Change to College Project Manager if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes a Compensable Change, Deleted Work, Compensable Delay or other matter that may involve or require a Contract Adjustment (additive or deductive). Such notice shall be provided prior to commencement of performance of the Work affected and no later than five (5) days after the Discovery Date of such circumstance.

9.6.1.2 Form. Notices of Change shall be provided using forms furnished by the College Project Manager or, if requested by College Project Manager, using forms furnished by Contractor that are approved by College Project Manager. Failure by College Project Manager to request or approve a particular form shall not relieve Contractor of its obligation to provide a Notice of Change in a written form that complies with the requirements specified in Subparagraph 9.6.1.3, below.

9.6.1.2.1 Content. Each Notice of Change to be considered complete shall include:

- (1) a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related Field Order);
- (2) a Reasonable Order of Magnitude Estimate by Contractor of any related Contract Adjustments (additive and deductive) to the Contract Sum Payable; and,
- (3) if such circumstances involve a right to adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Contractor shall include, if not previously provided, a

complete and timely Notice of Delay.

.4 Waiver by Contractor.

FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE UNDER CIRCUMSTANCES WHERE A NOTICE OF CHANGE INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH X.X.X SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION XX ABOVE, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

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

9.6.2 Change Order Request.

9.6.2.1 Submission. With respect to any matter that may involve or require a Contract Adjustment (additive or deductive) of the Contract Sum Payable, Contractor shall, within fourteen (14) Days after receipt by College Project Manager of a Notice of Change pursuant to Paragraph 9.6.1, above, submit to College Project Manager a written Change Order Request.

9.6.2.2 Form. Change Order Requests shall be provided using forms furnished by College Project Manager or, if requested by District, using forms furnished by Contractor that are approved by College Project Manager. Failure by College Project Manager to request or approve a particular form shall not relieve Contractor of its obligation to provide a Change Order Request in a written form that complies with the requirements stated in Subparagraph 9.6.2.3, below.

9.6.2.3 Content. Each Change Order Request in order to be considered complete shall include:

- (1) a detailed description of the circumstances for the Compensable Change, Deleted Work or Compensable Delay;
- (2) a complete, itemized cost breakdown (additive and deductive) of the Allowable Costs that form the basis for the Contractor's request for Contract Adjustment of the Contract Sum Payable, including: (a) all of Contractor's and each Subcontractor's costs, quantities, hours, unit prices, rates and Allowable Markups and (b) if the Subcontractor's pricing is in the form of a lump sum price a detailed breakdown of the lump sum price into its component and individual items of Allowable Costs and Allowable Markup; and
- (3) if such circumstances involve a right to a Contract Adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph, below, or Subparagraph, below, Contractor shall include, if not previously provided, a complete and timely Request for Extension.

9.6.2.4 Waiver by Contractor.

FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY CHANGE ORDER REQUEST UNDER CIRCUMSTANCES WHERE A CHANGE ORDER REQUEST INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH 9.6.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION X.X, ABOVE, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER

RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

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

9.6.3 Formal Notice of Essence. Contractor recognizes and acknowledges that timely submission of a formal Notice of Change and Change Order Request, whether or not the circumstances of the Change may be known to the District or available to District through other means, is not a mere formality but is of crucial importance to the ability of District to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of Paragraph 9.6.1, above, and Paragraph 9.6.2, above, shall accordingly be insufficient.

9.7 PRICING

9.7.1 Basis of Calculation.

9.7.1.1 Changes Not Involving Time. Contract Adjustments to the Contract Sum Payable on account of Compensable Changes or Deleted Work, other than Contract Adjustments to the Contract Sum Payable for Compensable Delay, shall be calculated, by one of the following methods:

(1) Lump Sum. By mutual acceptance of a lump sum proposal from Contractor based solely on Allowable Costs and Allowable Markups, that is properly itemized and supported by sufficient substantiating data to permit evaluation.

(2) Unit Prices. By the unit prices set forth in the Construction Contract or such other unit prices as are subsequently and mutually agreed to in writing between the District and Contractor, with no amount added thereto for Allowable Markups.

(3) Estimating Guides. For Compensable Changes with respect to which District has elected to make a unilateral and final determination pursuant to Paragraph 9.7.11, below, by the sum of all the following: (1) the reasonable value of materials and equipment documented as having been actually incorporated into the Work, which reasonable value may be less but shall never be more than Contractor's actual Allowable Costs therefor; (2) an estimate of the reasonable costs of labor, installation and other services using the lower of the estimated prices for the locale of the Project (or if prices are not reported for the locale of the Project, the estimated prices that are reported for the region in which the Project is located) as reported in the following recognized estimating guides: (a) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800; or (b) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 9420 Topanga Canyon Boulevard, Woodland Hills, CA 91311; and (3) the amount that results when the applicable Allowable Markup is applied to the sum of the amounts derived from Clauses (1) and (2) of this Subparagraph 9.7.1.1 (3).

