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GENERAL CONDITIONS

Article 1. DEFINITIONS

(a) Action of the Governing Board is a vote of a majority of the membership in a lawful meeting.

(b) Unless otherwise specified, the terms “approved,” “directed,” “satisfactory,” “accepted,” “acceptable,” “proper,” “required,” “necessary,” and “equal,” mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary, and equal, in the opinion of ARCHITECT.

(c) As shown, as indicated, as detailed, or words of similar import, refer to Drawings accompanying the Specifications unless otherwise stated.

(d) Contract, Contract Documents includes all contract documents, to wit: the (1) Notice to Contractors Calling for Bids, (2) Information for Bidders, (3) Scope of Work Summary, (4) Bid Form, (5) Noncollusion Declaration, (6) Site Visit Certification, (7) Designation of Subcontractors, (8) Bid Bond, (9) Information Required of Bidder, if applicable, (10) Contractor Prequalification Documents, if applicable, (11) DVBE Participation Goal Compliance, if applicable, (12) Bidder’s Acknowledgement of Project Schedule, (13) Storm Water Pollution Prevention Certification, (14) DVBE Compliance Forms, if applicable, (15) Agreement, (16) Performance Bond, (17) Payment Bond, (18) Workers’ Compensation Certification, (19) Drug-Free Workplace Certification, (20) Conduct Rules for Contractor(s), (21) Asbestos and Other Hazardous Materials Certification, (22) Lead Based Paint Certification, (23) Criminal Records Check Certification, (24) Escrow Agreement for Security Deposits in Lieu of Retention, if applicable, (25) Shop Drawing Transmittal Form, (26) Change Order Form, (27) Guarantee, (28) General Conditions, (29) Special Conditions, if any, (30) Project Construction Schedule, (31) Plans, (32) Drawings, (33) Specifications, (34) Insurance Policies, and all modifications and amendments thereto, and by this reference are incorporated herein. The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all.

(e) Contract Price means the total amount of compensation stated in the Agreement that is payable to CONTRACTOR for the complete performance of the Work in accordance with the Contract Documents.

(f) Contract Time shall mean the number of consecutive calendar days from and after the Starting Date within which the Project and all Work must be completed, which number of days is specifically set forth in Section 4 of the Agreement. The Contract Time may not be changed, altered or otherwise modified except by a Change Order in accordance with the terms and provisions of Article 60 hereof.

(g) CONTRACTOR, DISTRICT or OWNER, ARCHITECT are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if they are of singular number and neuter gender.

(h) Day or Days whenever used in the Contract Documents shall refer to calendar days unless otherwise specifically stated.

(i) Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, generally including Plans, elevations, sections, details, schedules, and diagrams.

(j) Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

(k) Environmental Laws means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the property (including without limitation, soil, groundwater, and indoor and ambient air conditions), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the property), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§2601 et seq.]; the Hazardous Materials Transportation Act [49 U.S.C.A. §§1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [17 U.S.C.A. §§136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§6901 et seq.]; the Clean Air Act [42 U.S.C.A. §§7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§2681 et seq.], the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§4821 et seq.], the California Underground Storage of Hazardous Substances Act [Cal. Health & Safety Code §§25280 et seq.]; the California Hazardous Substances Account Act [Cal. Health & Safety Code §§25300 et seq.]; the California Hazardous Waste Control Act [Cal. Health & Safety Code §§25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Cal. Health & Safety Code §§24249.5 et seq.]; the Porter-Cologne Water Quality Act [Cater Code §§13000 et seq.]; and all similar federal, state or local laws, rules, orders regulations, statutes, ordinances, codes, decrees, or requirements.

(l) Final Completion or Completion mean the point at which the following conditions have occurred with respect to the entire Work or a portion of the Work designated by DISTRICT for separate delivery: (1) the entirety of such Work is fully completed, including all minor corrective and "punch list," items; (2) a permanent and unconditional certificate of occupancy, or equivalent certification issued by the Division of State Architect ("DSA"), for the entirety of such Work has been delivered to DISTRICT; (3) all documents required to be submitted by CONTRACTOR as a condition of Substantial or Final Completion of such Work have been submitted, including, without limitation, warranties, guaranties and other Close-Out Documents; (4) such Work and the related portions of the Project site have been thoroughly cleared of all

construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturers recommendations and buff dried by machine to bring the surfaces to sheen; and (5) all conditions set forth in the Contract Documents for Substantial and Final Completion of the Work of the Project have been and continue to be fully satisfied.

(m) Furnish means to supply and deliver to the Project site, ready for assembly, installation, and similar operations.

(n) Indicated refers to graphic representations, notes, or schedules on the Drawings, or other paragraphs or schedules in the Specifications, and similar requirements in Contract Documents. Where terms such as "shown," "noted," "scheduled," and "specified" are used, it is to help locate the reference; no limitation is intended except as specifically noted.

(o) Install is used to describe operations at Project site including the actual unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protection, cleaning, and similar operations.

(p) Installer is the entity engaged by CONTRACTOR, either as an employee, Subcontractor, or sub-subcontractor for performance of a particular construction activity, including installation, erection, application, and similar operation. Installers are required to be experienced in the operations they are engaged to perform.

(q) Locality in which the work is performed means the county in which the Project is located.

(r) Notice to Proceed means the written notice issued by DISTRICT to CONTRACTOR to begin the Work.

(s) Project is the planned undertaking as provided for in the Contract Documents by DISTRICT and CONTRACTOR.

(t) Project Inspector is the individual retained by DISTRICT in accordance with Titles 21 and 24 of the California Code of Regulations, who will be assigned to the Project, who is certified, and who has been approved by DSA.

(u) Project Manual is the volume usually assembled for the Work which may include, but may not be limited to, the bidding requirements, sample forms, conditions of the Contract and Specifications.

(v) Provide shall include "provide complete in place," that is, "furnish, install, test, and ready for operation and use."

(w) Reviewed, when used in conjunction with ARCHITECT's action on CONTRACTOR's submittals and requests, is limited to the responsibilities and duties of ARCHITECT stated in the General and Supplementary Conditions, if any. Such review shall not release CONTRACTOR from responsibility to fulfill Contract Document requirements.

(x) Safety Orders are those issued by the Division of Industrial Safety and CAL-OSHA Safety and Health Standards for construction.

(y) Site or Project Site is the lands and facilities upon which the Work is to be performed, including such access to other lands and facilities designated in the Contract Documents.

(z) Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, and performance of related services.

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

(bb) Starting Date shall mean the date specified as such in the Notice to Proceed from DISTRICT to CONTRACTOR, and which shall be the date from which the Contract Time will commence and be calculated.

(cc) Subcontractor, as used herein, includes those having direct or indirect contracts with CONTRACTOR and one who furnishes labor, materials or services for a special design according to Plans, Drawings, and Specifications of the Work, but does not include one who merely furnishes material not so worked.

(dd) Substantial Completion means the point at which the Work, or a portion thereof designated by DISTRICT for separate delivery, is: (1) sufficiently and entirely complete in accordance with the Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by DISTRICT for its intended purpose (except for minor items which do not impair DISTRICT's ability to so occupy and use such Work); (2) receipt by DISTRICT of all permits and certificates by Governmental Authorities, if any, required to occupy and use such Work; and (3) all systems included in the Work are operational as specified, all designated or required inspections and certifications by Government Authorities have been made and posted and instruction of DISTRICT's personnel in the operation of the systems has been completed.

(ee) Surety is the firm, or corporation, that executes as surety on CONTRACTOR's Performance Bond and Payment Bond. Surety must be an admitted surety insurer pursuant to Code of Civil Procedure section 995.120.

(ff) Work shall mean the construction and services required by the Contract Documents or reasonably inferable by CONTRACTOR or Subcontractor as necessary to produce the results intended by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by CONTRACTOR or Subcontractor to fulfill CONTRACTOR's construction obligations and complete the Project. The term "Work" includes labor and materials, or both, incorporated in, or to be incorporated in the construction covered by the Contract Documents or reasonably inferable from the Contract Documents.

(gg) Worker includes laborer, worker, or mechanic.

Article 2. STATUS OF CONTRACTOR

(a) CONTRACTOR shall continually supervise and direct the Work using CONTRACTOR's best skill and attention. CONTRACTOR shall be solely responsible for and

have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work under the Contract, unless the Contract Documents specify otherwise. CONTRACTOR shall not perform the Work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the Work. If any of the Work is performed by contractors retained directly by DISTRICT, CONTRACTOR shall be responsible for the coordination and sequencing of the work of those other contractors so as to avoid any impact on the Baseline Project Schedule, as defined below. Specific duties of CONTRACTOR shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. CONTRACTOR shall fully comply with any and all reporting requirements of Education Code section 17315 et seq. in the manner prescribed by Title 24 of the California Code of Regulations.

(b) CONTRACTOR is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between DISTRICT and CONTRACTOR or any of CONTRACTOR's agents or employees. CONTRACTOR assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents and employees, shall not be entitled to any rights or privileges of DISTRICT employees and shall not be considered in any manner to be DISTRICT employees. DISTRICT shall be permitted to monitor the activities to determine compliance with the terms of the Contract.

(c) Contractors are required by law to be licensed and regulated by Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint is filed within three years of the date of the alleged violation. No payment shall be made for Work or material under the Contract unless and until the Registrar of Contractors verifies to DISTRICT that CONTRACTOR was properly licensed at the time the bid was made and at the time the Contract was awarded and CONTRACTOR continues to be so licensed throughout the term of the Contract. Any CONTRACTOR not so licensed is subject to penalties under the law. Any questions concerning a CONTRACTOR may be referred to the Registrar, Contractors' State License Board, 9835 Goethe Road, Sacramento, California, 95827.

(d) CONTRACTOR shall maintain, and shall require all Subcontractors to maintain, such contracting, professional and business licenses as may be required by applicable laws for the duration of time that CONTRACTOR is performing the Work under the Contract Documents, including the period of any warranty provided covering all or any portion of the Work.

(e) No Contractor or Subcontractor may be listed on the Bid Form or Designation of Subcontractors Form for the Project unless registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No Contractor or Subcontractor may be awarded a contract for the Project unless registered with DIR pursuant to Labor Code section 1725.5. This Project is subject to compliance monitoring and enforcement by the DIR.

Article 3. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Before CONTRACTOR makes any change in the name or legal nature of CONTRACTOR's entity, CONTRACTOR shall first notify DISTRICT and cooperate with DISTRICT in making such changes as DISTRICT may request in the Contract.

Article 4. CONTRACTOR'S SUPERVISION, PROSECUTION AND PROGRESS

(a) CONTRACTOR shall employ a competent, English speaking Superintendent and necessary assistants who shall be in attendance at the Project site during the performance of the Work. The Superintendent shall be available twenty-four (24) hours a Day, seven (7) Days a week to respond to emergencies. Before commencing the Work, CONTRACTOR shall designate in writing the name, qualifications, experience, and references from owners and architects on previous projects for CONTRACTOR's proposed Superintendent who, on approval of DISTRICT, shall have full authority to represent and act for CONTRACTOR. All directions given to the Superintendent shall be as binding as if given to CONTRACTOR. A facsimile of the signatures of the authorized representatives of CONTRACTOR shall be submitted to ARCHITECT and DISTRICT. CONTRACTOR's authorized representatives, or designated substitutes, acceptable to DISTRICT, shall be present at the Project site at all times that any Work is in progress and at any time that any employee or Subcontractor of CONTRACTOR is present at the Project site and shall attend all job meetings. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of DISTRICT, unless the Superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in its employ, in which case, CONTRACTOR shall notify DISTRICT and ARCHITECT in writing. The Superintendent shall represent CONTRACTOR in its absence and shall be fully authorized to receive and fulfill any instruction from ARCHITECT, PROJECT INSPECTOR, DISTRICT, or any other DISTRICT representative. All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any Day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the Day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind CONTRACTOR through the Superintendent's acts.

(b) CONTRACTOR shall notify DISTRICT and ARCHITECT, in writing, when CONTRACTOR desires to change the Superintendent for the Project, and shall provide the information specified above. The new Superintendent cannot serve on the Project until approved by DISTRICT. DISTRICT shall have the right, at any time, to direct a change in CONTRACTOR's Project Superintendent if performance is unsatisfactory, as determined by DISTRICT in its sole discretion.

(c) CONTRACTOR shall perform at least 15% of the Work, exclusive of supervisory and clerical work without the services of any Subcontractor. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall carefully study and compare all Drawings, Specifications, and other instructions and shall at once report to ARCHITECT any error, inconsistency or omission which CONTRACTOR or its employees may discover. CONTRACTOR shall comply with all

requirements set forth in Section 4-343 and Section 4-336, Part 1, Title 24 and Section 43 of Title 21 of the California Code of Regulations.

(d) CONTRACTOR shall comply with the requirements of the Contract for commencement and completion of all the Work. CONTRACTOR shall, at all times, perform its duties in a timely and expeditious manner to comply with the requirements of the Contract.

(e) CONTRACTOR shall verify all indicated dimensions before ordering materials or equipment, or before performing Work. CONTRACTOR shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to CONTRACTOR with the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to DISTRICT at once. Upon commencement of any item of Work, CONTRACTOR shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make Work properly fit at no additional cost to DISTRICT. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to Subcontractors or agents.

(f) Omissions from the Plans, Drawings or Specifications, or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Plans, Drawings and Specifications, or which are customarily performed, shall not relieve CONTRACTOR from performing such omitted or misdescribed Work, but they shall be performed as if fully and correctly set forth and described in the Plans, Drawings and Specifications.

(g) CONTRACTOR shall be responsible to DISTRICT for acts and omissions of CONTRACTOR's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with CONTRACTOR or any of its Subcontractors.

(h) CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of ARCHITECT in ARCHITECT's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than CONTRACTOR.

(i) CONTRACTOR shall attend progress meetings at the Project site weekly (or at such other time or frequency as DISTRICT or ARCHITECT requests) at which progress of the Work shall be reported in detail with reference to then-current updated Construction Schedule approved by ARCHITECT. Each Subcontractor, then active on the job or immediately scheduled to become active, shall have a competent representative present at such progress meeting to report on the condition of the Work of such Subcontractor and to receive relevant information.

Article 5. SUBCONTRACTORS

(a) All Subcontractors shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5, and properly licensed by the California State Licensing Board at the time the bid is made and throughout the term of the Contract. DISTRICT reserves the right to approve all Subcontractors. Such approval shall be a condition to the awarding of the Contract and, unless notification to the contrary is given to CONTRACTOR prior to the signing of the Agreement, the list of Subcontractors submitted with the proposal will be deemed to be acceptable.

(b) CONTRACTOR agrees to bind every Subcontractor by terms of the Contract as far as such terms are applicable to Subcontractor's Work. If CONTRACTOR shall subcontract any

part of the Contract, CONTRACTOR shall be fully responsible to DISTRICT for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and DISTRICT, nor shall the Contract be construed to be for the benefit of any Subcontractor.

(c) DISTRICT's consent to any Subcontractor under the Contract shall not in any way relieve CONTRACTOR of any obligations under the Contract and no such consent shall be deemed to waive any provision of the Contract.

(d) Pursuant to Section 4104 of the Public Contract Code, CONTRACTOR must submit with its bid, a Designation of Subcontractors. If CONTRACTOR specifies more than one Subcontractor for the same portion of Work or fails to specify a Subcontractor, and such portion of the Work exceeds one-half of one percent of the total bid, CONTRACTOR agrees that it is fully qualified to perform and shall perform such Work itself, unless CONTRACTOR provides for substitution or addition of Subcontractors. Substitution or addition of Subcontractors shall be permitted only as authorized by the Subletting and Subcontracting Fair Practices Act (the "Act") at Chapter 4 (commencing at Section 4100), Division 2, Part 1 of the California Public Contract Code. Any increase in the cost or time of performance of the Work resulting from the replacement, substitution or addition of Subcontractor shall be borne solely by CONTRACTOR at CONTRACTOR's own expense. Any attempt by CONTRACTOR to avoid compliance with the Act, such as, but not limited to, by splitting the work of subcontracts with Subcontractors into separate contracts or change orders so as to not exceed the monetary threshold of the Act applicable to listing of Subcontractors, is strictly prohibited.

(e) As provided by Public Contract Code section 6109, no contractor shall list or otherwise permit a Subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code to bid on, be awarded, or perform work as a Subcontractor on the Project.

(f) In accordance with California Business and Professions Code section 7059, if CONTRACTOR is designated as a "specialty contractor" (as defined in Section 7058 of the Business and Professions Code), all of the Work to be performed outside of CONTRACTOR's license specialty shall be performed by a licensed Subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq.

(g) A copy of each subcontract, if in writing, or if not in writing, then a written statement signed by CONTRACTOR giving the name of the Subcontractor and the terms and conditions of such subcontract, shall be filed with DISTRICT before the Subcontractor begins Work. Each subcontract shall contain a reference to the Contract between DISTRICT and CONTRACTOR and the terms of that Contract and all parts of the Contract Documents shall be made a part of such subcontract insofar as applicable to the Work covered thereby. Each subcontract will provide for termination in accordance with Article 13 of these General Conditions. Each subcontract shall provide for its annulment by CONTRACTOR at the order of ARCHITECT if in ARCHITECT's opinion Subcontractor fails to comply with the requirements of the principal Contract, insofar as the same may be applicable to the Work. Nothing herein contained shall relieve CONTRACTOR of any liability or obligation hereunder.