(4) **Time and Materials.** With respect to Compensable Changes, if none of the methods provided for in Subparagraphs 9.7.1.1 (1) through 9.7.1.1 (3), above, is applicable, then the additive amount increasing the Contract Sum Payable shall be calculated by taking (a) the total of the reasonable expenditures by Contractor and its Subcontractors, documented in the manner required by Paragraph 9.7.2, below, for Allowable Costs that are actually and directly incurred and paid in the performance of the Compensable Change, not to exceed for any Compensable Change a price that is reasonable, competitive and fair to District given the amount and type of Work involved and the circumstances under which the Compensable Change is performed, and (b) adding thereto the amount which result when the applicable Allowable Markups are applied to such total specified in Clause (1) of this Subparagraph 9.7.1.1 (4). A Contract Adjustment that is calculated pursuant to this Subparagraph 9.7.1.1 (4) shall be subject to a not-to-exceed or guaranteed maximum price if such not-to-exceed or guaranteed maximum price has been mutually agreed upon between District and Contractor. If Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of a portion of Extra Work authorized to be performed on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor pursuant to the foregoing time and materials calculation, then Contractor has an obligation to inform District of that fact (along with the provision to the District of a complete itemized breakdown in accordance with Subparagraph 9.6.2.3(2), above) so as to afford District the opportunity, on a fully informed basis as to the component Allowable Costs and Allowable Markups that comprise such price, to avail itself of such favorable pricing.

(5) **Deleted Work.** Except as otherwise provided in Subparagraph 9.7.5.4, below, in the case of Deleted Work, the credit amount used to reduce the Contract Sum Payable shall be calculated by taking: (a) the greater of either (i) the value assigned to the Deleted Work in the Schedule of Values, exclusive of all estimated markups by Contractor and any Subcontractor for overhead and profit (or, if insufficient detailed information on costs, overhead and profit for the Deleted Work is explicitly assigned in the Schedule of Values, as derived from the cost, bidding and/or estimating information that formed the basis for the establishment of the values set forth in such Schedule of Values); or (ii) a reasonable estimate of the value (based on savings of Allowable Costs only) of the Deleted Work (exclusive of any markups for overhead or profit) as of the Bid Closing Deadline plus (b) a credit for any indirect (i.e, corporate, home office and general administrative) overhead and profit by Contractor and its Subcontractors, of every Tier, on the Deleted Work sufficient to ensure that the amount retained by Contractor or any Subcontractor for the Deleted Work does not exceed the amount of Allowable Markup that is permitted to be retained by each, respectively, pursuant to the calculations of applicable credits that result from the application of the Allowable Markups that are set forth in Paragraph 9.7.5, below. The foregoing credit to District shall be in addition to any other credit that may be due to District pursuant to Subparagraph 8.2.6.2, below, for Contract Adjustments shortening the Contract Time due to Deleted Work.

.2 Changes Involving Time. Contract Adjustments to the Contract Sum Payable or Contract Time that are based on an extension of the Contract Time for Compensable Delay or a shortening of the Contract Time due to Deleted Work shall be calculated as stated in the provisions of Section of the Construction Contract and Article 10 below, with no Allowable Markup thereon for Contractor or any Subcontractor, of any Tier. Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by District in writing to overcome a Compensable Delay for which the Contractor is entitled to an extension of the Contract Time that has been properly requested and is not granted by District due to a District decision to accelerate rather than extend the Contract Time shall be calculated as stated in the Article 10, below.

9.7.2 Time and Materials Documentation. Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred by Contractor or its Subcontractors in the performance of a Compensable Change for which the Contract Adjustment is calculated pursuant to the time and materials method set forth in

Subparagraph 9.7.1.1 (4), above, shall be conditioned on Contractor's compliance with the following conditions with respect to documentation of the Extra Work that is involved in the performance of the Compensable Change:

- 9.7.2.1 Labor.** At the close of each Day on which such Extra Work is performed, Contractor shall submit to College Project Manager and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth with respect to each and all of the actual hours spent in performance of the Extra Work on the Day that the Extra Work was performed the following: the names of the workers, their classifications, hours worked and hourly rates. Such forms shall include a written certification by Contractor's project manager or superintendent at the time of submission that the information contained therein is complete and accurate.
- 9.7.2.2 Materials, Equipment.** At the close of each Day on which such Extra Work is performed, Contractor shall submit to College Project Manager and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth with respect to each and all of the materials and equipment used or consumed in the performance of the Extra Work on the Day that the Extra Work was performed, the following: a list of the materials and equipment, prices or rates charged, in the case of equipment a description of the type of equipment, identification number, and hours of operation (including loading and transportation), and copies of delivery tickets, invoices or other documentation confirmatory of the foregoing.
- 9.7.2.3 Other Services or Expenditures.** At the close of each Day on which such Extra Work is performed, Contractor shall submit to College Project Manager and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth a list of other expenditures constituting Allowable Costs incurred in performance of the Extra Work on the Day that the Extra Work was performed, along with documentation verifying the amounts thereof in such detail as District may require.
- 9.7.2.4 Subsequent Documentation.** Documentation not available on any Day that a portion of the Extra Work is performed shall be submitted as soon as they are available but not later than twenty-one (21) Days after the earlier of the Day of delivery or incorporation of the particular item of Extra Work at the Site.
- 9.7.2.5 Subcontractor Costs.** Extra Work performed by Subcontractors shall be performed on a time and materials basis and documented in the same manner as required of Contractor under this Paragraph 9.7.2 and shall not, unless approved in writing by College Project Manager, be based on a lump sum or unit price; provided, however, that if Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of all or a portion of Extra Work authorized by District to be performed by Contractor on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor on a time and materials basis, then Contractor has an obligation to inform College Project Manager of that fact (along with provision to District of a complete itemized breakdown in the accordance with Subparagraph 9.6.2.3 (2), above) so as to afford District the opportunity to avail itself of such favorable pricing.
- 9.7.2.6 Authentication.** In addition to the foregoing, District may require that Contractor comply with other reasonable requirements pertaining to observation and verification of time and materials work and authentication of time and material tickets and invoices by persons designated by District for such purpose.

9.7.2.7 Waiver by Contractor. The failure of Contractor to submit authentication of costs in the manner required by this Paragraph 9.7.2 shall, if District elects in its reasonable discretion to treat it as such, constitute a waiver by Contractor of any right to a Contract Adjustment to the Contract Sum Payable for the Allowable Costs incurred for performance of that portion of the Extra Work for which Contractor has failed to provide such authentication.

9.7.3 Allowable Costs. The term “Allowable Costs” means, and is limited to, the costs that are (1) listed in this Paragraph 9.7.3 and (2) not listed in Paragraph 9.7.4, below:

9.7.3.1 Labor. Straight-time wages and, if specifically authorized by District in writing, for employees employed at the Site, including wages for employees of Subcontractors performing engineering or fabrication detailing at locations other than at the Site. The use of a labor classification which would increase the Allowable Costs for Extra Work will not be permitted unless Contractor establishes the necessity for the use of such labor classification. Overtime wages and salaries shall only constitute an Allowable Cost to the extent permitted by the Contract Documents and only as specifically authorized by District in writing setting forth the amount of overtime anticipated, which amount shall be deemed the maximum amount of overtime reimbursable as an Allowable Cost. As part of the Allowable Costs permitted by this Subparagraph 9.7.3.1, Contractor shall be entitled to be reimbursed wages paid to a “time and materials clerk” employed by Contractor to track and document Compensable Changes that are authorized or permitted to be performed on a time and materials basis pursuant to Subparagraph 9.7.1.1 (4), above, provided that the time expended by such employee is verified by contemporaneously maintained time sheets maintained by such clerk showing the actual time spent tracking and documenting the performance of Compensable Changes separately from other tasks or functions performed by such clerk.

9.7.3.2 Benefits. To the extent based on wages reimbursable under Subparagraph 9.7.3.1, above, net actual employer costs of payroll taxes (FICA, Medicare, SUTA, FUTA), insurance (as adjusted for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, or the like), health and welfare, pension, vacation, apprenticeship funds and benefits required by the Project Labor Agreement (if applicable), Labor Compliance Program (if applicable) or lawful collective bargaining agreements.

9.7.3.3 Materials. Costs of materials used or consumed in the Work at a price that is competitive to the price charged for similar materials delivered within the general vicinity of the Site by other subcontractors, suppliers, manufacturers and distributors. The cost for any such item that is not new shall mean “fair market value” based on the estimated price a reasonable purchaser would pay to purchase the used material at the time it was used or consumed for the Work, which fair market value must be declared by Contractor and approved by District prior to such use or consumption.

9.7.3.4 Taxes. Sales taxes on the costs of the materials described in Subparagraph 9.7.3.3, above, and a prorated portion of Los Angeles City gross receipts taxes payable by Contractor (not Subcontractors) that is allocable to the value of the Extra Work or Deleted Work involved.