(h) Subcontractual Relations

CONTRACTOR shall, by written agreement entered into between CONTRACTOR and Subcontractor (other than a DISTRICT materials vendor) no later than twenty (20) Days after award, require each Subcontractor, to the extent of the Work to be performed by Subcontractor, to be bound to CONTRACTOR by terms of the Contract Documents and to assume toward CONTRACTOR all the obligations and responsibilities which CONTRACTOR, by the Contract Documents, assumes toward DISTRICT and ARCHITECT. Each subcontract agreement shall preserve and protect the rights of DISTRICT and ARCHITECT under the Contract Documents with respect to the Work to be performed by Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against CONTRACTOR that CONTRACTOR, by the Contract Documents, has against DISTRICT. CONTRACTOR shall require each Subcontractor to enter into similar agreements with their sub-subcontractors. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Without limitation to the foregoing, each contract that is entered into by a Subcontractor shall, without limitation, require Subcontractor to:

- (1) perform the Work in accordance with the terms of the Contract Documents;
- (2) assume all the obligations and responsibilities which CONTRACTOR assumes toward DISTRICT by the Contract Documents
- (3) preserve and protect the rights of DISTRICT under the Contract Documents with respect to the Work to be performed by Subcontractor so that subcontracting thereof will not prejudice such rights;
- (4) waive all rights (including, without limitation, rights of subrogation) that Subcontractor or its insurers may have against DISTRICT and others required by the Contract Documents to be named as additional insureds, for losses covered by insurance carried by CONTRACTOR or DISTRICT, except for such rights that Subcontractor may have to the proceeds of such insurance held by DISTRICT or such other additional insured.
- (5) afford DISTRICT and entities and agencies designated by DISTRICT the same rights and remedies afforded to them under the Contract Documents with respect to access to and the right to audit and copy at DISTRICT's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, memoranda and other records and documents relating to the Work and requiring Subcontractor to preserve all such records and other items for a period of at least three (3) years after final completion.
- (6) recognize the rights of DISTRICT regarding contingent assignment of subcontractors, including, without limitation, DISTRICT's right to elect to accept assignment of Subcontractor's contract and of CONTRACTOR's rights as principal under such Subcontractor's performance bond, if any, and to retain Subcontractor pursuant to the terms of its contract to complete the unperformed obligations under its subcontract and, if requested by DISTRICT, to execute a written agreement on terms acceptable to DISTRICT confirming that Subcontractor is bound to DISTRICT under the terms of its subcontract;
- (7) submit applications for payment, requests for change orders and extensions of time and claims, and to comply with all other notice and submission requirements of the

Contract Documents, sufficiently in advance to allow CONTRACTOR time to comply with its obligations under the Contract Documents;

(8) purchase and maintain insurance in accordance with the requirements of the Contract Documents;

(9) defend and indemnify the Indemnitees;

(10) comply with the nondiscrimination and prevailing wage provisions of these General Conditions;

(11) warrant and represent that Subcontractor has reviewed the Contract Documents and inspected the Project site;

(12) provide for a right of termination for convenience by CONTRACTOR that limits Subcontractor's right to compensation to an allocable share of the subcontract sum that corresponds to the percentage of the Work properly performed by Subcontractor, with no additional sum payable for prospective damages, lost profits, consequential damages or other losses, of any kind;

(13) provide that time is of the essence to each of Subcontractor's obligations; and

(14) provide for resolution of disputes as provided in these General Conditions.

(i) CONTRACTOR shall make available to each proposed Subcontractor with whom it enters into a contract for performance of any portion of the Work, prior to the execution of the subcontract agreement, copies of the Contract Documents to which Subcontractor will be bound so as to ensure that all matters disclosed thereby are taken into consideration and included in the terms of such contracts and shall identify to such Subcontractor the terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

Article 6. PROHIBITED INTERESTS

No official of DISTRICT who is authorized in such capacity and on behalf of DISTRICT to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with construction of Project, shall become directly or indirectly interested financially in the Contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for DISTRICT who is authorized in such capacity and on behalf of DISTRICT to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in the Contract or in any part thereof. CONTRACTOR shall receive no compensation and shall repay DISTRICT for any compensation received by CONTRACTOR hereunder, should CONTRACTOR aid, abet or knowingly participate in violation of this Article.

Article 7. DISTRICT'S INSPECTOR

(a) One (1) or more inspectors, including special inspectors, as required, will be employed by DISTRICT in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the Work. Duties of an Inspector are specifically defined in Section 4-342 of said Title 24, and Section 4-333 for observation and inspection of construction.

(b) All Work shall be under the observation of PROJECT INSPECTOR. PROJECT INSPECTOR shall have free access to any and all parts of the Work at any time. CONTRACTOR shall furnish PROJECT INSPECTOR such information as may be necessary to keep PROJECT INSPECTOR fully informed regarding progress and manner of Work and character of materials. Such inspection shall not, in any way relieve CONTRACTOR from responsibility for full compliance with all of the terms and conditions of the Contract, nor be construed to lessen to any degree, CONTRACTOR's responsibility for providing efficient and capable superintendence as required herein. PROJECT INSPECTOR is not authorized to make changes in the Drawings or Specifications, nor shall his or her approval of Work and methods relieve CONTRACTOR of responsibility for the correction of subsequently discovered defects or from its obligation to comply with the Contract Documents.

(c) No Work shall be carried on except with the knowledge and under the inspection of said PROJECT INSPECTOR. He shall have free access to any and all parts of Work at any time. CONTRACTOR shall furnish PROJECT INSPECTOR reasonable opportunities and use of required equipment (wheelbarrow, shovel, ladder, man-lift, etc.), as available or in use on site, for obtaining such information as may be necessary to keep PROJECT INSPECTOR fully informed respecting progress and manner of Work and character of materials. Inspection of Work shall not relieve CONTRACTOR from any obligation to fulfill the Contract. PROJECT INSPECTOR or ARCHITECT shall have authority to stop Work whenever provisions of Contract Documents are not being complied with and such noncompliance is discovered. In addition, either PROJECT INSPECTOR or ARCHITECT may stop any Work which poses a probable risk of harm to persons or property. CONTRACTOR shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. CONTRACTOR shall immediately comply with such directive and not be entitled to any adjustment of Contract Time or Contract Price payable as a result of any such directive. DISTRICT shall have no duty or responsibility to CONTRACTOR or any other party to exercise the right to stop the Work. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve CONTRACTOR from any of its obligations pursuant to the Contract Documents.

(d) CONTRACTOR understands and agrees that PROJECT INSPECTOR for the Project may also serve concurrently as inspector for other DISTRICT projects and may not therefore be available on site during the entire work day. It shall be the responsibility of CONTRACTOR to notify PROJECT INSPECTOR not less than twenty-four (24) hours in advance of materials and equipment deliveries and required final inspections of Work elements.

(e) CONTRACTOR shall notify ARCHITECT and PROJECT INSPECTOR in writing at least three (3) working days in advance of the permanent concealment of any materials or Work. If any of the Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to demonstrate to the satisfaction of PROJECT INSPECTOR, ARCHITECT, and DSA that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by CONTRACTOR at CONTRACTOR's own expense or if furnished by DISTRICT shall be paid by DISTRICT and backcharged to CONTRACTOR as a withholding from future payments due. CONTRACTOR shall replace and/or restore, at CONTRACTOR's own expense, any Work or other structures, improvements or property damaged by testing or exposure, as well as any defective work evidenced by such exposure or testing.

Article 8. ARCHITECT'S STATUS

(a) ARCHITECT shall be DISTRICT's representative during construction period and shall observe the progress and quality of the Work on behalf of DISTRICT. ARCHITECT shall have the authority to act on behalf of DISTRICT only to the extent expressly provided in the Contract Documents. ARCHITECT shall have authority to stop Work whenever such stoppage may be necessary in ARCHITECT's reasonable opinion to ensure the proper execution of the Contract. CONTRACTOR, however, shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of ARCHITECT in ARCHITECT's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than CONTRACTOR.

(b) ARCHITECT shall be, in the first instance, the judge of the performance of the Contract. ARCHITECT shall exercise authority under the Contract to enforce CONTRACTOR's faithful performance. ARCHITECT may recommend to DISTRICT that DISTRICT reject Work which does not conform to the Contract Documents. Whenever ARCHITECT considers it necessary or advisable to achieve the intent of the Contract Documents, ARCHITECT may recommend to DISTRICT that DISTRICT require additional inspection or testing of the Work in accordance with Article 26, whether or not such Work is fabricated, installed, or completed. However, neither this authority of ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of ARCHITECT to CONTRACTOR, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(c) ARCHITECT shall have the authority and responsibility established by law, including Title 24 of the California Code of Regulations. Within the scope of the Contract, ARCHITECT has the authority to enforce compliance with the Contract Documents, including the Plans and Specifications. CONTRACTOR shall promptly comply with instructions from ARCHITECT or an authorized representative of ARCHITECT.

(d) On all questions related to the quantities, the acceptability of material, equipment or workmanship, the execution, progress or sequence of Work, the interpretation of Specifications or Drawings, and the acceptable fulfillment of the Contract on the part of CONTRACTOR, the decision of ARCHITECT shall govern and shall be precedent to any payment under the Contract unless otherwise ordered by the Governing Board. The progress and completion of the Work shall not be impaired or delayed by virtue of any question or dispute arising out of or related to the foregoing matters and the instructions of ARCHITECT relating thereto.

(e) ARCHITECT will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions in connection with the Work, since these are solely CONTRACTOR's responsibility as provided in Article 4. ARCHITECT will not be responsible for CONTRACTOR's failure to carry out the Work in accordance with the Contract Documents. ARCHITECT will not have control over or charge of and will not be responsible for acts or omissions of CONTRACTOR, Subcontractors, or their agents or employees, or any other persons performing portions of the Work.

(f) General supervision and direction of the Work by ARCHITECT shall in no way imply that ARCHITECT or his or her representatives are in any way responsible for the safety of CONTRACTOR or its employees or that ARCHITECT or his or her representatives will maintain

supervision over CONTRACTOR's construction methods or personnel other than to ensure that the quality of the finished Work is in accordance with the Contract Documents.

(g) If at any time during the life of the Contract, through no fault of its own, ARCHITECT is required to provide additional services for any reason by any act of CONTRACTOR, CONTRACTOR shall be held liable for the cost of any such additional services. DISTRICT shall invoice CONTRACTOR for such costs, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other DISTRICT remedies and shall not be considered a waiver of any DISTRICT rights or remedies. If payments then or thereafter due to CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the difference to DISTRICT. Additional services of ARCHITECT shall include but shall not necessarily be limited to the following:

- (1) Services made necessary by the default of CONTRACTOR.
- (2) Services made necessary due to defects or deficiencies in the Work of CONTRACTOR.
- (3) Services required by failure of CONTRACTOR to perform according to any provision of the Contract Documents.
- (4) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by CONTRACTOR, and making subsequent revisions to Drawings, Specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- (5) Services for evaluating and processing claims submitted by CONTRACTOR in connection with the Work outside the established Change Order process.
- (6) Services required by the failure of CONTRACTOR to prosecute the Work in a timely manner in compliance with specified time of completion.
- (7) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- (8) Services in conjunction with more than one (1) re-review of submittals of shop drawings, product data, samples, etc.

In such case, an appropriate change order will be issued deducting from payments then or thereafter due CONTRACTOR for the cost of ARCHITECT's additional services. Such Change Order shall be deemed to have been executed by CONTRACTOR, whether or not actually signed by CONTRACTOR unless the Change Order is shown to have been prepared in bad faith by DISTRICT. If payments then or thereafter due CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the difference to DISTRICT.

Article 9. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of the Contract may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to the Contract, the private party may be subjected to the payment of property taxes levied on such interest.

Article 10. ASSIGNMENT OF ANTITRUST ACTIONS

Section 7103.5(b) of the Public Contract Code provides:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body [DISTRICT] all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

CONTRACTOR, for itself and all Subcontractors, agrees to assign to DISTRICT all rights, title, and interest in and to all such causes of action CONTRACTOR and all Subcontractors may have under the Contract Documents. This assignment shall become effective at the time DISTRICT tenders final payment to CONTRACTOR, and CONTRACTOR shall require assignments from all Subcontractors to comply herewith.

Article 11. OTHER CONTRACTS

(a) DISTRICT reserves the right to let other contracts in connection with the Work. CONTRACTOR shall afford other contractors reasonable opportunity for introduction and storage of their materials, access to the Work, and execution of their Work and shall properly connect and coordinate its Work with those other contractors.

(b) If any part of CONTRACTOR's Work depends for proper execution or results upon work of any other contractor, CONTRACTOR shall inspect and within seven (7) Days or less, report to ARCHITECT in writing any defects in such work that render it unsuitable for such proper execution or results. CONTRACTOR will be held accountable for damages to DISTRICT for that work which it failed to inspect or should have inspected. CONTRACTOR's failure to inspect and report shall constitute its acceptance of any other contractor's work as fit and proper for reception of its Work, except as to defects which may develop in another contractor's work after execution of CONTRACTOR's Work.

(c) To ensure proper execution of its subsequent Work, CONTRACTOR shall measure and inspect Work already in place and shall at once report to ARCHITECT in writing any discrepancy between executed Work and Contract Documents.

(d) CONTRACTOR shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by DISTRICT in prosecution of the Project to the end that CONTRACTOR may perform the Contract in the light of such other contracts, if any.

(e) Nothing herein contained shall be interpreted as granting to CONTRACTOR exclusive occupancy at site of Project. CONTRACTOR shall not cause any unnecessary hindrance or delay to any other contractor working on Project. If simultaneous execution of any contract for Project is likely to cause interference with performance of some other contract or contracts,

DISTRICT shall decide which contractor shall cease Work temporarily and which contractor shall continue or whether Work can be coordinated so that contractors may proceed simultaneously.

(f) DISTRICT shall not be responsible for any damages suffered or extra costs incurred by CONTRACTOR resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on Project, or caused by any decision or omission of DISTRICT respecting the order of precedence in performance of contracts.

(g) If CONTRACTOR, or any of its Subcontractors or employees, cause loss or damage to any separate contractor on the Work, CONTRACTOR agrees to settle with such separate contractor by agreement or arbitration, if they will so settle. If such separate contractor sues DISTRICT on account of any loss so sustained, DISTRICT shall notify CONTRACTOR, who shall indemnify and save harmless DISTRICT against any expenses or judgment arising therefrom.

Article 12. OCCUPANCY

DISTRICT reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract prior to the completion of the entire Work. A list of Work to be completed and corrected by CONTRACTOR, if any, shall be prepared and agreed to between DISTRICT and CONTRACTOR before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Work but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of Work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until DISTRICT has given CONTRACTOR written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. DISTRICT and CONTRACTOR shall take reasonable steps to obtain the consent of CONTRACTOR's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance.

Such occupancy or use by DISTRICT shall relieve CONTRACTOR of (and DISTRICT shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by DISTRICT or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of CONTRACTOR, any Subcontractors or materialmen of any tier, or their officers, employees or agents.

Article 13. DISTRICT'S RIGHT TO TERMINATE/SUSPEND CONTRACT

(a) Termination for Cause

(1) If CONTRACTOR refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the time specified or any extension thereof, or fails to complete said Work within such time, or if CONTRACTOR should be adjudged bankrupt, or if CONTRACTOR should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is

provided, to supply enough properly skilled Workers or proper materials to complete the Work in the time specified, or if CONTRACTOR is persistently or repeatedly absent, without excuse, from the Project site, or if CONTRACTOR should fail to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances or instructions of DISTRICT, or if CONTRACTOR or its Subcontractors should otherwise be guilty of a substantial violation of any provision of the Contract, CONTRACTOR shall be deemed to be in default of the Contract and DISTRICT may, without prejudice to any other right or remedy, serve written notice upon CONTRACTOR and its Surety of DISTRICT's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate, and unless within ten (10) Days after the service of such notice such condition shall cease or such violation shall cease and arrangements satisfactory to DISTRICT for the correction thereof be made, the Contract shall, upon the expiration of said ten (10) Days, cease and terminate. In such case, CONTRACTOR shall not be entitled to receive any further payment until Work is finished.

(2) In the event of any such termination, DISTRICT shall immediately serve written notice thereof upon Surety and CONTRACTOR, and Surety shall have the right to take over and perform the Contract, provided, however, that if Surety within seven (7) Days after service upon it of said notice of termination does not give DISTRICT written notice of its intention to take over and perform the Contract or does not commence performance thereof within fifteen (15) Days from date of serving such notice of termination by DISTRICT on Surety, DISTRICT may take over the Work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of CONTRACTOR. CONTRACTOR and its Surety shall be liable to DISTRICT for any excess cost or other damages occasioned DISTRICT thereby. Time is of the essence in the Contract. If DISTRICT takes over the Work as hereinabove provided, DISTRICT may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to CONTRACTOR as may be on the site of the Work and necessary therefor.

(3) If unpaid balance of Contract Price shall exceed the expense of finishing Work, including without limitation compensation for additional architectural, managerial, inspection, and administrative services, such excess shall be paid to CONTRACTOR. If such expense shall exceed such unpaid balance, CONTRACTOR shall pay difference to DISTRICT. Expense incurred by DISTRICT as herein provided, and damage incurred through CONTRACTOR's default, shall be certified to DISTRICT by ARCHITECT. The payment obligation shall survive completion of the Contract.

(4) The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to DISTRICT. Additionally, the failure of DISTRICT in any one or more instances to insist upon strict performance of any terms of the Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

(b) Suspension for Convenience

(1) DISTRICT may, without cause, order CONTRACTOR, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as DISTRICT may determine.

(2) An adjustment shall be made for increases in the Contract Price, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment 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 CONTRACTOR is responsible; or

(ii) That an equitable adjustment is made or denied under another provision of the Contract Documents.

(c) **Termination for Convenience**

(1) DISTRICT may, at any time, terminate the Contract for DISTRICT's convenience and without cause.

(2) Upon receipt of written notice from DISTRICT of such termination for DISTRICT's convenience, CONTRACTOR shall:

(i) Cease operations as directed by DISTRICT in the notice;

(ii) Take actions necessary, or that DISTRICT may direct, for the protection and preservation of the Work; and

(iii) Not terminate any insurance provisions required by the Contract Documents.

(3) In case of such termination for DISTRICT's convenience, CONTRACTOR shall be entitled to receive payment from DISTRICT for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including overhead and profit for that portion of the Work completed, and reasonable proven damages.

(4) In the case of Termination for Convenience, DISTRICT shall have the right to accept assignment of subcontracts as provided elsewhere in the Contract Documents.

(d) The foregoing provisions included in paragraphs (a), (b), and (c) above are in addition to and not in limitation of any other rights or remedies available to DISTRICT. Additionally, the failure of DISTRICT in any one or more instances to insist upon strict performance of any terms of the Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

(e) All obligations of CONTRACTOR and Subcontractors under the Contract Documents with respect to warranties and guaranties of the Work will continue in force and shall apply notwithstanding a termination or other discontinuance of the Work by DISTRICT pursuant to an exercise of its rights under this Article to any portion of the Work that at the time of such termination or discontinuance is performed by CONTRACTOR to the point that it is substantially ready (exclusive of any incidental work that may be needed to connect such portion of the work to other work or existing improvements or to energize such portion of the work for operation) for use or occupancy by DISTRICT.

Article 14. CONTRACT SECURITY – BONDS

(a) Unless otherwise specified in Special Conditions, CONTRACTOR shall furnish a surety bond in an amount equal to one hundred percent (100%) of Contract Price as security for

faithful performance of the Contract and shall furnish a separate bond in an amount equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and furnishing materials in connection with the Contract. Aforesaid bonds shall be in the form set forth in the Contract Documents. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

(b) The Payment and Performance Bonds must be accompanied by the original or a certified copy of the unrevoked power of attorney or other appropriate instrument entitling or authorizing the person who executed the bond to do so. In addition, to the extent required by law, the Payment and Performance Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Los Angeles that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

(c) To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, CONTRACTOR shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to DISTRICT. The bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to CONTRACTOR will release the Surety. If CONTRACTOR fails to furnish the required bonds, DISTRICT may terminate the Contract for cause.

Article 15. SUBSTITUTION OF SECURITIES

(a) Pursuant to the requirements of Public Contract Code section 22300, upon CONTRACTOR's request, DISTRICT will make payment to CONTRACTOR of any funds withheld from payments under the Contract if CONTRACTOR deposits with DISTRICT or in escrow with a California or federally chartered bank in California acceptable to DISTRICT, securities eligible for the investment of State Funds under Government Code section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

(1) CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

(2) All expenses relating to the substitution of securities under said Section 22300 and under this clause, including, but not limited to DISTRICT's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of CONTRACTOR.

(3) Securities or certificates of deposit substituted for monies withheld shall be of a value of at least equivalent to the amounts of retention to be paid to CONTRACTOR pursuant to this paragraph.

(4) If CONTRACTOR shall choose to enter into an escrow agreement, such agreement shall be in the form attached hereto as part of the Contract Documents.

(5) CONTRACTOR shall obtain the written consent of the Surety to such agreement.

(6) Securities, if any, shall be returned to CONTRACTOR only upon satisfactory completion of the Contract.

(b) To minimize the expense caused by such substitution of securities, CONTRACTOR shall, prior to or at the time CONTRACTOR requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of the Contract. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which DISTRICT determines to withhold, CONTRACTOR shall immediately and at CONTRACTOR's expense deposit additional security qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Contract.

(c) Alternatively, subject to the conditions set forth in paragraph (a) of this Article, CONTRACTOR may request and DISTRICT shall make payment of retentions directly to escrow at the expense of CONTRACTOR. At the expense of CONTRACTOR, CONTRACTOR may direct the investment of the payments into securities and CONTRACTOR shall receive the interest earned on the investments. Upon satisfactory completion of the Contract, CONTRACTOR shall receive from escrow all securities, interest, and payments received by escrow from DISTRICT, pursuant to the terms of Section 22300.

(d) If any provisions of this Article shall be found to be illegal or unenforceable then, notwithstanding, this Article shall remain in full force and effect, and such provision shall be deemed stricken.

Article 16. PUBLIC LIABILITY, PROPERTY DAMAGE AND COURSE OF CONSTRUCTION (BUILDER'S RISK) INSURANCE

(a) CONTRACTOR shall take out and maintain during the life of the Contract such public liability, property damage and course of construction (Builder's Risk) insurance as shall protect CONTRACTOR, DISTRICT, ARCHITECT and PROJECT INSPECTOR from all claims for personal injury, including accidental death, to any person (including, as to DISTRICT, ARCHITECT and PROJECT INSPECTOR injury or death to CONTRACTOR's or Subcontractor's employees), as well as from all claims for property damage arising from operations under the Contract, in amounts as set forth in the Agreement. Such insurance shall be with an insurance company qualified to do business in California and rated A or better by Best's Key Rating Guide.

(b) CONTRACTOR shall either (1) require its Subcontractors, if any, to take out and maintain similar public liability and property damage insurance in like amounts, or (2) insure the activity of its Subcontractors in CONTRACTOR's own policy.

(c) DISTRICT is to provide coverage in the amount of the full value of the Project for losses due to fire, vandalism and theft with a maximum deductible of five thousand dollars (\$5,000) per loss. CONTRACTOR is responsible for a share of the deductible proportionate to its portion of the total loss. Any portions of CONTRACTOR's Work and materials stored offsite are not to be covered under such insurance. In addition, CONTRACTOR is required to provide evidence that stored materials are covered under a separate policy. Property and equipment owned by CONTRACTOR or others which are not to be installed in the Project are not afforded coverage by DISTRICT's insurance. CONTRACTOR shall be responsible for the securing and maintaining of fire insurance and other insurance on any tool, equipment, or supplies which are expected to

remain its property. Coverage under DISTRICT's policy is not construed to extend to earthquake, flood, pollution, and other commonly excluded perils.

(d) All insurance coverage amounts specified in the Agreement and in this Article shall be project-specific to this particular Work, and all such insurance shall cover only risks relating to or arising out of the Work. The insurance and required amounts of insurance specified herein shall not be reduced or encumbered on account of other work contracted for or being performed by CONTRACTOR.

(e) A "claims made" or modified "occurrence" policy shall not satisfy the requirements specified herein without prior written approval of DISTRICT.

Article 17. WAIVER OF RIGHTS TO DAMAGE BY FIRE OR OTHER PERILS

DISTRICT and CONTRACTOR waive all rights against each other and any of their Subcontractors, sub-subcontractors, agents and employees, each of the other, and ARCHITECT, ARCHITECT's consultants, PROJECT INSPECTOR, separate contractors, if any, and any of their Subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. DISTRICT or CONTRACTOR, as appropriate, shall require separate contractors, if any, and Subcontractors, sub-subcontractors, agents and employees of any of them by appropriate agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Article 18. WORKERS' COMPENSATION INSURANCE

(a) In accordance with the provisions of Section 3700 of the California Labor Code, CONTRACTOR and every Subcontractor shall be required to secure the payment of compensation to its employees.

(b) CONTRACTOR shall provide, during the life of the Contract, workers' compensation insurance for all of its employees engaged in Work under the Contract, on or at the site of the Project, and, in case any of its Work is sublet, CONTRACTOR shall require Subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by CONTRACTOR's insurance. In case any class of employees engaged in Work under the Contract, on or at the site of the Project, is not protected under the Workers' Compensation statute, CONTRACTOR shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before Subcontractor commences Work. CONTRACTOR shall file with DISTRICT certificates of its insurance protecting Workers and a 30-day notice shall be provided to DISTRICT before the cancellation or reduction of any policy of CONTRACTOR or Subcontractor.

Article 19. PROOF OF CARRIAGE OF INSURANCE

(a) CONTRACTOR shall not commence Work nor shall it allow any Subcontractor to commence Work under the Contract until all required insurance, certificates and endorsements

have been obtained and delivered in duplicate to and approved by DISTRICT. Such insurance shall be with an insurance company admitted by the Insurance Commissioner of the State of California to transact such insurance in the State of California and having a current certificate of authority.

(b) Certificates and insurance policies shall include the following:

(1) A clause stating:

“This policy shall not be non-renewed, canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to DISTRICT stating date of cancellation or reduction. Date of cancellation or reduction may not be less than thirty (30) Days after date of providing notice.”

(2) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

(3) Statement that DISTRICT, ARCHITECT and PROJECT INSPECTOR are a named additional insured under the policy described, that such insurance policy shall be primary to any insurance or self-insurance maintained by DISTRICT, ARCHITECT and PROJECT INSPECTOR, and that the amount of the insurer’s liability shall not be reduced by the existence of such other insurance. The Additional Insured Endorsement included on all such insurance policies shall be a CG 2010 (11/85) or CG 2010 (10/93) form and state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

(4) A clause whereby the insurance company waives all right of recovery by way of subrogation against DISTRICT, ARCHITECT and PROJECT INSPECTOR in connection with damage covered by the policy.

(c) In case of CONTRACTOR’s failure to provide insurance as required by the Contract, DISTRICT may, at DISTRICT’s option, take out and maintain at the expense of CONTRACTOR, such insurance in the name of CONTRACTOR, or Subcontractor, as DISTRICT may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which are due or become due to CONTRACTOR under the Contract.

(d) A “claims made” or modified “occurrence” policy shall not satisfy the requirements specified herein without prior written approval of DISTRICT.

Article 20. INTERPRETATION OF CONTRACT DOCUMENTS, DRAWINGS, AND SPECIFICATIONS

(a) Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work, and that is, in all of its parts, suitable for use and occupancy for its intended purpose, and without limitation, all equipment, case records, mechanical, electrical and similar devices of whatever nature, completely installed, hooked-up and made fully operational and functional. All Work mentioned or indicated in the Contract Documents shall be performed by CONTRACTOR as part of the Contract unless

specifically indicated in the Contract Documents that such Work is to be done by others. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by CONTRACTOR as if shown or mentioned in both.

(b) Materials or Work described in words which so applied has a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

(c) Trade Name or Trade Term. It is not the intention of the Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to CONTRACTOR that it will be required to complete the work so named with all its appurtenances according to the best practices of the trade.

(d) The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefore, as per best practices of the trade(s) involved, unless specifically noted otherwise.

(e) Demolition. Existing improvements at the Project site, for which no specific description is made on the Drawings, but which could be necessarily assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of at CONTRACTOR's own expense.

(f) Interpretations. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence (the first being the highest order of precedence):

(1) Applicable Laws (provided, however, that where the Contract Documents or manufacturer's recommendations or specifications require standards higher than those of applicable laws, the Contract Documents or manufacturer's recommendations or specifications shall control).

(2) Change Orders and modifications, issued after execution of the Agreement;
(3) Addenda, issued prior to award of the Contract;
(4) The Agreement (including all modifications, attachments and certifications);

(5) Special Conditions;
(6) Supplemental Conditions;
(7) General Conditions;
(8) Bid Form (including all modifications and attachments; and

(9) Drawings and Specifications. Figured, derived, or numerical dimensions on Drawings shall govern, but Work not dimensioned shall be as directed. At no time shall CONTRACTOR base construction on scaled drawings. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and Specifications are intended to be fully cooperative and to agree. However, if CONTRACTOR

observes that Drawings and Specifications are in conflict, CONTRACTOR shall promptly notify ARCHITECT in writing, and any necessary changes shall be adjusted as provided in the Article entitled "Changes and Extra Work."

(g) Conflicts. In the event of a conflict between any of the Contract Documents, the provision placing a more stringent requirement or greater burden on CONTRACTOR shall prevail. CONTRACTOR shall provide the greater quantity and/or higher quality material or workmanship unless otherwise directed by DISTRICT in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on CONTRACTOR, the controlling provision shall be that which is found in the document with higher precedence.

(h) Specifications and Accompanying Drawings are intended to delineate and describe the Project and its component parts to such a degree as will enable skilled and competent contractors to intelligently bid upon the Work, and to carry said Work to a successful conclusion. The organization of the Specifications into divisions, sections and articles and the arrangement of Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

(i) Compliance with Laws. Drawings and Specifications are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules and regulations shall be considered as a part of said Contract within the limits specified. Before commencing any portion of the Work, CONTRACTOR shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public and municipal utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. Such checking shall include Title 21 and Title 24 of the California Code of Regulations, California Building Code, local utility, local water connection, local grading and all other applicable agencies. In the event CONTRACTOR observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with the Contract Documents, CONTRACTOR shall, within five (5) Days, notify ARCHITECT and DISTRICT in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Project. CONTRACTOR shall bear all expenses of correcting Work done contrary to said laws, ordinances, rules and regulations if CONTRACTOR knew or should have known that the Work as performed is contrary to said laws, ordinances, rules and regulations, and if CONTRACTOR performed same (1) without first consulting ARCHITECT for further instructions regarding said Work or (2) disregarded ARCHITECT's instructions regarding said Work.

(j) Questions regarding interpretation of Drawings and Specifications shall be clarified by ARCHITECT. Before commencing any portion of the Work, CONTRACTOR shall carefully examine all Drawings and Specifications and other information given to CONTRACTOR as to materials and methods of construction and other Project requirements. CONTRACTOR shall immediately notify ARCHITECT and DISTRICT in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If CONTRACTOR or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees, performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known

to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance.

(k) CONTRACTOR will be furnished, free of charge, copies of Drawings and Specifications, as set forth in the Agreement. Additional copies may be obtained at cost of reproduction.

(l) During the construction period, CONTRACTOR shall maintain a set of blue-line prints in a satisfactory record condition, and shall thoroughly and neatly post, as they occur, all additions, deletions, corrections and/or revisions in the actual construction of the Project, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. CONTRACTOR will update the Record Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly. The Record Drawings must be posted weekly and be current prior to each submission of each monthly certificate of payment. The Record Drawings and Annotated Specifications shall be kept at the Project site and available for review and inspection by DISTRICT and ARCHITECT. At the completion of the Work, all such additions, deletions, corrections and/or revisions shall be posted on Mylar transparencies by a competent draftsman at CONTRACTOR's expense. Both the blue-line prints and the Mylar transparencies shall be signed by the construction Superintendent. The signature certifies that the Record Drawings have been posted accurately. On completion of CONTRACTOR's portion of the Work and prior to application for final payment, CONTRACTOR will provide one complete set of Record Drawings and Annotated Specifications to ARCHITECT certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

Article 21. OWNERSHIP OF DRAWINGS

All Plans, Drawings, designs, Specifications, and other incidental architectural and engineering work or materials and other Contract Documents and copies thereof furnished by DISTRICT are and shall remain the sole and exclusive property of DISTRICT, pursuant to Education Code section 17316 and may be used by DISTRICT as it may require, without any additional costs to DISTRICT. They are not to be used by CONTRACTOR, Subcontractor, sub-subcontractor or equipment or material supplier in other work and, with the exception of signed sets of the Contract, are to be returned to it on request at completion of Work. Neither CONTRACTOR nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, or other Contract Documents. DISTRICT and/or ARCHITECT hereby grants CONTRACTOR, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings, Specifications, and other Contract Documents for the Project in the execution of their Work under the Contract Documents.

Article 22. DETAIL DRAWINGS AND INSTRUCTIONS

(a) In case of ambiguity, conflict, or lack of information, ARCHITECT shall furnish additional instructions by means of drawings or otherwise, necessary for proper execution of Work. All such drawings and instructions shall be consistent with Contract Documents, true

developments thereof, and reasonably inferable therefrom. Such additional instructions shall be furnished with reasonable promptness, but not more than fourteen (14) Days provided that CONTRACTOR informs ARCHITECT of the relationship of the request to the critical path of construction.

(b) Work shall be executed in conformity therewith and CONTRACTOR shall do no Work without proper Drawings and instructions.

(c) ARCHITECT will furnish necessary additional details to more fully explain the Work, which details shall be considered as part of the Contract Documents.

(d) Should any details be more elaborate, in the opinion of CONTRACTOR, than scale drawings and specifications warrant, CONTRACTOR shall give written notice thereof to ARCHITECT within five (5) Days of the receipt of same. In case no notice is given to ARCHITECT within five (5) Days, it will be assumed the details are a reasonable development of the scale drawings. In case notice is given, then the claim will be considered, and if found justified, ARCHITECT will either modify the Drawings or shall recommend to DISTRICT a change order for the extra Work involved.

(e) CONTRACTOR shall keep on the Project site one legible copy of all approved Drawings, setting Plans, schedules and Specifications. Said documents shall be available to ARCHITECT and to his representatives and all constituted authorities having jurisdiction.