9.7.3.5 Equipment Rental. Rental charges for necessary machinery and equipment, exclusive of hand tools, whether rented from Contractor or others. No charge shall be allowed or credit required for items which have a replacement value of One Hundred Dollars (\$100) or less. The allowable rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment used for Extra Work is used

intermittently and, when not in use, could be returned to its rental source at less expense to District than holding it at the Site, it shall be returned, unless Contractor elects to keep it at the Site at no expense to District. Under no circumstances shall the aggregate rentals chargeable for any item of equipment exceed the following percentages of the fair market value of the item at the time of its first use for the Work, which fair market value must be declared by Contractor and approved by College Project Manager prior to the first use of such item in or for the Work: (1) if the item is owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 75% of such fair market value; and (2) if the item is not owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 100% of such fair market value. All equipment shall be acceptable to District, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The cost of major repairs or overhaul of rented equipment or machinery shall be deemed a cost of business of the lessor of such equipment or machinery and shall not be reimbursable as an Allowable Cost.

9.7.3.6 Royalties, Permits. Costs of royalties and permits.

9.7.3.7 Bonds. Costs of bonds required to be furnished by Contractor (not Subcontractors) under the terms of the Contract Documents; provided, however, that such additional costs chargeable for Extra Work or credited for Deleted Work shall not exceed two percent (2%) of the costs described in Subparagraphs 9.7.3.1 through 9.7.3.6, above.

9.7.4 Costs Not Allowed. Allowable Costs shall not include any of the costs associated with any of the following:

- a) superintendent(s);
- b) assistant superintendent(s);
- c) project engineer(s);
- d) project manager(s);
- e) scheduler(s);
- f) estimator(s);
- g) drafting or detailing (except as otherwise permitted by Paragraph 9.7.3.1, above);
- h) vehicles not dedicated solely to the performance of the Work;
- i) small tools with a replacement value not exceeding One Hundred Dollars (\$100);
- j) office expenses, including staff, materials and supplies;
- k) on-Site and off-Site trailer and storage rental and expenses;
- l) Site fencing not added solely due to the performance of Extra Work;
- m) utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment;
- n) computer and data-processing personnel, equipment and software;

- o) federal, state or local business, income and franchise taxes;
- p) insurance (including, without limitation, general liability, automobile and worker's compensation);
- q) costs arising from or related to Delay, whether incurred by Contractor or a Subcontractor, of any Tier; and
- r) costs and expenses of any kind or item not specifically and expressly included in Paragraph 9.7.3, above.

9.7.5 Allowable Markups. Allowable Markups consist of the percentages set forth in this Paragraph 9.7.5 that, except as otherwise stated in the Contract Documents, are to be used for purposes of computing Contract Adjustments to the Contract Sum Payable by means of the pricing methods set forth in Subparagraphs 9.7.1.1 (1), (3) and (4), above. Allowable Markups include and are limited to the following:

9.7.5.1 Self-performed Work

(1) Compensable Change. With respect to all or that portion of a Compensable Change that is self-performed by the Contractor, the Allowable Markup to Contractor shall be fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by Contractor in the self-performance of such Compensable Change or portion thereof, including, without limitation, Allowable Costs for materials or equipment purchased by Contractor from a first-Tier Subcontractor that is not an Installation Subcontractor.

(2) Deleted Work. With respect to all or that portion of Deleted Work that was to have been self-performed by Contractor, District shall be entitled to a credit equal to eight percent (8%) of the amount of the savings to Contractor for the self-performed Work as calculated pursuant to Subparagraph 7.7.1.1 (5), above.

I. Installation Subcontractors (First-Tier)

(1) Compensable Change. *With respect to all or that portion of a Compensable Change that is performed by a first-Tier Installation Subcontractor, the Allowable Markups to the first-Tier Installation Subcontractor and the Contractor shall be as follows:*

(a) The Allowable Markup to the first-Tier Installation Subcontractor shall be fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such first-Tier Installation Subcontractor in the performance of such Compensable Change or portion thereof by such first-Tier Installation Subcontractor.

(b) The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of the Allowable Costs incurred by such first-Tier Installation Subcontractor and the amount which results when the Allowable Markups thereon that are permitted pursuant to preceding Clause (a) of this Subparagraph 7.7.5.2 (1) are multiplied times such Allowable Costs.

(2) Deleted Work. *With respect to all or that portion of Deleted Work that was to have been performed by a first-Tier Installation Subcontractor, District shall, in addition to the credit provided for in Subparagraph 9.7.1.1 (5), above, be entitled to the following:*

(a) A markup credit shall be due from the first-Tier Installation Subcontractor equal to eight percent (8%) multiplied times the amount of the savings to the first-Tier Installation Subcontractor as calculated pursuant to Subparagraph 9.7.1.1 (5), above.

(b) An additional credit shall be due from Contractor of five percent (5%), multiplied times the amount of the savings to the first-Tier Installation Subcontractor as calculated pursuant to preceding Clause (a) of this Subparagraph 9.7.5.2 (2).

I. Installation Subcontractors (Second-Tier)

(1) **Compensable Change.** With respect to all or that portion of a Compensable Change that is performed by a second-Tier Installation Subcontractor, the Allowable Markups to such second-Tier Installation Subcontractor, to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor and to the Contractor, shall be as follows:

(a) The Allowable Markup to the second-Tier Installation Subcontractor shall be fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change or portion thereof by such second-Tier Installation Subcontractor.