(f) All parts of the described and shown construction shall be of the best quality of their respective kinds and CONTRACTOR is hereby advised to use all diligence to become fully involved as to the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from ARCHITECT such directions and/or Drawings as may be necessary for the proper performance of the Work.

(g) If it is found at any time, before or after completion of the Work, that CONTRACTOR has varied from the Drawings and/or Specifications in materials, quality, form or finish, or in the amount or value of the materials and labor used, ARCHITECT shall make a recommendation: (1) that all such improper Work should be removed, remade and replaced, and all Work disturbed by these changes be made good at CONTRACTOR's expense; or (2) that DISTRICT deduct from any amount due CONTRACTOR, the sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. ARCHITECT shall determine such difference in value. DISTRICT, at its option, may pursue either course.

Article 23. SHOP DRAWINGS

(a) CONTRACTOR shall check and verify all field measurements and shall submit with such promptness as to cause no delay in its own Work or in that of any other contractor, eight (8) copies checked and approved by CONTRACTOR of all shop or setting drawings, schedules and material lists required for the Work of the various trades. ARCHITECT shall review such schedules and drawings only for conformance with design concept of Project and compliance with information given in Contract Documents, and return either with no exception taken, rejected, or requires corrections with guidance as to the required corrections within ten (10) Days. CONTRACTOR shall make any corrections required by ARCHITECT, file three (3) corrected copies with ARCHITECT, and furnish such other copies as may be needed for construction. Professional services required for more than one (1) re-review of required submittals of shop

drawings, product data, or samples, are subject to charge to CONTRACTOR pursuant to Article 8. ARCHITECT's review shall neither be construed as a complete check which relieves CONTRACTOR, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents nor shall ARCHITECT's taking no exceptions of such drawings or schedules relieve CONTRACTOR from responsibility for deviations from Drawings or Specifications unless CONTRACTOR has in writing called ARCHITECT's attention to such deviations at time of submission and secured ARCHITECT's written approval. ARCHITECT's review shall not relieve CONTRACTOR or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, coordination of the differing Subcontractor trades and shop drawings and Work which is not indicated on the shop drawings at the time of submission of shop drawings. CONTRACTOR and Subcontractors shall be solely responsible for any quantities which may be shown on the submittals or Contract Documents.

(b) All submittals of shop drawings, catalog cuts, data sheets and material lists shall be complete and shall conform to Contract Drawings and Specifications.

(c) The term "shop drawing" as used herein shall be understood to include, but not be limited to, detail design, calculations, fabrication and installation drawings, lists, graphs, operating instructions, products, data and samples. Shop drawings shall be submitted at a time sufficiently early to allow review of the same by DSA, if required, and ARCHITECT, and to accommodate the rate of construction progress required under the Contract. CONTRACTOR will be required to pay ARCHITECT's reasonable and customary fees in order to expedite review of shop drawings and schedules which are not submitted in a timely fashion.

(d) All shop drawing submittals shall be accompanied by an accurately completed transmittal form using the form included as part of the Contract Documents. Any shop drawing submittal not accompanied on such a form, or where all applicable items on the form are not completed, will be returned for resubmittal. CONTRACTOR may authorize a material or equipment supplier to deal directly with ARCHITECT with regard to shop drawings, however ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with CONTRACTOR.

(e) Normally, a separate transmittal form shall be used for each specific item or class of material or equipment for which a submittal is required. Transmittal of shop drawings on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. At its option, CONTRACTOR or supplier may obtain from ARCHITECT quantities of the shop drawing transmittal form at reproduction cost.

(f) CONTRACTOR's Responsibility. CONTRACTOR shall obtain and shall submit all required shop drawings and samples with such promptness as to cause no delay in its own Work or in that of any other CONTRACTOR or Subcontractor but in no event later than thirty-five (35) calendar days after the Notice of Award, unless noted otherwise. No extensions of time will be granted to CONTRACTOR or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of DISTRICT, CONTRACTOR and ARCHITECT through CONTRACTOR. By submitting shop drawings, product data, and samples, CONTRACTOR, or submitting party (if other than CONTRACTOR),

represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, including the construction schedule. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 30, "Substitutions of Specified Items." Review by DISTRICT and ARCHITECT shall not relieve CONTRACTOR or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Any submission, which in ARCHITECT's opinion is incomplete, contains errors, or has been checked superficially, will be returned unreviewed by ARCHITECT for resubmission by CONTRACTOR.

(g) CONTRACTOR shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents and evidence CONTRACTOR's review through execution of the following stamp to be placed on each shop drawings:

“CONTRACTOR has reviewed and approved not only the field dimensions but the construction criteria and has also made written notation regarding any information in the shop drawings that does not conform to the Contract Documents. This shop drawing has been coordinated with all other shop drawings received to date by CONTRACTOR and this duty of coordination has not been delegated to Subcontractors, material suppliers, ARCHITECT or the engineers on this Project.

(h) Within ten (10) calendar days after receipt of said prints, ARCHITECT will return as approved or disapproved one or more prints of each drawing to CONTRACTOR with his or her comments noted thereon. If disapproved, CONTRACTOR shall make all necessary noted corrections and resubmit eight (8) corrected copies to ARCHITECT. It is considered reasonable that CONTRACTOR shall make a complete and acceptable submittal to ARCHITECT by the second submission of drawings. DISTRICT reserves the right to withhold funds due to CONTRACTOR to cover additional costs of ARCHITECT's review beyond the second submission.

(i) Fabrication of an item shall not be commenced before ARCHITECT has reviewed the pertinent shop drawings and returned copies to CONTRACTOR marked "Approved." Revisions indicated on shop drawings shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra Work. CONTRACTOR shall have no claim for damages or extension of time due to any delay resulting from CONTRACTOR's having to make the required revisions to shop drawings unless review by ARCHITECT of said drawings is delayed beyond a reasonable period of time and unless CONTRACTOR can establish that ARCHITECT's delay in review actually resulted in delay in CONTRACTOR's construction schedule. The review of such drawings by ARCHITECT shall in no way relieve CONTRACTOR of responsibility for errors or omissions contained therein, nor

shall such review operate to waive or modify any provision contained in the Contract Documents. Fabricating dimensions, quantities of material, applicable code requirements, and other Contract requirements shall be CONTRACTOR's responsibility.

(j) No Work represented by required shop drawings shall be purchased or commenced until the applicable submittal has been approved with a wet stamped copy of the approved shop drawings provided by CONTRACTOR to PROJECT INSPECTOR. The Work shall conform to the approved shop drawings and all other requirements of the Contract Documents. CONTRACTOR shall not proceed with any related Work which may be affected by the Work covered under shop drawings until the applicable shop drawings have been approved, particularly where piping, machinery, and equipment and the required arrangements and clearance are involved.

(k) Except where the preparation of a shop drawing is dependent upon the approval of a prior shop drawing, all shop drawings pertaining to the same class or portion of the Work shall be submitted simultaneously.

(l) Calculations of a structural nature must be approved by DSA. For those items indicated in the Contract Documents requiring a deferred approval by DSA, CONTRACTOR shall submit shop drawings with a manual signature of the professional engineer registered in the State of California responsible for preparing such shop drawings.

(m) CONTRACTOR SHALL HAVE NO CLAIM FOR DAMAGES OR EXTENSION OF TIME DUE TO ANY DELAY RESULTING FROM CONTRACTOR HAVING TO MAKE THE REQUIRED REVISIONS TO SHOP DRAWINGS UNLESS REVIEW BY ARCHITECT OF SAID DRAWINGS IS DELAYED BEYOND THE TIME PROVIDED HEREINBEFORE AND CONTRACTOR CAN ESTABLISH THAT ARCHITECT'S DELAY IN REVIEW ACTUALLY RESULTED IN A DELAY IN CONTRACTOR'S CONSTRUCTION SCHEDULE. CONTRACTOR SHALL NOT BE ENTITLED TO ANY CLAIM FOR DAMAGES RESULTING FROM DSA REVIEW EXTENDING BEYOND FIFTEEN (15) DAYS AFTER SUBMITTAL. HOWEVER, DISTRICT MAY CONSIDER A NO-COST EXTENSION OF TIME DUE TO ANY DELAY CAUSED BY DSA REVIEW.

Article 24. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by CONTRACTOR at its expense. Such Work shall be done by a land surveyor or civil engineer registered in the State of California. Any required "Record" Drawings of site development shall be prepared by the California State registered civil engineer or land surveyor.

Article 25. SOILS INVESTIGATION REPORT

(a) When required by the scope of the Project, DISTRICT will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by ARCHITECT or as required by local or state codes. Such services, with written reports and appropriate written professional recommendations, may include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

(b) When a soils investigation report obtained from test holes at the Project site is available from DISTRICT, such report shall not be a part of the Contract. Any information

obtained from such report or any information given on Drawings provided by DISTRICT as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of the Contract, and CONTRACTOR may not rely thereon. There is no warranty or guarantee, either express or implied that the conditions indicated in any such soils investigation report are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. CONTRACTOR is required to make a visual examination of the Project site and must make whatever tests CONTRACTOR deems appropriate to determine underground condition of soil. CONTRACTOR agrees that no claim against DISTRICT will be made by CONTRACTOR for damages and hereby waives any rights to damages in event that during progress of Work CONTRACTOR encounters subsurface or latent conditions at the Project site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature which differ materially from those ordinarily encountered in the Work of the character provided for in Plans and Specifications, except as provided in Article 37 entitled "Existing Utility Lines; Removal, Restoration."

Article 26. TESTS AND INSPECTIONS

(a) Tests, inspections and approvals of portions of Work required by the Contract Documents will comply with Title 24, California Code of Regulations, section 4-335 and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

(b) DISTRICT shall pay for all tests, subject to reimbursement by CONTRACTOR through deductive change order if occasioned for any of the following reasons: (1) when in the opinion of ARCHITECT or registered engineer, additional tests are required because of the manner in which CONTRACTOR executes its Work; (2) tests of material substituted for previously accepted materials; (3) retests made necessary by the failure of material to comply with the requirements of the Contract Documents; and (4) load tests necessary because certain portions of the structure have not fully met Specifications or plan requirements. CONTRACTOR shall also be responsible for all costs of re-inspection and re-approval, including, but not limited to, compensation for ARCHITECT's services and expenses.

(c) If the Contract Documents, DISTRICT's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, CONTRACTOR shall give notice as required by such authority of its readiness for observation or inspection. CONTRACTOR shall notify DISTRICT's PROJECT INSPECTOR not less than two (2) working days prior to any required observation or inspection so that PROJECT INSPECTOR may arrange for same. Required certificates of inspection shall be secured by CONTRACTOR. Observations by DISTRICT's PROJECT INSPECTOR shall be promptly made, and where practicable, at source of supply. If any Work should be covered up without approval or consent of DISTRICT's PROJECT INSPECTOR, it must be uncovered for examination and satisfactorily reconstructed at CONTRACTOR's expense in compliance with the Contract Documents.

The Division of the State Architect, Office of Regulation Services will provide field supervision per Section 4-334 Part I, Title 24, CCR. CONTRACTOR shall verify with the General Inspector that DSA has been notified prior to start of construction in compliance with Section 4-331.

(d) In the event CONTRACTOR requests any test or inspection for the Project and is not completely ready for the inspection, CONTRACTOR shall be invoiced by DISTRICT for all

costs and expenses resulting from that testing or inspection, including, but not limited to, PROJECT INSPECTOR's and ARCHITECT's fees and expenses, and the amount of the invoice shall be deducted from the next progress payment.

Article 27. TRENCHES

(a) As required by Labor Code section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five feet or more in depth, CONTRACTOR shall, in advance of excavation, submit to DISTRICT or a registered civil or structural engineer employed by DISTRICT a detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for Worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer, employed by CONTRACTOR, and all costs therefore shall be included in the price named in the Contract for completion of the Work as set forth in the Contract Documents. Nothing in this Article shall be deemed to allow the use of a system less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by DISTRICT or the person to whom authority to accept has been delegated by DISTRICT. Nothing in this Article shall be construed to impose tort liability on DISTRICT, ARCHITECT, PROJECT INSPECTOR, nor any of their officers, agents, representatives, or employees.

(b) As required by Public Contract Code section 7104, if the Contract involves the digging of trenches or excavations that extend deeper than four feet below the surface, the following shall apply:

(1) Immediately upon discovery, CONTRACTOR shall promptly, and before the following conditions are disturbed, notify DISTRICT, by telephone and in writing, of any:

(i) Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(ii) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids.

(iii) Unknown physical conditions at the Project site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

(2) DISTRICT shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in CONTRACTOR's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract Documents.

(3) In the event a dispute arises between DISTRICT and CONTRACTOR, whether the conditions materially differ or involve hazardous waste, cause a decrease or increase in CONTRACTOR's cost of, or time required for, performance of any part of the Work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. CONTRACTOR

shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

(4) Failure by CONTRACTOR to strictly comply with the requirements of this Article concerning the timing and content of any required notice or request for adjustment to Contract Price or Contract Time based on differing Project site conditions shall be deemed a waiver of any right by CONTRACTOR for an adjustment to the Contract Price or Contract Time by reason of such conditions.

(c) CONTRACTOR shall not commence any excavation Work until it has secured all necessary permits including the required CAL-OSHA excavation/shoring permit pursuant to Labor Code section 6500. Any permit shall be prominently displayed on the Project site prior to the commencement of any excavation.

(d) DISTRICT reserves the right to terminate the Contract should DISTRICT determine not to proceed because of any condition described in (i), (ii), (iii) above. CONTRACTOR shall receive payment for all Work performed to the date of termination.

Article 28. DOCUMENTS ON WORK

CONTRACTOR shall keep on the job site at all times one legible copy of all Contract Documents, including addenda and change orders, Uniform Building Code, and Titles 19, 21, 24 of the California Code of Regulations, all approved Drawings, Plans, schedules and Specifications, all codes and documents referred to in the Specifications and made a part thereof, and a copy of all manufacturers safety data sheets for hazardous products being used on the Project. Said documents shall be kept in good order, marked currently to record changes and selections made during construction, shall be made available to ARCHITECT, ARCHITECT's representatives, DISTRICT's PROJECT INSPECTOR, and all authorities having jurisdiction, and shall be delivered to ARCHITECT for delivery to DISTRICT upon completion of the Work. CONTRACTOR shall be acquainted with and comply with the provisions of said Titles as they relate to the Project. (See particularly the duties of contractor, Part 1, Title 24, California Code of Regulations. Sec. 4-343.) CONTRACTOR shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on the Project, particularly Titles 8 and 17.

Article 29. STATE AUDIT

(a) Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records and files of DISTRICT, CONTRACTOR, or any Subcontractor connected with the performance of the Contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the State Auditor of the State of California, at the request of DISTRICT or as part of any audit of DISTRICT, for a period of three (3) years after final payment is made under the Contract. CONTRACTOR shall preserve and cause to be preserved such books, records and files for the audit period.

(b) In addition to the State Auditor rights above, DISTRICT shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of CONTRACTOR (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and

completeness of the cost or pricing data at no additional cost to DISTRICT for a period of four (4) years after final payment.

(c) CONTRACTOR shall keep, and shall require provisions to be included in all contracts entered into with Subcontractors requiring Subcontractors to keep, full and detailed books, records, information, materials and data, of every kind and character (hard copy, as well as computer readable data if it exists), that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, Work or Contract, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda; accounting records; job cost reports; job cost files (including complete documentation of negotiated settlements); backcharges; general ledgers; documentation of cash and trade discounts earned; insurance rebates and dividends, and other documents relating in any way to claims, charges or time extensions asserted by CONTRACTOR or any of the Subcontractors.

(d) CONTRACTOR shall allow, and shall require provisions to be included in all contracts entered into by Subcontractors allowing, DISTRICT and its authorized representative(s), auditors, attorneys and accountants, upon twenty-four (24) hours' notice to CONTRACTOR, full access to inspect and copy all its aforestated books and records at a location within the Southern California area.

(e) CONTRACTOR's compliance with this Article shall be a condition precedent to maintenance of any judicial or extra-judicial action by CONTRACTOR against DISTRICT. In addition to and without limitation upon DISTRICT's other rights and remedies for breach, including any other provisions for withholding set forth in the Contract Documents, DISTRICT shall have the right exercised in its sole discretion, to withhold from any payment to CONTRACTOR due under a current application for payment an additional sum of up to ten percent (10%) of the total amount set forth in such application for payment, until CONTRACTOR and Subcontractors have complied with any outstanding and unsatisfied request by DISTRICT under this Article. Upon compliance with this Article, any such monies withheld shall be released to CONTRACTOR.

Article 30. SUBSTITUTIONS FOR SPECIFIED ITEMS

(a) Whenever in Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by the words "or equal" and CONTRACTOR may, under the provisions of Public Contract Code section 3400, unless otherwise stated, offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified. If material, process or article offered by CONTRACTOR is not, in opinion of ARCHITECT or DISTRICT, substantially equal or better in every respect to that specified, then CONTRACTOR shall furnish material, process, or article specified. No substitutions shall be made until approved, in writing, by ARCHITECT and DISTRICT. Substitutions shall be considered as a change order and be approved by DSA prior to fabrication or use. Burden of proof as to equality of any material, process, or article shall rest with CONTRACTOR. CONTRACTOR shall submit request together with complete manufacturer's catalogs, brochures, drawings,

samples, certified copies of test reports and other substantiating data for substitution of an “or equal” item not later than 4:30 p.m. on the second business day following the bid deadline. In addition to the substantiating information specified in paragraph (c) of this Article, CONTRACTOR, as part of its request, shall state the amount of credit to be extended to DISTRICT, if the substitute material is accepted. Provision authorizing submission of “or equal” justification data shall not in any way authorize an extension of time for performance of the Contract.