(b) The Allowable Markup to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of the Allowable Costs incurred by such second-Tier Installation Subcontractor and the amount which results when the Allowable Markups that are permitted pursuant to preceding Clause (a) of this Subparagraph 9.7.5.3 (1) are multiplied times such Allowable Costs.

(c) The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of the Allowable Costs incurred by the first- and second-Tier Installation Subcontractors and the amounts which result when the Allowable Markups thereon that are permitted pursuant to Clauses (a) and (b) of this Subparagraph 9.7.5.3 (1) are multiplied times such Allowable Costs.

(2) **Deleted Work.** With respect to Deleted Work involving Work that was to have been performed by a second-Tier Installation Subcontractor, the District shall be entitled to the following:

(a) A markup credit shall be due from the second-Tier Installation Subcontractor equal to eight percent (8%) multiplied times the amount of the savings to the second-Tier Installation Subcontractor as calculated pursuant to Subparagraph 9.7.1.1 (5), above.

(b) A markup credit shall be due from the first-Tier Installation Subcontractor equal to five percent (5%) the credit due from the second-Tier Installation Subcontractor pursuant to preceding Clause (a) of this Subparagraph 9.7.5.3 (2).

(c) A markup credit shall be due from the Contractor equal to five percent (5%) of the sum of the credits due from the first and second-Tier Installation Subcontractor pursuant to preceding Clauses (a) and (b) of this Subparagraph 9.7.5.3 (2).

.4 Other Subcontractors.

(1) **Compensable Changes:** With respect to a Subcontractor, of any Tier, performing all or a portion of a Compensable Change who is not an Installation Subcontractor or who is an Installation Subcontractor below the second-Tier, the following shall apply:

(a) No markup shall be allowed to such other Subcontractor.

(b) The Subcontractor that is positioned in the Tier immediately above such other Subcontractor shall be entitled to an Allowable Markup of five percent (5%) upon the Allowable Costs of such other Subcontractor.

(c) Except as permitted by preceding Clause (b) of this Subparagraph 9.7.5.4 (1), no other Allowable Markup by any Subcontractor of any Tier above such other Subcontractor shall be permitted.

(d) Contractor shall be entitled to an Allowable Markup of five percent (5%) upon the sum of (i) the Allowable Costs of such other Subcontractor and (ii) the amount which results when the Allowable Markup permitted by Clause (b) of this Subparagraph 9.7.5.4 (1) is multiplied times such Allowable Costs.

(2) **Deleted Work:** Notwithstanding anything stated in Subparagraph 9.7.1.1 (5), above, to the contrary, with respect to all or a portion of Deleted Work to be performed by a Subcontractor, of any Tier, who is not an Installation Subcontractor or who is Installation Subcontractor below the second-Tier, there shall be included in the calculation of the Contract Adjustment the following credits to District:

(a) The District shall be entitled to a credit for the full amount of the price (including all direct and indirect overhead and profit) agreed to or proposed by such Subcontractor for such Deleted Work to be performed by such Subcontractor.

(b) The District shall be entitled to a credit for any and all markups to such Subcontractor's price added by Contractor or by any Subcontractor who is positioned in a Tier that is above and in the same vertical contractual line of Tiers with such Subcontractor

9.7.6 Review of Markups. It is Contractor's responsibility to review information submitted by Subcontractors to ensure that all markups comply with the requirements of the Contract Documents. Payment by the District of markups that exceed Allowable Markups shall not be considered as a waiver by District of the right to require repayment by Contractor of any markup charged that is in excess of Allowable Markups and such excess amounts shall be promptly paid by Contractor to District.

9.7.7 Exclusions and Limitations. Neither Contractor nor any Subcontractor, of any Tier, is entitled as part of a Contract Adjustment to an Allowable Markup or any other markup or multiplier of any kind, on:

- .1 agreed unit prices;
- .2 District Furnished Materials;
- .3 any Allowable Cost or other compensation or cost with respect to which the Contract

Documents state that there shall be "no Allowable Markup", "no markup for overhead and profit" or words of similar meaning.

9.7.8 Net Allowable Costs. If any one Change or collection of Changes in the same or related portions of the Work, or in multiple portions of Work covered by a single bulletin or instruction by District, College Project Manager or a District Consultant, involves both additive adjustments (for Compensable Change or Compensable Delay) and deductive adjustments (for Deleted Work), then the computation of the Allowable Costs added or credited for purposes of calculating and applying Allowable Markups shall be based on the net difference.