(b) The awarding of the Contract to a bidder who has submitted the substantiating data required by this Article to request the substitution of an “equal” item shall not constitute an admission by DISTRICT of the equality of that product. It is expressly understood and agreed by the bidder that, in so awarding the Contract, DISTRICT reserves the right to reject any such proposed substituted product. It is further expressly understood and agreed by bidder that in the event DISTRICT rejects a proposed “equal” product, the bidder will then supply either a product designated by brand name in the Specifications or a substitute therefore which meets with the approval of DISTRICT.

(c) With respect to all proposed substitutions of “equal” products, materials or equipment, the bidder shall submit all pertinent and appropriate data substantiating its request for substitutions not later than 4:30 p.m. on the second business day following the bid deadline. In this regard, bidders should note that neither DISTRICT nor ARCHITECT is responsible for locating or securing any information which is not included in such substantiating data. A substitution request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related Work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to DISTRICT; will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and will require no change of the construction schedule. Bidders should note that the burden of proof as to the quality or suitability of proposed alternative articles shall be borne by the bidder. CONTRACTOR shall furnish with its substitution request complete manufacturer’s catalogs, brochures, all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist ARCHITECT in determining whether the proposed substitution is acceptable. ARCHITECT shall review the technical and aesthetic qualities of materials specified, and in no case will ARCHITECT accept a substitution of a product with a lower cost which does not extend credit to DISTRICT. ARCHITECT or his or her authorized representative shall be the sole judge as to the quality and suitability of proposed alternative articles or materials, and decisions of ARCHITECT, or that of his or her authorized representative, shall be final and conclusive. Unless extended by the mutual agreement of the parties, ARCHITECT or his or her authorized representative shall notify the successful bidder of the decision concerning the proposed substitution of “equal” items within thirty (30) Days after the submission by the bidder of the bidder’s substantiating data. Also such decisions by ARCHITECT or his or her authorized representative shall be in writing, and no proposed alternative product shall be deemed approved unless ARCHITECT or his or her authorized representative has so indicated in writing. ARCHITECT may condition its approval of any substitution upon delivery to ARCHITECT of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to approval by DSA or any other governmental agency having jurisdiction shall be on CONTRACTOR.

(d) The time limitations contained in this Article shall be complied with strictly, and in no case will an extension of time for completion be granted because of CONTRACTOR's failure to request the substitution of an alternative item at the times and in the manner set forth herein.

(e) CONTRACTOR is responsible for all deferred approval requirements set forth in the Contract Documents. CONTRACTOR is responsible to comply with all laws, building codes, and regulations necessary to obtain all necessary approvals, including those required from DSA and the State Fire Marshall. CONTRACTOR shall not be granted an extension of time for failure to obtain necessary approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). If CONTRACTOR fails to include deferred-approval items in its schedule which results in a critical path delay, then CONTRACTOR shall be subject to the assessment of liquidated damages. Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to DSA's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

(f) In the event CONTRACTOR furnishes material, process, or article more expensive than that specified, difference in cost of such material, process, or article so furnished shall be borne by CONTRACTOR.

(g) By making requests for substitutions, CONTRACTOR:

(1) represents that CONTRACTOR has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

(2) represents that CONTRACTOR will provide the same warranty for the substitution that CONTRACTOR would for that specified;

(3) certifies that the cost data presented is complete and includes all related costs under the Contract except ARCHITECT's redesign costs, which will be the responsibility of CONTRACTOR, and waives all claims for additional costs related to the substitution which subsequently become apparent;

(4) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

(h) If ARCHITECT and DISTRICT accept a proposed substitution, CONTRACTOR agrees to pay for all engineering and design services, including, without limitation, compensation to ARCHITECT and affected engineers for their required time to process such substitution through DSA, if required, and to make all changes and adjustments in materials or the Work of all trades directly or indirectly affected by the substituted item or items at no cost to DISTRICT.

(i) If CONTRACTOR fails to make a request for substitutions for products, prior to the submission of its bid, and such products subsequently become commercially unavailable, CONTRACTOR may request a substitution for such commercially unavailable item. The decision to grant this request is solely at DISTRICT's discretion. The written approval of DISTRICT, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. DISTRICT may condition its approval of the substitution upon the delivery to DISTRICT of an extended warranty or other assurances of adequate performance of the substitution as well as an equitable deduction in the Contract Price should the substituted item cost less than the Specified Item. All risks of delay due to approval of a requested substitution by DSA, or any other governmental agency having jurisdiction, shall be on the requesting party. All

additional costs, all procurement and construction delays, and all costs for review by ARCHITECT or its consultants shall be the responsibility of CONTRACTOR and will be deducted from CONTRACTOR's pay request.

Article 31. SAMPLES

(a) CONTRACTOR shall furnish for approval, within thirty-five (35) Days following award of Contract, all samples as required in the Specifications together with catalogs and supporting data required by ARCHITECT. This provision shall not authorize any extension of time for performance of the Contract. ARCHITECT shall review such samples, as to conformance with design concept of Work and for compliance with information given in Contract Documents and approve or disapprove same within twenty (20) working days from receipt of same.

(b) Unless specified otherwise, sampling, preparation of samples and tests shall be in accordance with the latest standards of the American Society for Testing and Materials.

(c) Samples of materials and/or articles shall, upon demand of ARCHITECT or DISTRICT, be submitted for tests or examinations and consideration before incorporation of same in Work is started. CONTRACTOR shall be solely responsible for delays due to samples not being submitted in time to allow for tests. Acceptance or rejection will be expressed in writing. Work shall be equal to approved samples in every respect. Samples which are of value after testing will remain the property of CONTRACTOR.

Article 32. PROGRESS SCHEDULE

(a) Within seven (7) calendar days after being awarded the Contract and prior to the processing of any Contractor Payment Request (including a Contractor Payment Request for mobilization), CONTRACTOR shall prepare a critical path progress schedule that will show, in graphic form, CONTRACTOR's plan for timely completion of the Work, and submit same to ARCHITECT for approval by ARCHITECT and DISTRICT (the "Baseline Project Schedule"). The Baseline Project Schedule shall include, at a minimum, the items of data listed in paragraph (b) below and shall provide for an orderly progression of the Work to completion within the specified milestones and the Contract Time. Approval of the Baseline Project Schedule by DISTRICT and ARCHITECT shall neither impose on DISTRICT or ARCHITECT responsibility for the progress scheduling of the Work nor relieve CONTRACTOR from full responsibility therefor. The Baseline Project Schedule will separately identify those milestones or events that must be completed before other portions of the Work can be accomplished. Additionally, CONTRACTOR agrees that the Baseline Project Schedule shall plot and incorporate all milestone activities and dates deemed "critical" or "constraining factors" by DISTRICT and furnished by DISTRICT. Should DISTRICT not provide CONTRACTOR with such milestone activities or dates, then the start and finish dates shall be considered the main constraining elements; however, DISTRICT reserves the full right to reject or approve intermediate schedule development. CONTRACTOR will exchange scheduling information with Subcontractors and suppliers, and will update the Baseline Project Schedule periodically, but at a minimum monthly, to show critical path tasks and tasks which are completed to date. The updated Baseline Project Schedule must include a section for Subcontractors' and suppliers' signature to evidence that CONTRACTOR exchanged scheduling information with the pertinent Subcontractor and/or supplier. The updated Baseline Project Schedule shall also include a narrative report by CONTRACTOR discussing the delays since the last update to the schedule and the impacts of such delays. Failure to submit an updated Baseline Project Schedule will be cause for delaying approval of CONTRACTOR's

application for payment. CONTRACTOR will order work, equipment and materials with sufficient lead time to avoid interruption of the Work. Upon request of ARCHITECT or DISTRICT, CONTRACTOR will provide documents and justifications for any schedule changes or substantiate allocation of schedule changes to a change order or other factors.

(b) The completed Baseline Project Schedule and all required updates shall include, at a minimum, the following items of data:

(1) Critical path: the critical path schedule must denote all activities that are critical and all activities that are sub-critical and must show graphically all critical paths on the network diagram;

(2) Early and late dates for start and completion of each activity on the critical path schedule;

(3) Float for each activity;

(4) Start and finish dates of activities for the submittal, approval, manufacture and/or fabrication and delivery of critical and non-critical material, equipment and furnishings. CONTRACTOR shall provide written evidence from the manufacturer, supplier or fabricator that the dates in the Baseline Project Schedule can be met for the manufacture, fabrication and delivery of the material, equipment and furnishings.

(5) DISTRICT-designated milestone activities;

(6) Submission dates for all submittals and shop drawings (which may be provided on a separate schedule of submittals); and

(7) All underground Work.

(c) DISTRICT and ARCHITECT shall provide CONTRACTOR with their approval or disapproval of the Baseline Project Schedule promptly after receipt of the same. If the Baseline Project Schedule is not approved, CONTRACTOR shall revise the Baseline Project Schedule as necessary based on DISTRICT's and ARCHITECT's comments and resubmit to DISTRICT and ARCHITECT a revised Baseline Project Schedule. No progress payments shall be processed or paid until CONTRACTOR's Baseline Project Schedule has been properly prepared and submitted by CONTRACTOR and approved by DISTRICT and ARCHITECT. DISTRICT's and ARCHITECT's approval of the Baseline Project Schedule shall not mean that DISTRICT and ARCHITECT approve, accept, or agree with the specific assumptions and data of the Baseline Project Schedule, including, but not limited to, duration and sequence of activities, resource availability, or scheduled start and finish dates of activities, milestones, phases and the Project. Delay in approval or disapproval of the Baseline Project Schedule shall not result in an extension of the completion date unless it is otherwise requested and approved by DISTRICT pursuant to paragraph (e) of this Article.

(d) CONTRACTOR shall submit with each progress payment request as provided in Article 59, monthly reports to DISTRICT and ARCHITECT indicating the current status of Work and incorporating into such monthly Baseline Project Schedule all Change Orders. The reports may include proposed adjustments in CONTRACTOR's Baseline Project Schedule, and, additionally shall indicate any updated sequences of the Work as may be necessary to meet specified milestone and final completion dates. No changes in any activity or price allocations shall be permitted except by, and in accordance with, the Change Order provisions set forth in

Article 60 hereof. Acceptance of the proposed adjustments shall be at the sole discretion of DISTRICT and ARCHITECT. If the proposed adjustments are accepted, CONTRACTOR shall, within ten (10) Days, submit to DISTRICT and ARCHITECT for approval (in their sole discretion) an updated CONTRACTOR's Baseline Project Schedule indicating the accepted adjustments.

Without limitation to any of CONTRACTOR's other obligations under the Contract Documents or applicable laws, CONTRACTOR shall maintain at the Project site, be acquainted with and comply with the provisions of the California Code of Regulations as they relate to the Project, including, without limitation, Titles 8, 17 and Pat 1, Title 24, California Code of Regulations. A representative of CONTRACTOR shall, in accordance with the provisions of Part 1, Title 24 of the California Code of Regulations, prepare and file periodic and final verified reports on forms prescribed by DSA averring that of his/her own personal knowledge (as defined in California Education Code 17309) the Work performed, during the period of time covered by the report, has been performed, and materials have been used and installed in every material respect in compliance with the Drawings and Specifications approved by DSA for the Project, together with such other detailed statements of fact as DSA may require.

Under no circumstances shall information contained in CONTRACTOR's daily reports, monthly reports or job meeting minutes relieve CONTRACTOR of its obligations to comply with, serve as a substitute for, nor constitute a waiver by DISTRICT of its right to insist upon, CONTRACTOR's compliance with the provisions of the Contract Documents relative to timely and complete notice to DISTRICT of changes, delays, claims, or other matters for which written notice is required by the Contract Documents.

(e) If CONTRACTOR submits a request for an extension of time, CONTRACTOR shall also submit an analysis of the Baseline Project Schedule, which demonstrates the cause for the delay, the length of the delay, and an explanation of why CONTRACTOR believes it is entitled to the time extension. CONTRACTOR shall also submit documentation, data and a delay analysis showing that the delay could not be avoided or mitigated by revising the Baseline Project Schedule. Failure to submit such analyses will result in CONTRACTOR waiving his/her right to obtain any extension of time.

(f) IF CONTRACTOR, AT ITS DISCRETION, SUBMITS A REVISED SCHEDULE SHOWING AN EARLIER COMPLETION DATE FOR THE PROJECT, DISTRICT'S ACCEPTANCE OF THIS REVISED SCHEDULE SHALL NOT ENTITLE CONTRACTOR TO ANY CLAIM OF DAMAGES FOR DELAY OR ACCELERATED WORK EFFORT DUE TO ANY SUCH REVISED SCHEDULE. CONTRACTOR shall not submit a schedule showing early completion without indicating float time through the date set by DISTRICT for Project completion. CONTRACTOR's schedule shall account for all Days past early completion as float which belongs to the Project. Usage of float shall not entitle CONTRACTOR to any delay or damages due to delay.

(g) In bidding the Project, CONTRACTOR expressly agrees and understands that the following principles will be controlling and shall govern DISTRICT's evaluation and interpretation of the Baseline Project Schedule and, together with the terms and provisions of Article 60 hereof, shall be applied when determining the potential impact of, and monetary costs (if any) resulting from, Project delays:

(1) No extended overhead, general conditions money, impact costs, out-of-sequence money or any other type of compensation, by any name or characterization, shall be paid

to CONTRACTOR for any delay to any activity not designated as a critical path item on the latest approved Baseline Project Schedule, and if any delay occurs to any critical path item, such compensation shall only be payable to CONTRACTOR in accordance with the terms and provisions of Article 60 below.

(2) Neither DISTRICT nor CONTRACTOR has the right to the float. If CONTRACTOR's construction progress is ahead of the agreed-upon baseline time schedule and a delay is encountered (even if such delay is a DISTRICT-caused delay), no compensation of any type will be due CONTRACTOR and DISTRICT may claim float days equal to the delay until such float days are exhausted.

(h) CONTRACTOR shall not be granted an extension of time for failure to obtain necessary approvals or deferral approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). CONTRACTOR shall schedule all deferred approval items and shop drawings in its progress schedule. If CONTRACTOR fails to include deferred approval items and shop drawings in its schedule which results in a critical path delay, then CONTRACTOR shall be subject to the assessment of liquidated damages.

(i) CONTRACTOR shall conduct a weekly meeting with DISTRICT and ARCHITECT to discuss the status of the Project. The Agenda for the meeting shall include, but not be limited to the following topics:

- (1) Contractual deadline status, including missed and future deadlines;
- (2) Document or report submittals;
- (3) Outstanding Change Order proposals, including impact to the Baseline Project Schedule;
- (4) CONTRACTOR's lack of compliance with Contract Documents
- (5) Status of Baseline Project Schedule; and
- (6) The past week's Daily Work Force Report conducted by the INSPECTOR.

(j) CONTRACTOR shall submit the Baseline Project Schedule to ARCHITECT and DISTRICT in both electronic and paper format. Such Baseline Project Schedule shall be updated on a monthly basis, or as otherwise required by ARCHITECT or DISTRICT or as a result of a Change Order or CONTRACTOR claim.

Article 33. MATERIALS AND WORK

(a) Except as otherwise specifically stated in the Contract, CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, construction equipment and machinery, transportation, superintendence, temporary constructions of every nature, and all other services, facilities and permits of every nature whatsoever necessary to execute and complete the Contract within specified time.

(b) Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality. CONTRACTOR shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) Days of a written request by DISTRICT, including furnishing DISTRICT with bona fide copies of invoices for materials or services provided on the

Project. All labor shall be performed by Workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other school construction.

(c) Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required. CONTRACTOR shall be entirely responsible for damage or loss by weather or other causes to materials or Work under the Contract. In the event that DISTRICT gives direction as to the location for storage or protection of materials or equipment, CONTRACTOR shall nonetheless remain solely responsible for its safe and secure storage and protection.

(d) CONTRACTOR shall, after issuance of the Notice to Proceed by DISTRICT place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. CONTRACTOR shall, upon demand from ARCHITECT, furnish to ARCHITECT documentary evidence showing that orders have been placed.

(e) DISTRICT reserves the right, for any neglect in not complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed by the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by CONTRACTOR.

(f) No material, supplies, or equipment for Work under the Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. CONTRACTOR warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to DISTRICT free from any claims, liens, or charges. CONTRACTOR further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by the Contract shall have any right to place a lien upon the premises or any improvement or appurtenance thereon, except that CONTRACTOR may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, CONTRACTOR shall advise DISTRICT as to owner thereof within five (5) Days of such installation, in writing, prior to making the installation.

(g) Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due CONTRACTOR in hands of DISTRICT, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for Work when no formal contract is entered into for such material.

(h) Materials shall be stored on the premises in such manner so as not to interfere with the Work and so that no portion of the structure shall be overloaded.

(i) Materials or Work required or necessary to be tested shall be tested under supervision of, as directed by, and at such places as may be convenient to ARCHITECT. The required testing of all structural materials shall be performed by an approved testing laboratory.

(j) Consistent with Article 54, no materials furnished, installed or incorporated in the Work shall contain asbestos. Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, amosite, anthophyllite, tremolite, and actinolite. Any or all materials containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. All Work or materials installed with asbestos-containing equipment will be immediately rejected and the Work will be removed at no additional cost to DISTRICT. If CONTRACTOR believes a specified material contains asbestos, it shall be the responsibility of CONTRACTOR to notify DISTRICT so that an appropriate substitute can be made in a timely manner so as not to delay the Work. Upon completion of the Work, CONTRACTOR shall submit a certificate stating that, to the best of its knowledge, no materials containing asbestos were used in the Work, products, items, or equipment. Forms for this purpose are included within the Contract Documents.

(k) If asbestos is found to exist in any of the materials, products, items or equipment provided as part of the Work, CONTRACTOR shall be financially responsible for all costs resulting from removal in accordance with a DISTRICT-approved method and replacement to an asbestos free condition. This financial responsibility of CONTRACTOR shall not terminate with the end of the one year warranty period, but shall continue through the life of the facility.

(l) CONTRACTOR shall ensure that material safety data sheets are available in a readily accessible place at the Project site for any material requiring a material safety data sheet per the federal “hazard communication” standard, or employee’s right-to-know law. CONTRACTOR shall also ensure proper labeling on any substance brought into the jobsite, and that any person working with the material, or within the general areas of the material, is informed of the hazards of the substance and follows proper handling and protection procedures. CONTRACTOR shall comply with the provisions of California Health and Safety Code section 25249 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. CONTRACTOR agrees to familiarize itself with the provisions of this section, to comply fully with its requirements.

(m) The title to new materials and/or equipment for the Work of the Contract and attendant liability for its protection and safety, shall remain with CONTRACTOR until incorporated in the Work of the Contract and accepted by DISTRICT and ARCHITECT; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of the Contract; and CONTRACTOR shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to DISTRICT or its authorized representative.

(n) CONTRACTOR shall be responsible for the installation of 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 is subject to the control of the Environmental Protection Agency’s Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in DISTRICT’s reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at DISTRICT’s request, CONTRACTOR shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall CONTRACTOR have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling

or the making of such arrangements. These controls shall be implemented during site preparation and construction.

(o) CONTRACTOR shall assume complete liability and responsibility for all property, materials, equipment or other items provided by DISTRICT to CONTRACTOR unless otherwise provided in the Contract Documents.

Article 34. INTEGRATION OF WORK

(a) CONTRACTOR shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, and fit it to receive or be received by Work of other contractors showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall make good after them as ARCHITECT may direct. CONTRACTOR shall perform all layouts for new Work installed and shall ensure all installed Work is plumb and true.

(b) All costs caused by defective or ill-timed Work shall be borne by CONTRACTOR.

(c) CONTRACTOR shall not endanger any Work by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other contractor save with consent of ARCHITECT. New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of ARCHITECT. Work done contrary to such authority is at CONTRACTOR's risk and subject to replacement at its own expense without reimbursement under the Contract. Schedule delays resulting from Agency approvals for unauthorized Work shall be CONTRACTOR's responsibility.

(d) When modifying existing Work or installing new Work adjacent to existing Work, CONTRACTOR shall match, as closely as conditions of site and materials will allow, the finishes, textures, and colors of the original Work, refinishing existing Work as required, at no additional cost to DISTRICT. CONTRACTOR shall be solely responsible for protecting existing Work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

(e) CONTRACTOR is aware that the Project may be split into several phases. If the Project is split into phases, then CONTRACTOR has made allowances for any delays or damages which may arise from coordination with contractors for other phases. If any delays should arise from a contractor working on a different phase, CONTRACTOR's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not DISTRICT. CONTRACTOR shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

(f) Permission to patch any areas or items of the Work shall not constitute a waiver of DISTRICT's, or ARCHITECT's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of ARCHITECT or DISTRICT, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

Article 35. OBTAINING OF PERMITS, LICENSES AND EASEMENTS

(a) All permits, licenses and certificates necessary for prosecution of Work shall be secured and paid for by CONTRACTOR, unless otherwise specified in the Contract Documents. All such permits, licenses, and certificates shall be delivered to ARCHITECT before demand is

made for the certificate of final payment. CONTRACTOR shall maintain, and shall require Subcontractors to maintain, contractor's licenses in effect as required by law. CONTRACTOR shall initiate and pursue the application process for obtaining all permits and licenses (including all required DISTRICT signatures) necessary for the prosecution of the Work, including utility fees.

(b) DISTRICT shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract Documents.

Article 36. SURVEYS

Surveys to determine location of property lines and corners will be supplied by DISTRICT. Surveys to determine locations of construction, grading, and site work, shall be provided by CONTRACTOR.

Article 37. EXISTING UTILITY LINES; REMOVAL, RESTORATION

(a) Pursuant to Government Code section 4215, DISTRICT assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction under the Contract with respect to any such utility facilities which are not identified in the Plans and Specifications. CONTRACTOR shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of DISTRICT to provide for removal or relocation of such utility facilities. DISTRICT shall compensate CONTRACTOR for the costs of locating, repairing damage not due to the failure of CONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such Work.

(b) This Article shall not be construed to preclude assessment against CONTRACTOR for any other delays in completion of the Work. Nothing in this Article shall be deemed to require DISTRICT to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, manholes, or similar appurtenances on or adjacent to the site of the construction.

(c) 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. It shall be CONTRACTOR's sole responsibility to delineate any area to be excavated before notifying the appropriate regional notification center as well as notifying all other public and private utilities serving the site prior to commencing Work. In accordance with Government Code section 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) calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known or reasonably should be known, to contain subsurface installations and obtain an inquiry identification number from the regional notification center. The date of the notification shall not count as part of the two (2) working day notice. No excavation shall be commenced and carried out by CONTRACTOR unless such an inquiry identification number has been assigned to CONTRACTOR or any Subcontractor of CONTRACTOR and DISTRICT has been given the identification number by CONTRACTOR. Any damages arising from failure to make appropriate

regional notification shall be at the sole risk of CONTRACTOR. Any delays caused by failure to make appropriate regional notification shall be at the sole risk of CONTRACTOR and shall not be considered for extension of time pursuant to Article 64.

(d) If CONTRACTOR, while performing Work under the Contract, discovers utility facilities not identified by DISTRICT in the Contract Plans or Specifications, CONTRACTOR shall immediately notify DISTRICT and the utility in writing. If CONTRACTOR fails to notify DISTRICT within forty eight (48) hours after discovery of any utility facilities not identified by DISTRICT in the Contract Documents, CONTRACTOR waives all rights to be compensated for any extra Work or damage resulting from such discovered utilities.

(e) CONTRACTOR shall coordinate its Work with all utilities, including, but not limited to electricity, water, gas and telephone and meet with said utilities prior to the start of any Work.

Article 38. WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS

(a) CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work as indicated and specified, including but not limited to the appropriate statutes and Code of Regulation sections. If CONTRACTOR observes that Drawings and Specifications are at variance therewith, or should CONTRACTOR become aware of the development of conditions not covered by the Contract Documents which will result in finished Work being at variance therewith, CONTRACTOR shall promptly notify ARCHITECT in writing and any changes deemed necessary by ARCHITECT shall be adjusted as provided in Contract for changes in Work. If CONTRACTOR performs any Work which it knew, or through exercise of reasonable care should have known to be contrary to such laws, ordinances, rules or regulations, and without such notice to ARCHITECT, CONTRACTOR shall bear all costs arising therefrom. Where Specifications or Drawings state that materials, processes, or procedures must be approved by DSA, State Fire Marshall, or other body or agency, CONTRACTOR shall be responsible for satisfying requirements of such bodies or agencies.

(b) Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. section 12101 et seq.). The Work, including any installations of equipment and other devices, shall be performed in compliance with ADA regulations.

Article 39. ACCESS TO WORK

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

Article 40. PAYMENTS BY CONTRACTOR

(a) CONTRACTOR shall pay:

(1) For all transportation and utility services not later than the 20th Day of the calendar month following that in which such services are rendered;

(2) For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 20th Day of the calendar month following that in which such materials, tools, and equipment are delivered at site of Project and balance of cost thereof not later than the 30th Day following completion of that part of Work in or on which such materials, tools, and equipment are incorporated or used; and

(3) To each of its Subcontractors, not later than the 7th Day following each payment to CONTRACTOR; the respective amounts allowed CONTRACTOR on account of Work performed by respective Subcontractor to the extent of such Subcontractor's interest therein.

(4) Subject to paragraph (b) below, within seven (7) Days from the time that all or any portion of the retention proceeds are received by CONTRACTOR from DISTRICT, to each of its Subcontractors from whom retention has been withheld, each Subcontractor's share of the retention received. However, if a retention payment received by CONTRACTOR is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor, if the payment is consistent with the terms of the subcontract.

(b) CONTRACTOR may withhold from a Subcontractor its portion of the retention proceeds if a bona fide dispute exists between Subcontractor and CONTRACTOR. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

Article 41. FIELD OFFICE AND STORAGE FACILITIES

DISTRICT shall provide and maintain a field office at [REDACTED] of not less than 400 square feet in support of the Project for DISTRICT, PROJECT INSPECTOR, DISTRICT's LABOR COMPLIANCE THIRD PARTY PROVIDER, if applicable, and ARCHITECT's use until removal is authorized by DISTRICT. DISTRICT shall further provide a bookcase and plan rack for storage of Contract Documents and reference materials, a 3' x 5' desk, three (3) office chairs, a 3' x 6' reference table and stool, one (1) four drawer legal file cabinet, a telephone with separate line and answering machine, lighting, heating and cooling. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock operable windows. Doors shall have a key-type lock or padlock hasp. CONTRACTOR shall maintain a similar on-site facility for his/her use.

Article 42. UTILITIES

(a) In the event DISTRICT provides a field office, all utilities, including but not limited to electricity, water, gas, and telephone reasonably necessary, directly related to and used on Work shall be furnished and paid for by DISTRICT. DISTRICT shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points. Upon completion of Work, DISTRICT shall remove all temporary distribution systems. DISTRICT will maintain telephone service for use of PROJECT INSPECTOR and ARCHITECT.

(b) Should the Contract involve Work at an operating school, CONTRACTOR shall coordinate such Work so that the fire alarm, bell passing, security alarm and communications systems are in operable condition at all times when school is in session.

(c) When it is necessary to interrupt any existing utility service to make connections, a minimum of forty-eight (48) hours advance notice shall be given DISTRICT and ARCHITECT. Interruptions in utility services shall be of the shortest possible duration for the Work at hand and shall be approved by ARCHITECT.

(d) In the event any utility service is interrupted without the required forty-eight (48) hours' notice, then CONTRACTOR shall be financially liable for all damage suffered by DISTRICT due to the unauthorized interruption.

Article 43. SANITARY FACILITIES

DISTRICT shall provide sanitary temporary toilet facilities in no fewer numbers than required by law and such additional facilities as may be directed by PROJECT INSPECTOR for the use of all Workers. The facilities shall be maintained in a sanitary condition at all times and shall be left at the Project site until removal is directed by PROJECT INSPECTOR. Use of existing or permanent toilet facilities in the Work area under construction shall not be permitted except by consent of DISTRICT.

Article 44. CLEANING UP

(a) CONTRACTOR shall, at all times, keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment caused by the Work. CONTRACTOR shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner and shall maintain the structures in a clean and orderly condition at all times until acceptance of the Project by DISTRICT. All rubbish and debris resulting from the Work, crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each work day. CONTRACTOR shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each Day. CONTRACTOR shall be responsible for clearing away all trash, materials and equipment from the walls, existing drains and storm drains and new Work surfaces when a final inspection is made as well as all trash from the area to be inspected.

(b) In addition to the general cleaning, the following special cleaning shall be done at the completion of the Work in accordance with the Specifications, including, but not limited to:

(1) Clean interior and exterior of building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces, drains and storm drains are free from foreign material or discoloration.

(2) Remove putty stains from glazing, then wash and polish glazing.

(3) Remove stains, dust, dirt, plaster and paint.

(4) Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.

(5) Clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment.

(6) Remove spots, soil, plaster and paint from tile work, and wash tile. Polish floors and waxed surfaces.

(7) Vacuum-clean carpeted surfaces.

(8) Remove temporary utilities, fencing, barricades, planking and construction toilet and similar temporary facilities from Project site.

(c) If CONTRACTOR fails to clean up as required by the Contract Documents, DISTRICT may do so and the cost thereof shall be invoiced to CONTRACTOR and deducted from the next progress payment.

Article 45. PATENTS, ROYALTIES, AND INDEMNITIES

(a) CONTRACTOR shall hold and save DISTRICT and ARCHITECT and their officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by DISTRICT, unless otherwise specifically provided in the Contract Documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of DISTRICT, ARCHITECT, and their officers, agents, and employees.

(b) The review by ARCHITECT of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by CONTRACTOR in violation of any patent or other rights of any person or entity.

Article 46. GUARANTEE

(a) CONTRACTOR warrants that the Work (which includes any equipment furnished by CONTRACTOR as part of the materials) shall: (a) be free from defects in workmanship and material; (b) be free from defects in any design performed by CONTRACTOR; (c) be new, and conform and perform to the requirements stated in the Specifications and where detail requirements are not so stated, shall conform to applicable industry standards; (d) be suitable for the use stated in the specification; and (e) be free and clear of liens, claims, security interests, or encumbrances in favor of CONTRACTOR, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(b) The warranty period for discovery of defective Work shall commence on the earlier of (1) the date on which DISTRICT occupies or has beneficial use of the Project and (2) the date on which DISTRICT's Governing Board accepts the Project as complete and continue for the period set forth in the Specifications or for one (1) year if not so specified. If, during the warranty period, the Work is not available for use due to defective Work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective Work shall continue for a duration equivalent to the original warranty period.

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

(d) In the event of failure of CONTRACTOR or Surety to commence and pursue with diligence said replacements or repairs within ten (10) Days after being notified in writing, DISTRICT is hereby authorized to proceed to have defects repaired and made good at expense of

CONTRACTOR and Surety who hereby agree to pay costs and charges therefore immediately on demand. If CONTRACTOR does not pay expenses of the repair, removal or re-execution and other losses, then within ten (10) Days after written request by DISTRICT, DISTRICT may sell any materials removed at auction or at private sale or otherwise dispose of such materials and shall account for net proceeds thereof, after deducting all costs and expenses incurred for removal or correction. If such proceeds of sale do not cover the losses from which CONTRACTOR is liable to DISTRICT, the amount due CONTRACTOR shall be reduced by such deficiency. If there are no payments due CONTRACTOR, or the remaining payments are insufficient to cover such deficiency, CONTRACTOR shall promptly pay the difference to DISTRICT.

(e) If, in the opinion of DISTRICT, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to DISTRICT or to prevent interruption of operations of DISTRICT, DISTRICT will attempt to give the notice required by this Article. If CONTRACTOR or Surety cannot be contacted or fails to comply with DISTRICT's requirements for correction within a reasonable time as determined by DISTRICT, DISTRICT may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against CONTRACTOR and Surety. Such action by DISTRICT will not relieve CONTRACTOR and Surety of the guarantees provided in this Article or elsewhere in the Contract.

(f) This Article does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CONTRACTOR shall furnish to DISTRICT appropriate guarantee or warranty certificates upon completion of the Project unless sooner requested by DISTRICT.

(g) All guarantees required under this Article shall be in writing on the Guarantee Form included in Contract Documents. CONTRACTOR shall furnish DISTRICT with all warranty and guarantee documents prior to final acceptance of the Project by DISTRICT.

(h) CONTRACTOR shall also provide to DISTRICT instruction materials for all items which require same.

(i) Nothing herein shall limit any other rights or remedies available to DISTRICT.

(j) Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of CONTRACTOR under the Contract Documents that may be for longer specified periods.

(k) Establishment of the repair period under this Article relates only to the specific obligation of CONTRACTOR to correct the Work and in no way limits either CONTRACTOR's liability for defective Work or the time within which proceedings may be commenced to enforce CONTRACTOR's obligations under the Contract Documents.

(l) With respect to all warranties, express or implied, from Subcontractors, manufacturers, or suppliers for Work performed and materials furnished under the Contract, CONTRACTOR shall:

(1) Obtain for DISTRICT all warranties that would be given in normal commercial practice;

(2) Require all warranties to be in writing, executed, and for the benefit of DISTRICT; and

(3) Enforce all warranties for the benefit of DISTRICT, unless otherwise directed in writing by DISTRICT.

(m) This Article shall not limit DISTRICT's rights under the Contract or with respect to latent defects, gross mistakes, or fraud. DISTRICT specifically reserves all rights related to defective work, including, but not limited to, the defect claims pursuant to California Code of Civil Procedure section 337.15.

Article 47. DUTY TO PROVIDE FIT WORKERS

(a) CONTRACTOR and Subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on Work any unfit person or anyone not skilled in Work assigned to such person. It shall be the responsibility of CONTRACTOR to ensure compliance with this Article.

(b) Any person in the employ of CONTRACTOR or Subcontractors whom DISTRICT or ARCHITECT may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Project site and shall not again be employed on it except with written consent of DISTRICT.