9.7.9 Unit Prices. Unless otherwise stated in the Contract Documents, unit prices stated in the Contract Documents or subsequently agreed upon by District and Contractor shall be deemed to include and encompass all costs of performance, overhead and profit, including, without

limitation, all Allowable Costs and Allowable Markups. If the unit price stated in the Contract Documents is based on an estimated quantity established by District in the Construction Contract and the actual quantity of such unit-priced item varies by more than 25% above or below the estimated quantity, an equitable adjustment in the Contract Sum Payable, shall be made upon demand of either District or Contractor. Such equitable adjustment shall be based solely upon any increase or decrease in Allowable Costs (without any Allowable Markups), due solely to the variation above 125% or below 75% of the estimated quantity.

9.7.10 Discounts. For purposes of determining Allowable Costs of a Compensable Change, all trade discounts, rebates, refunds, and returns from the sale of surplus materials and equipment shall accrue and be credited to District, and Contractor shall take all necessary steps to ensure that such discounts, rebates, refunds and returns are secured.

9.7.11 Prompt Pricing. It is fundamental to the District's objective of controlling costs that performance of Compensable Changes on a time and materials basis of compensation and without a not-to-exceed price be curtailed. Contractor recognizes that prompt pricing by Contractor is critical to this objective. Accordingly, in addition to and without limitation on any of the District's other rights or remedies, including, without limitation, its right to enforce a waiver under Subparagraph 9.6.2.4, above, it is agreed that if Contractor fails to timely submit a complete Change Order Request in accordance with Paragraph 9.6.2, above, with respect to any circumstance, event or occurrence constituting a Compensable Change: (1) any Delay to the performance of the Work associated with the performance, delayed performance or nonperformance of such Compensable Change shall be conclusively deemed to be an Unexcused Delay; and (2) the District shall have the option, exercised in its sole discretion, to unilaterally fix and determine the amount of the Contract Adjustment to the Contract Sum Payable for such Compensable Change based on the "estimating guide" method set forth in Subparagraph 9.7.1.1 (3), above, which determination shall be conclusively final and binding upon Contractor.

9.7.12 Final Payment. No Claim by Contractor for adjustment to the Contract Sum Payable shall be allowed if asserted after Final Payment.

9.7.13 Full Resolution. Except as otherwise stated in Paragraph 9.7.14, below, the signing of a Change Order by Contractor and the District shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all Loss and Delay, whether known or unknown at the time of execution of the Change Order, related to the subject matter of the Change Order including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, multiplicity of changes, loss of productivity, labor, wage or material cost escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related Losses. The foregoing provisions of this Paragraph 9.7.13 shall, whether or not they are expressly stated or referenced on the face of a Change Order, be deemed to be part of the terms of the Change Order and shall be deemed to supersede and govern over any other provision contained in any proposal, estimate or other documents attached to or referenced in such Change Order that conflicts with the provisions of this Paragraph 9.7.13.

9.7.14 Reserved Rights. Change Orders shall be executed by Contractor without any express reservation of rights by Contractor to reserve for the future the assertion of any right of recovery from the District for Loss or Delay arising out of or relating to the subject matter of the Change Order. Execution of a Change Order, Unilateral Change Order or Field Order shall not be interpreted as a waiver, release or settlement of any rights or claims that the

District may have for any of the following: (1) Defective Work; (2) liquidated damages or actual Losses for Delay; or (3) recoupment by District (by way of withholding of funds, set off or recovery from Contractor) of amounts paid by District for costs or markups on costs that the District discovers, following payment of such amounts to Contractor, do not constitute proper charges to District, or that constitute charges that are not properly substantiated, under the terms of the Contract Documents.

9.7.15 No "Total Cost" Calculations. Contractor represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that, if required, will reflect the actual costs of the Work incurred or avoided for multiple items of Compensable Change and, on an event-by-event basis, the effect of multiple and concurrently occurring or caused Compensable Delays on the progress of the Work. Accordingly, Contractor agrees that all Change Order Requests and Claims shall be itemized in a manner that, with reasonable mathematical certainty and without reliance upon probabilities or inferences, segregates on a discrete, event-by-event basis the direct, actual Allowable Costs associated with each individual Compensable Change or Compensable Delay. Unless otherwise agreed to by District in writing in the exercise of its sole discretion, Change Order Requests and Claims shall not be based, in whole or in part, upon any methodology (such as "total cost" or "modified total cost" methodologies) that purports to establish Contractor's entitlement to additional compensation inferentially based, solely or principally, on the difference between Contractor's total costs for the Work or a portion of the Work and its original estimate of costs for performance of the Work.

9.7.16 Multiple Changes. The District reserves the absolute right to make whatever Changes, including, without limitation, Compensable Changes or Deleted Work, that it determines, in its sole discretion, are necessary or otherwise desirable. Under no circumstances shall the individual or cumulative number, value or scope of such Changes, or their individual and cumulative impact on the Work, become a basis for Contractor to assert any claim for breach of contract, abandonment, rescission, termination, cardinal change or reformation of the Construction Contract, nor shall such circumstances be the basis for Contractor, or any of the Subcontractors, of any Tier, to assert a right of recovery of any Loss if such right is not permitted by, or is in excess of that allowed under, the Contract Documents.