(c) CONTRACTOR and Subcontractor personnel on the Project site:

(1) Shall report for work in a manner fit to do their job.

(2) Shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Work is not affected thereby) and;

(3) Shall not have been convicted of any criminal offense which may have a discernible adverse impact on DISTRICT or its students. CONTRACTOR shall advise its employees of these requirements before they enter on the Project site and shall immediately remove from the Project site any employee in violation of these requirements as determined by CONTRACTOR or by DISTRICT. CONTRACTOR shall impose these requirements on its Subcontractors.

(d) CONTRACTOR shall be at all times during the performance of Work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and CONTRACTOR shall indemnify, hold harmless and defend DISTRICT against any and all actions, proceedings, penalties or claims arising out of CONTRACTOR's failure to comply strictly with the IRCA.

Article 48. WAGE RATES, TRAVEL AND SUBSISTENCE

(a) The Work is a "public work" as defined in Labor Code section 1720 and must be performed in accordance with the requirements of Labor Code sections 1720 to 1850 and applicable regulations which govern the payment of prevailing wage rates on public works projects.

(b) Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of DISTRICT has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification or type of worker needed to execute the Contract from the Director of the Department

of Industrial Relations (“Director”). These rates are on file in the [REDACTED] Office of DISTRICT and copies will be made available to any interested party on request. CONTRACTOR shall post a copy of such wage rates at the job site. Contractor shall also post at the Site a notice containing the following language:

This public works project is subject to compliance monitoring and investigative activities by the Public Works Unit of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site in order to enable the Public Works Unit to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on this public works project. These wages are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity that awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this public works project may be filed with the Public Works Unit at any office of the Division of Labor Standards Enforcement.

Local Office Telephone Number: (818) 901-5315

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws. Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity that awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any Division of Labor Standards Enforcement office. Complaint forms are also available at the Department of Industrial Relations website, <https://www.dir.ca.gov/dlse/DLSE-Forms.htm>.

(c) While the wage rates shown are the minimum rates required to be paid during the life of the Contract, this is not a representation that labor can be obtained at these rates. It is the responsibility of bidders to inform themselves as to the local labor conditions. No increase in the Contract Price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

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

(e) CONTRACTOR shall pay and shall cause to be paid each Worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between CONTRACTOR or any Subcontractor and such Workers.

(f) CONTRACTOR shall pay and shall cause to be paid to each Worker needed to execute the Work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations (“DIR”) in accordance with Labor Code section 1773.8.

(g) If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the compensation amount in the Contract subsequently awarded.

(h) Pursuant to Labor Code section 1775, CONTRACTOR and each Subcontractor shall, as a penalty to DISTRICT, forfeit an amount not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof, for each Worker paid less than the prevailing rates, determined by the Director, for such work or craft in which such Worker is employed for any public work done under the Contract by CONTRACTOR or by any Subcontractor under CONTRACTOR. Minimum penalty amounts for the failure to pay prevailing wages are set forth in Labor Code section 1775(a)(2)(B). The amount of this penalty shall be determined by the Labor Commissioner and shall be based on whether the failure of CONTRACTOR or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of CONTRACTOR or Subcontractor, and whether CONTRACTOR or Subcontractor has a prior record of failing to meet its prevailing wage obligations. A mistake, inadvertence or neglect in failing to pay the correct rate of prevailing wage is not excusable if CONTRACTOR had knowledge of his or her obligations under this part. The difference between such prevailing wage rates and the amount paid to each Worker for each calendar day or portion thereof for which each Worker was paid less than the prevailing wage rate shall be paid to each Worker by CONTRACTOR or Subcontractor.

(i) Any Worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.

(j) Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for (a) health and welfare, (b) pension, (c) vacation, (d) travel time, (e) subsistence pay, as provided for in Labor Code section 1773.8, (f) apprenticeship, (g) worker protection and assistance programs or committees established under the Federal Labor Management Cooperation Act of 1978 (section 175A of Title 29 of the United States Code), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works, (h) industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue, and (i) other purposes similar to those specified in items (a) through (h), inclusive.

(k) Further details regarding the enforcement of paying prevailing wage rates, reporting violations, withholding contract payments, forfeitures and hearing to review withholding of contract payments are available from the Public Works Unit of the Division of Labor Standards Enforcement (“DLSE”) of the DIR and CONTRACTOR and Subcontractors shall comply with such prevailing wage requirements. This Project is subject to compliance monitoring and enforcement by the DIR.

(l) CONTRACTOR shall post at appropriate conspicuous points on the site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

(m) CONTRACTOR shall comply with all requirements to provide certified payroll records to the California Labor Commissioner.

Article 49. HOURS OF WORK

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

(b) CONTRACTOR shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each Worker employed by CONTRACTOR and Subcontractor in connection with the Work or any part of the Work contemplated by the Contract. The record shall be kept open at all reasonable hours to the inspection of DISTRICT and to the Division of Labor Law Enforcement, and DIR.

(c) Pursuant to Labor Code section 1813, CONTRACTOR or any Subcontractor shall pay to DISTRICT a penalty of twenty-five dollars (\$25) for each Worker employed in the execution of the Contract by CONTRACTOR or by any Subcontractor for each calendar day during which such workman 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 Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the Worker so employed by CONTRACTOR or Subcontractor is not less than one and one half (1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per Day or 40 hours per calendar week.

(d) Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to DISTRICT. CONTRACTOR will pay for overtime inspection costs which are not authorized by DISTRICT and are over and above the normal rate.

(e) Should the Work of CONTRACTOR require the presence of DISTRICT PROJECT INSPECTOR beyond regular working hours or on Sundays or other holidays, CONTRACTOR

shall reimburse DISTRICT for the purpose of employing DISTRICT PROJECT INSPECTOR at his/her normal per hour rate for a minimum of two hours per occurrence. Reimbursement shall occur under provisions of Article 60.

(f) Should CONTRACTOR require access to existing Project or site during hours when there is not a DISTRICT custodian or maintenance technician available, CONTRACTOR, upon prior approval from DISTRICT, shall reimburse DISTRICT for the purpose of employing a DISTRICT custodian or maintenance technician, at their normal per hour rate, for a minimum of two hours per occurrence. Reimbursement shall occur under provisions of Article 60.

Article 50. PAYROLL RECORDS

(a) Pursuant to the provisions of Section 1776 of the Labor Code, CONTRACTOR shall keep and shall cause each Subcontractor performing any portion of Work under the Contract to keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, Worker, or other employee employed by CONTRACTOR or Subcontractor in connection with the Work under the Contract. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any Work performed by his or her employees on the public works project.

(b) Electronic certified payroll records shall be submitted to the Labor Commissioner at least monthly, in accordance with California Labor Code section 1771.4(a)(3)(A). In addition, pursuant to California Labor Code section 1776(b)(2), and as set forth below, a certified copy of all payroll records shall be made available for inspection or furnished upon request to the DLSE. The Department of Industrial Relations shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements. The Labor Commissioner shall review the payroll reports to verify compliance with the prevailing wage requirements and shall conduct audits as deemed necessary. The prevailing rates of per diem wages and a description of employer payments are on file at DISTRICT's [REDACTED] Office and are available to any interested party upon request. If the payroll records due directly to the Labor Commissioner are delinquent or inadequate, DISTRICT shall withhold Contract payments as directed by the Labor Commissioner. Additionally, if, after an investigation, it is established that an underpayment occurred, DISTRICT shall withhold Contract payments equal to the amount of underpayment and applicable penalties as directed by the Labor Commissioner.

(c) Said payroll records enumerated in subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of CONTRACTOR on the following basis:

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

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of DISTRICT, and the DLSE.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the DISTRICT or the DLSE. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by CONTRACTOR, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of CONTRACTOR.

(d) Unless required to be furnished directly to the Labor Commissioner in accordance with Section 1771.4(a)(3), the certified payroll records shall be on forms provided by the DLSE or shall contain the same information as the forms provided by this division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(e) Each CONTRACTOR or Subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within ten (10) Days after receipt of a written request.

(f) Except as provided below, any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by DISTRICT or the DLSE shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of CONTRACTOR or Subcontractor shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(g) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. CONTRACTOR or Subcontractor shall inform DISTRICT of the location of the records, enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a notice of change of location and address.

(h) CONTRACTOR or Subcontractor shall have ten (10) Days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that CONTRACTOR fails to comply within the ten (10) Day period, he or she shall, as a penalty to DISTRICT, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each Worker until strict compliance is effectuated. Upon the request of the DLSE,

these penalties shall be withheld from progress payments then due. CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

(i) It shall be the responsibility of CONTRACTOR to ensure compliance with the provisions of this Article and the provisions of Labor Code section 1776.

Article 51. APPRENTICES

(a) CONTRACTOR acknowledges and agrees that, if the Contract involves a dollar amount greater than that specified in Labor Code section 1777.5, the Contract is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of CONTRACTOR to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeable occupations.

(b) Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

(c) Every such apprentice shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he is registered and shall be employed only at the work of the craft or trade to which he is registered.

(d) Unless otherwise provided by a collective bargaining agreement, should CONTRACTOR request the dispatch of an apprentice pursuant to Labor Code section 1777.5 to perform any Work under the Contract and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, other than taking a preemployment drug or alcohol test which the apprentice fails, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for the apprentices in the trade to which he or she is registered.

(e) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed at the apprentice wage rate. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he is training or the rules and regulations of the California Apprenticeship Council.

(f) Pursuant to Labor Code section 1777.5, if that section applies to the Contract as indicated above, CONTRACTOR and any Subcontractor employing Workers in any apprenticeable craft or trade in performing any Work under the Contract shall employ apprentices in at least the ratio set forth in Section 1777.5 and may apply to any apprenticeship program in the craft or trade that can provide apprentices for a certificate approving CONTRACTOR or Subcontractor under the applicable apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the CONTRACTOR or Subcontractor, shall arrange for the dispatch of apprentices to CONTRACTOR or Subcontractor in order to comply with this section. CONTRACTOR or Subcontractors shall not be required to submit

individual applications for approval to apprenticeship programs provided they are already covered by the apprenticeship program standards.

(g) “Apprenticeable craft or trade,” as used in Section 1777.5, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council.

(h) Before commencing Work, CONTRACTOR and every Subcontractor shall submit Contract award information to the applicable apprenticeship program which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. A copy of this information shall also be submitted to the DISTRICT, if requested by the DISTRICT. Within 60 days after concluding work on the Contract, CONTRACTOR and each Subcontractor shall submit to the DISTRICT, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. This information shall be public. The apprenticeship programs shall retain this information for 12 months.

(i) The apprenticeship program supplying apprentices shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(j) The ratio of work performed by apprentices to journeymen, who shall be employed in a particular craft or trade on the public work, may be no higher than the ratio stipulated in the apprenticeship standards under which the joint apprenticeship program operates if CONTRACTOR or Subcontractor agrees to be bound by those standards. However, except as otherwise provided in Section 1777.5, in no case shall the ratio be less than one hour of apprentice's work for every five hours of labor performed by a journeyman.

(k) Any ratio shall apply during any Day or portion of a Day when any journeyman is employed at the job site and shall be computed on the basis of the hours worked during the Day by journeymen so employed. CONTRACTOR shall employ apprentices for the number of hours computed as above before the end of the Contract, or, in the case of a subcontractor, before the end of the subcontract. However, CONTRACTOR shall 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 job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of a joint apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(l) CONTRACTOR or Subcontractor, if he or she is covered by Section 1777.5, who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or if he or she has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards, but in no event less than the 1-to-5 ratio required by Section 1777.5(g).

(m) Upon proper showing by CONTRACTOR or Subcontractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, the Administrator of Apprenticeship may grant a certificate exempting

CONTRACTOR or Subcontractor from the 1-to-5 hourly ratio set forth in Section 1777.5 for that craft or trade.

(n) An apprenticeship program shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent (15%), or
- (2) The number of apprentices in training in such area exceeds a ratio of 1-to-5, or
- (3) There is a showing that 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
- (4) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her 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.

(o) When exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(p) Pursuant to Labor Code section 1777.5, CONTRACTOR and any Subcontractor under CONTRACTOR, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Work. CONTRACTOR or Subcontractor may take as a credit for payments to the Council any amounts paid by CONTRACTOR or Subcontractor to an approved apprenticeship program that can supply apprentices. CONTRACTOR or Subcontractor may add the amount of the contribution in computing his or her bid for the Contract.

(q) The responsibility of compliance with this Article and Section 1777.5 for all apprenticeable occupations is with the prime contractor.

(r) Section 1777.5 does 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 contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(s) All decisions of the joint apprenticeship committee under this Article and Section 1777.5 are subject to Section 3081.

(t) It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

(u) Pursuant to Section 1777.1, in the event CONTRACTOR or Subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5 of the Labor Code, the Labor Commissioner may deny CONTRACTOR or Subcontractor, and to its responsible officers, the right to bid on, or to be awarded or perform work on any public works contract for a period of up to one year for the first violation and for a period of up to three (3) years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(v) If the Labor Commissioner or his or her designee determines after an investigation that CONTRACTOR or Subcontractor knowingly violated Section 1777.5, CONTRACTOR or Subcontractor shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Pursuant to Section 1727, upon receipt of a determination that a civil penalty has been imposed, DISTRICT shall withhold the amount of the civil penalty from Contract progress payments then due or to become due.

(w) In lieu of the penalty provided above, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in Section 1777.5(d), order CONTRACTOR or Subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(x) If a Subcontractor is found to have violated Section 1777.5, CONTRACTOR is not liable for any penalty provided above unless CONTRACTOR had knowledge of the Subcontractor's failure to comply with the provisions of Section 1777.5 or unless CONTRACTOR fails to comply with any of the following requirements:

- (1) The contract executed between the CONTRACTOR and the Subcontractor shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
- (2) CONTRACTOR shall continually monitor Subcontractor's use of apprentices required to be employed on the Project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.
- (3) Upon becoming aware of a failure of Subcontractor to employ the required number of apprentices, CONTRACTOR shall take corrective action, including, but not limited to, retaining funds due to Subcontractor for work performed on the Project until the failure is corrected.
- (4) Prior to making the final payment to Subcontractor for work performed on the Project, CONTRACTOR shall obtain a declaration signed under penalty of perjury from Subcontractor that Subcontractor has employed the required number of apprentices on the Project.

(y) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(z) The interpretation of Labor Code section 1777.5 and the substantive requirements of Section 1777.7 applicable to CONTRACTOR and Subcontractors shall be in accordance with the regulations of the California Apprenticeship Council.

(aa) CONTRACTOR shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 320 West 4th Street, Room 950, Los Angeles, CA 90013.

Article 52. LABOR - FIRST AID

CONTRACTOR shall maintain emergency first aid treatment for CONTRACTOR's and Subcontractors' Workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651 et seq.) and all other applicable laws.

Article 53. PROTECTION OF PERSONS AND PROPERTY

(a) CONTRACTOR has been advised and is aware that DISTRICT has adopted Board Policy 3513.3 and Administrative Regulation 3513.3, which prohibit the use of tobacco products anywhere on DISTRICT property. CONTRACTOR shall be responsible for the enforcement of DISTRICT's tobacco-free policy among all CONTRACTOR's employees and Subcontractors while on DISTRICT property. CONTRACTOR understands and agrees that should any employee or Subcontractor of CONTRACTOR violate Board Policy 3513.3 or Administrative Regulation 3513.3, after having already been warned once for violating DISTRICT's tobacco-free policy, CONTRACTOR shall remove the individual for the duration of the Project. CONTRACTOR shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.

(b) CONTRACTOR shall take all steps necessary to ensure that employees of CONTRACTOR or any of its Subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. CONTRACTOR shall prevent any of its employees or its Subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. CONTRACTOR shall also prevent its employees or Subcontractors' employees from bringing any animal onto the Project.

(c) CONTRACTOR shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by DISTRICT. All Work shall be solely at CONTRACTOR's risk with the exception of damage to the Work in excess of five (5) percent of the Contract amount caused by "acts of God" as defined in Public Contract Code section 7105(b)(2).

(d) CONTRACTOR shall take, and require Subcontractors to take, all necessary precautions for safety of Workers on the Work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent

accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Prior to the start of the Work, CONTRACTOR shall submit to ARCHITECT a copy of CONTRACTOR's Project Health, Safety & Environmental Plan. Such plan shall include, at minimum, guidelines, requirements and procedures for the following: safety management policy; emergency response plan; illness and injury prevention procedures; safety meetings; accident investigation; basic accident causes; safety inspection checklist; fire prevention and control; report forms; and employee safety manual and procedures for achieving compliance with safety requirements of insurers. A copy of CONTRACTOR's Health, Safety & Environmental Plan shall be maintained on the Project site at all times. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, CONTRACTOR shall furnish, erect and properly maintain at all times, as directed by DISTRICT and ARCHITECT or required by conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of Workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. CONTRACTOR shall designate a responsible member of its organization on the Work, whose duty shall be to post information regarding protection and obligations of Workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of Workers. Name and position of person so designated shall be reported to DISTRICT by CONTRACTOR. CONTRACTOR shall correct any violations of safety laws, rules, orders, standards or regulations occurring or threatened by conditions at the Project site. Upon the issuance of a citation or notice of violation by any government authority, including, without limitation, the Division of Occupational Safety and Health, such violation shall be corrected promptly at CONTRACTOR's own expense.