9.7.17 Continuous Performance. Subject to Contractor's rights under Section 10, below, no dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Contractor's right to or the terms of a Contract Adjustment, shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

Article 10. SEPARATE CONTRACTORS

10.1 District's Right to Award Separate Contracts. The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

- 10.2 District's Coordination of Separate Contractors.** The District shall provide for coordination of the activities of the District's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Approved Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the District until subsequently revised.
- 10.3 Mutual Responsibility.** The Contractor shall afford the District and separate contractors reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.
- 10.4 Discrepancies or Defects.** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Project Inspector any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the District's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discoverable by the Contractor's reasonable diligence.

11 TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

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

11.1.2 Cost of Tests and Inspections. Except as set forth below, the District will pay for fees, costs and expenses to complete the initial tests/inspections of portions of the Work as required by law, code or regulation, provided that such tests/inspections are conducted and completed at a location within a one hundred (100) mile radius of the Site. The foregoing notwithstanding, if the portion(s) of the Work subject to tests/inspections is/are not ready for such test/inspection at the time indicated in the Contractor's notice under Article 11.1.1 or if upon completion of such test/inspection,

the portion(s) of the Work subject to such test/inspection do not meet or exceed the minimum requirements of such test/inspection, the Contractor shall be solely responsible for the payment of all fees, costs or expenses arising out of or related in any manner to subsequent tests/inspections of such portion(s) of the Work. Notwithstanding the District's payment of fees, costs or expenses for conducting initial tests/inspections, if any actions or failures to act of the Contractor or person or entity providing or performing Work under the direction or control of the Contractor require tests/inspections to be conducted over a period of more than eight (8) hours per day by any single person or on weekends/holidays, the Contractor shall be solely responsible for the payment of fees, costs or expenses which result from test/inspection services which exceed eight (8) hours per day by any single person or on weekends/holidays. If any tests/inspections are conducted outside a one hundred (100) mile radius of the Site, the Contractor shall be solely responsible for all costs, fees or expenses to conduct and complete such tests/inspections conducted at such location, including without limitation, costs to complete such tests/inspections and travel, meal and related expenses..

11.1.3 Testing/Inspection Laboratory. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents. Tests and inspections required of the Work shall be as set forth in the Contract Documents and as required by applicable law, rule or regulation, including without limitation, Title 24 of the California Code of Regulations. Test/inspection standards shall be as set forth in the Contract Documents or established by applicable law, rule or regulation. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector, the Project Manager or the Architect and not by the Contractor.

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

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

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

12 UNCOVERING AND CORRECTION OF WORK

12.1 Inspection of the Work.

12.1.1 Access to the Work. All Work and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the District, the Project Manager, the Architect and the Project Inspector for conformity with the Contract Documents. The Contractor shall, at its cost and without adjustment to the Contract Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work including but not limited to scaffolding, safety harnesses and other safety equipment, for purposes of inspection by the District, the Project Manager, the Architect, the Project Inspector, DSA or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

12.1.2 Limitations Upon Inspections. Inspections, tests, measurements, or other acts of the Architect, the Project Manager and the Project Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform to the requirements of the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the Architect or the Project Inspector shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.

12.2 Uncovering of Work. If any portion of the Work is covered contrary to the request of the Architect, the Project Manager, the Project Inspector or the requirements of the Contract Documents, it must, if required by the Architect or the Project Inspector, be uncovered for observation by the Architect, Project Manager and the Project Inspector and be replaced at the Contractor's expense without adjustment of the Contract Time or the Contract Price.

12.3 Rejection of Work. Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the District, the Project Manager the Architect or the Project Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

12.4 Correction of Work. The Contractor shall promptly correct any portion of the Work rejected by the District, the Project Manager, the Architect or the Project Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

12.5 Removal of Non-Conforming or Defective Work. The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by

the Contractor nor accepted by the District.

- 12.6 Failure of Contractor to Correct Work.** If the Contractor fails to commence to correct defective or non-conforming Work within 3 days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation for the Architect's services, attorneys fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the District.
- 12.7 Acceptance of Defective or Non-Conforming Work.** The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

13 WARRANTIES

- 13.1 Workmanship and Materials.** The Contractor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work, or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.
- 13.2 Warranty Work.** If, within one year after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work.

Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

13.3 Guarantee. Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. The Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.

13.4 Survival of Warranties. The provisions of this Article 13 shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

14 SUSPENSION OF WORK

14.1 District's Right to Suspend Work. The District may, without cause, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

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

15 TERMINATION

15.1 Termination for Cause.

15.1.1 District's Right to Terminate. The District may terminate the Contract and/or the Contractor's performance of the Contract, in whole or in part, upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as will insure

Substantial Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within 10 days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (vi) if the Contractor disregards proper directives of the Architect, the Project Inspector or District under the Contract Documents; (vii) if the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy each cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

15.1.2 District's Rights Upon Termination. In the event that the Contract or the Contractor's performance of the Contract is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, pursuant to the Contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

15.1.3 Completion by the Surety. In the event that the Contract or the Contractor's performance of the Contract is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above.

15.1.4 Assignment and Assumption of Subcontracts. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.

15.1.5 Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the District.

15.1.6 Contractor Responsibility for Damages. The Contractor and the Surety shall be liable for all damages sustained by the District resulting from, in any manner, the termination of Contract under this Article 15.1, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.

15.1.7 Conversion to Termination for Convenience. In the event the Contract is terminated under this Article 15.1, and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the District's exercise of its rights under Article 15.1 was defective, deficient, ineffective, invalid or improper for any reason, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

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

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

any other damages, direct or indirect, which the Contractor or anyone claiming through the Contractor alleges resulted from the District's election to terminate under Article 15.2 or where a termination under Article 15.1 has been converted to a termination for convenience under Article 15.1.7. The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for the District's convenience.

16 MISCELLANEOUS

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

16.8 Independent Contractor Status. In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the District and not an agent or employee of the District. Nothing contained herein shall be deemed or construed as creating a relationship of employer and employee between the District and the Contractor or any Subcontractors, employees of the Contractor or Subcontractors or their respective agents and representatives. Neither the Contractor, Subcontractors nor any employees of the Contractor or Subcontractors are entitled to any rights or privileges of District employees.

16.9 Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.

16.10 Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

16.11 Dispute Resolution; Attorneys' Fees.

16.11.1 Claims Under \$375,000.00. Claims between the District and the Contractor of \$375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California Public Contract Code, §§20104 et seq.; provided however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the Contract Documents. The term "claims" as used in this Article 16.11 shall be as defined in California Public Contract Code §20104(b)(2). For purposes of this Article 16.11.1, if any claim or any portion remains in dispute, the Contractor shall file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code as contemplated in California Public Contract Code §20104.2(e).

16.11.2 Claims Over \$375,000.00. For all other claims, the Contractor shall comply with the requirements of Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code and sections 16.11.3, as set forth below.

16.11.3 Informal Mediation Procedures: Within thirty (30) after the timely submission of a Documented Claim Application, a Project-Level Representative of the District (consisting of a Representative of the Project Manager) and a management representative of the Contractor (either the Project Manager or a senior official of the company not less than a vice-president) shall meet to negotiate the a resolution of the Negotiated Claim. In the event this effort is not successful, then within thirty (30) days

of the Project Level Meeting, there shall be a meeting of Senior Level of the District (which may be represented by their General Counsel) and a senior representative of the Contractor (consisting of either the owner, president or chief executive officer, in a good faith effort to negotiate a resolution to the Claim. No informal mediation shall be required if the District contends that the Claim Application was filed late.

- 16.12 Formal Mediation Procedure:** In the event the informal mediation referred to in the preceding paragraph is not resolved the Claim Application will be submitted to a mutually acceptable third-party mediator. The parties shall endeavor to select a mediator who is an attorney with at least five (5) years experience in public works construction and in mediating public works construction disputes.
- 16.13 Location and Costs of Formal Mediation:** The location of the mediation shall be at the office of the District. The Mediator's fees and costs shall be shared equally by the parties to the mediation. If the Claim involves a Pass-Through Claim by a subcontractor or sub-consultant, then such subcontractor or subconsultant shall be considered a party to such party for purposes of allocating responsibility for the costs of the mediation. If such party refuse to pay its allocable share, such share shall, without limitation to any right of Contractor to recover such costs, be paid by the Contractor. All discussions that occur during mediation and all documents prepared for the purpose of the mediation shall be confidential and privileged, pursuant to California Evidence Code sections 1119, 1120 and 1152.
- 16.14 Superior Court Action:** In the event that the formal Mediation is not successful either party may file an action in Los Angeles Superior Court. Upon the Agreement of both parties the matter may also be submitted to binding arbitration.
- 16.14.1 No Attorneys Fees.** Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor the Contractor shall recover from the other any attorneys fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.
- 16.14.2 No Interest.** In accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts. Notwithstanding any other provision of law, the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.
- 16.15 Capitalized Terms.** Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.
- 16.16 Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 16.17 Prohibited Interests.** No employee of the District, who is authorized in such capacity on behalf of the District to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or subcontract in connection with the Work shall become directly or

indirectly financially interested in the Work or any part thereof.

16.18 Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

[END OF SECTION]

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