(e) In an emergency affecting safety of life or of Work or of adjoining property, CONTRACTOR, without special instruction or authorization from ARCHITECT or DISTRICT is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and CONTRACTOR shall so act if so authorized or instructed by ARCHITECT or DISTRICT. Any compensation claimed by CONTRACTOR on account of emergency Work shall be determined by agreement between DISTRICT and CONTRACTOR.

(f) CONTRACTOR shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

(g) CONTRACTOR shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and CONTRACTOR shall repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair Work shall be obtained and paid for by CONTRACTOR.

(h) In the event CONTRACTOR is required to access DISTRICT's computer system or network in the performance of the Contract, CONTRACTOR shall provide 48-hours advance notification to DISTRICT. In the event such access infects DISTRICT's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate

any system data or personal information, CONTRACTOR agrees to indemnify DISTRICT and pay for any and all losses, damages and expenses incurred by DISTRICT to remedy any such infection.

(i) CONTRACTOR shall (unless waived by DISTRICT in writing):

(1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing Work which may interfere with the school routine before or after school hours, enclose working area with a substantial barricade, and arrange Work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.

(2) Not allow any person, other than Workers on the Project, or individuals authorized by DISTRICT to come upon any portion of the premises where Work is being performed. CONTRACTOR shall require all Workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.

(3) Provide substantial barricades around any shrubs or trees indicated to be preserved.

(4) Deliver materials to building area over route designated by ARCHITECT.

(5) Take preventive measures to eliminate objectionable dust.

(6) Confine apparatus, the storage of materials, and the operations of Workers to limits indicated by law, ordinances, permits, or directions of ARCHITECT or DISTRICT; and shall not interfere with the Work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of DISTRICT and ARCHITECT regarding signs, advertising, fires, smoking the presence of liquor, and the presence of firearms and require that all Workers comply with all regulations while on construction site.

(7) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to DISTRICT.

(8) Not allow personal radios used for entertainment on the Project site of any operating school during regular school hours.

(9) Where the Project involves Work at an operating school, inform and take such preventive measures necessary to ensure that all employees, Subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.

(j) If any portion of the Work for the Project is to be performed at an operating school, CONTRACTOR shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with DISTRICT's pupils. CONTRACTOR shall also ensure that its Subcontractors on the Project comply with the applicable requirements of Sections 45125.1 and 45125.2. To this end, CONTRACTOR and its Subcontractors must provide for the completion of the certification form attached to the Contract Documents and incorporated herein by this reference prior to commencing Work on the Project. In no event shall any employees of CONTRACTOR or its Subcontractors come into contact with DISTRICT's pupils before the certification is completed.

CONTRACTOR's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at DISTRICT's sole discretion, without any further compensation to CONTRACTOR.

(k) Should CONTRACTOR encounter any material defined as being hazardous by Section 25249.5 et seq., of the California Health and Safety Code, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 Proposition 65, on the Project site which has not been rendered harmless, CONTRACTOR shall immediately stop work in the affected area and notify DISTRICT and ARCHITECT of the condition in writing. Work in the affected area shall not be resumed except by written agreement of DISTRICT and CONTRACTOR if the hazardous material has not been rendered harmless. The Work in the affected area shall be resumed in the absence of hazardous material, or when it has been rendered harmless.

(l) CONTRACTOR shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Project site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of CONTRACTOR. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. CONTRACTOR shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by CONTRACTOR at no cost to DISTRICT.

(m) CONTRACTOR shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by CONTRACTOR for the Project, which will cover all Work performed by CONTRACTOR and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. All Subcontractors and material or equipment suppliers shall cooperate fully with CONTRACTOR, DISTRICT, and all insurance carriers. Subcontractors shall immediately, within two (2) Days, report in writing to CONTRACTOR all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Project site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported within four (4) Days by telephone or messenger. CONTRACTOR shall thereafter immediately, within two (2) Days, report the facts in writing to DISTRICT and ARCHITECT giving full details of the accident.

(n) CONTRACTOR and Subcontractors shall use only those ingress and egress routes designated by DISTRICT, observe the boundaries of the Project site designated by DISTRICT, park only in those areas designated by DISTRICT, which areas may be on or off the Project site, and comply with any parking control program established by DISTRICT, such as furnishing license plate information and placing identifying stickers on vehicles.

(o) CONTRACTOR shall be responsible for providing security services for the Project site as needed for the protection of the site and as determined in DISTRICT's sole discretion. CONTRACTOR shall be responsible for the security of the Project site and all of the Work provided under the terms of the Contract Documents, as well as the work of the separate contractors or DISTRICT's own forces that occurs on the Project site. Fences, barricades and other perimeter security shall be maintained in good condition and secured with locking devices. Damage shall be repaired immediately. Graffiti and unauthorized postings shall be removed or painted over so as to maintain a clean and neat appearance. Mobile equipment and operable machinery shall be kept locked or otherwise made inoperable whenever left unattended.

(p) CONTRACTOR shall not allow any person, other than the Workers on the Project, authorized representatives of a union pursuant to a project labor agreement, or other individuals authorized by DISTRICT or ARCHITECT to come upon any portion of the Project site where the Work is being performed. Only authorized personnel will be permitted on the Project site. CONTRACTOR shall submit to ARCHITECT the names of all personnel either directly employed by CONTRACTOR or in the employ of any of the Subcontractors who will be present at the Project site. All construction personnel will be required to register with ARCHITECT and wear badges. Personnel not displaying badge identification will be removed from the Project site until properly registered and wearing badge. All badges shall be maintained and controlled by CONTRACTOR and shall be returned to ARCHITECT upon Final Completion of the Work. If additional or special personnel shall be needed for the efficient completion of the Work, then CONTRACTOR shall submit a list of names of all such additional personnel prior to their appearance on the Project site.

Article 54. ASBESTOS AND OTHER HAZARDOUS MATERIALS

(a) NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION. Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, amosite, anthophyllite, tremolite, and antinolite. Any or all material containing greater than one-tenth of one percent ($> .1\%$) asbestos shall be defined as asbestos-containing material. Should CONTRACTOR at any time during the Contract encounter on the Project site what it reasonably believes or knows to be asbestos, polychlorinated biphenyl ("PCB"), or any other "hazardous material" (as defined below), and said hazardous material has not been rendered harmless, CONTRACTOR shall immediately stop work in the affected area and notify DISTRICT and ARCHITECT of the condition in writing. Work in the affected area shall not be resumed until ARCHITECT has notified CONTRACTOR in writing that the hazardous material has been removed and/or made harmless. As used herein, hazardous material means any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any governmental authority to be a hazardous waste or hazardous substance. "Governmental authority" shall include any local, regional, state or federal governmental agency, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body. OWNER-owned float shall be used to offset any time lost resulting from the discovery of such hazardous materials.

(b) Unless otherwise expressly required by the Contract Documents, CONTRACTOR and Subcontractors shall not generate, manufacture, store or dispose of, nor permit the

introduction, use, dispersal, release, generation, storage or disposal of, Hazardous Substances on, under or about the Project site or existing improvements, nor shall any of them transport or permit the transportation of Hazardous Substances to or from the Project site, except for Hazardous Substances that (1) are specified in the Contract Documents for removal by CONTRACTOR or for use in the construction of the Work; (2) are stored, used and handled by CONTRACTOR in compliance with Environmental Laws; (3) do not contain asbestos or PCBs; and (4) do not require a permit or license from, or need be reported to, a Governmental Authority.

(1) In the event that the presence of hazardous materials is suspected or discovered on the Project site, (except in cases where asbestos and other hazardous material work is CONTRACTOR's responsibility), DISTRICT shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required.

(2) All Work or materials found to contain asbestos or Work or material installed with asbestos-containing equipment will be immediately rejected and the Work shall be removed at no additional cost to DISTRICT. Decontamination and removal of Work found to contain asbestos or Work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency ("EPA"). The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall be chosen and approved by DISTRICT and who shall have sole discretion and final determination in this matter. The Work will not be accepted until the asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

(3) In the event the hazardous materials on the Project site is caused by CONTRACTOR, CONTRACTOR shall pay for all costs of testing and remediation, if any, and shall compensate DISTRICT for any additional costs incurred as a result of CONTRACTOR's generation of hazardous material on the Project site. In addition, CONTRACTOR shall pay to defend, indemnify and hold harmless DISTRICT and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project site caused by CONTRACTOR. This provision shall survive the completion of the Work and/or any termination of the Contract.

(c) CONTRACTOR shall execute and submit to DISTRICT the "Asbestos and Other Hazardous Materials Certification" attached to the Contract Documents and incorporated herein by this reference prior to commencing Work on the Project.

(d) Pursuant to the Lead-Safe Schools Protection Act (Education Code section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on the Project, and only trained and State certified contractors, inspectors, and workers shall undertake any action to abate existing risk factors for lead. To this end, CONTRACTOR must acknowledge notification by DISTRICT of these requirements, as well as its knowledge of them, by completing the "Lead Based Paint Certification" attached to the Contract Documents and incorporated herein by this reference prior to commencing Work on the Project.

(e) When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, CONTRACTOR shall exercise utmost

care and carry on such activities under supervision of properly qualified personnel. CONTRACTOR shall notify DISTRICT any time that explosives or hazardous materials are expected to be stored on Project site. The location of storage shall be coordinated with DISTRICT and local fire authorities.

(f) If the Project requires the use of imported soils, CONTRACTOR shall be responsible to use imported material that is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law and California Health and Safety Code. CONTRACTOR must notify DISTRICT of the source of material and comply with the guidelines of the Department of Toxic Substances Control ("DTSC"). Prior to delivery of the imported material to the Site, CONTRACTOR shall provide DISTRICT with a written certification and supporting documentation for any such imported material verifying that it is free from hazardous materials and in compliance with DTSC guidelines. DISTRICT reserves the right to reject any imported material that has come from agricultural or commercial land uses or for which CONTRACTOR fails to provide the required documentation. CONTRACTOR shall be responsible for all costs associated with any imported material which does not meet the requirements of this section including, as necessary, testing and/or removal and/or replacement.

Article 55. NON-DISCRIMINATION

(a) In the performance of the Contract, CONTRACTOR agrees that it will not engage in nor permit such Subcontractors as it may employ to engage in the unlawful discrimination against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, age, or sex, gender, gender identity, gender expression, sexual orientation, or military or veteran status. CONTRACTOR and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act as set forth at Government Code section 12900 et seq., and all applicable regulations promulgated thereunder, including all amendments thereto.

(b) If DISTRICT finds that any of the provisions of this Article have been violated by CONTRACTOR or any of the Subcontractors, such violation shall constitute a material breach of the Contract upon which DISTRICT may cancel, terminate or suspend the Contract. While DISTRICT reserves the right to determine independently that the anti-discrimination provisions of the Contract have been violated, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that CONTRACTOR or Subcontractor has violated State or Federal anti-discrimination laws shall constitute a finding by DISTRICT that CONTRACTOR or Subcontractor has violated the provisions of this Article.

Article 56. SCHEDULE OF VALUES AND PERIODICAL ESTIMATES

(a) Within seven (7) Days after award of the Contract, CONTRACTOR shall submit to ARCHITECT and DISTRICT, for their reasonable approval, a schedule of values (the "Schedule of Values"), allocated to various portions of the Work, prepared in Microsoft Excel, on hard copy and on compact disc, and supported by such data to substantiate its accuracy as ARCHITECT or DISTRICT may require. Such values shall include the amount of overhead and profit applicable to each item of the Work and shall include a breakdown between rough and finish work for the basic trades as well as individual dollar figures for large dollar equipment and materials installed or furnished in connection with the Project. Prior to the processing of any Contractor Payment Request (including a Contract Payment Request for mobilization), the

Schedule of Values must have been approved by DISTRICT and ARCHITECT. The approved Schedule of Values shall be used as a basis for reviewing Contractor Payment Requests that are submitted for payment from time to time. If DISTRICT or ARCHITECT objects to any Schedule of Values submitted by CONTRACTOR, CONTRACTOR shall work and cooperate with the party objecting to the same in order to revise the Schedule of Values in a manner that addresses such objecting party's objections. The Schedule of Values will be updated from time to time as may be necessary during the course of construction. Updates to the Schedule of Values shall also be subject to the prior approval of DISTRICT and ARCHITECT.

(b) In preparing the Schedule of Values, CONTRACTOR shall carefully list the true cost of each activity or item for which payment will be requested. CONTRACTOR shall not "front load" the Schedule of Values with false dollar amounts for activities required to be performed in the early stages of the Baseline Project Schedule. DISTRICT may, in its sole discretion, utilize the costs listed in the Schedule of Values as the true costs of items to be deducted from the Contract Price through credit or deductive Change Order.

Article 57. CLAIMS

(a) Arising of Claim

(1) **Disputed Compensable Changes.** A Claim by CONTRACTOR involving an adjustment to the Contract Price or Contract Time due to a compensable change or deleted work arises upon issuance of a decision denying, in whole or in part, CONTRACTOR's Change Order request. Such Claim shall be prepared and submitted in accordance with the requirements of this Article.

(2) **Other Claims.** In the case of a Claim by CONTRACTOR that does not involve an adjustment to the Contract Price or Contract Time due to a compensable change or deleted work, the Claim arises at the time that DISTRICT receives written notice by CONTRACTOR of intent to file the Claim. Such notice of intent shall be given no later than three (3) Days after the discovery date relative to such circumstances (even if CONTRACTOR has not yet experienced a loss or delay due to such circumstances) and shall state the event or condition giving rise to the Claim. Failure to timely provide such written notice of intent to file a Claim shall constitute a waiver of CONTRACTOR's right to assert such Claim.

(b) **Content of Claims by CONTRACTOR.** A Claim by CONTRACTOR must include the following:

- (1) A statement that it is a Claim and a request for a decision on the Claim;
- (2) A detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;
- (3) Summary of Claim merit and price, and Contract clause pursuant to which the Claim is made.
- (4) List of documents relating to Claim
 - (i) Specifications
 - (ii) Drawings
 - (iii) Clarifications (Requests for Information)

- (iv) Schedules
- (v) Other

- (5) Chronology of events and correspondence
- (6) Analysis of Claim merit
- (7) Analysis of Claim cost
- (8) Analysis of time impact analysis in CPM format
- (9) If the Claim involves an adjustment to the Contract Price or Contract Time due to a compensable change, a statement demonstrating that all requisite notices were provided, including, without limitation, timely and proper notice of change, Change Order request, notice of delay and request for extension. If the Claim does not involve an adjustment to the Contract Price or Contract Time due to compensable change, a statement demonstrating that a notice of intent to file the Claim was timely submitted as required by sub-section (a) (2) of this Article.

(10) A detailed justification for any remedy or relief sought by the Claim, including without limitation: (a) a detailed cost breakdown in the form required for submittal of Change Order requests; and (b) actual job cost records demonstrating that the costs have been incurred.

(11) If the Claim involves a request for adjustment to the Contract Time, written documentation including, without limitation, a time impact analysis of CONTRACTOR's entitlement to an adjustment to the Contract Time under the Contract Documents; and

(12) A written certification signed by a managing officer of CONTRACTOR's organization who has the authority to sign contracts and purchase orders on behalf of CONTRACTOR and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

I hereby certify under penalty of perjury that I am a managing officer of _____ (Contractor's name) and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of _____ (Subcontractor's name) and that, to the best of my knowledge after conducting a diligent inquiry into the facts of the Claim, the following statements are true and correct:

(1) The facts alleged in or that form the basis for the Claim are, to the best of my knowledge following diligent inquiry, true and accurate; and

(2) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and

(3) I have with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor, and by each Subcontractor that is asserting all or any portion of the

Claim) and confirmed with reasonable certainty that the losses or damages suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and

(4) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and the Subcontractor, of any tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the delays or disruption suffered by Contractor and/or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and

(5) Contractor has not received payment from District for, nor has Contractor previously released District from, any portion of the Claim.

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

(c) **Noncompliance.** Failure by CONTRACTOR to submit complete information, documentation and certifications as required by sub-section (b) above and within the time period required by sub-section (d) below, shall result in the Claim being returned to CONTRACTOR without any decision.

(d) **Submission of Claims.**

(1) Transmittal. Claims by CONTRACTOR shall be first submitted to DISTRICT for decision by DISTRICT.

(2) Continuous Work. No dispute or disagreement with respect to any Claim 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 in the Work.

(3) Time for Filing. All Claims by CONTRACTOR and supporting documentation and certifications must be filed within thirty (30) Days after the Claim arises (as "arises" is defined in sub-section (a) above) and unless such statement shall be made as thus required, CONTRACTOR's claims for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage and to be offset by OWNER-owned float. No Claims by CONTRACTOR shall be filed after the final payment is made to CONTRACTOR.

(4) **Condition Precedent.** CONTRACTOR's strict compliance with the requirements of this Article as to a Claim shall be considered conditions precedent to CONTRACTOR's right to initiate the claims dispute resolution process or any legal proceedings with respect to such Claim.

(e) **Response to Claims.** DISTRICT shall respond to CONTRACTOR's claim in accordance with the requirements specified in Article 73 herein.

(f) **Meet and Confer.** If CONTRACTOR disputes DISTRICT's response, or if DISTRICT fails to respond within the prescribed time, CONTRACTOR may so notify DISTRICT, in writing and demand an informal conference to meet and confer for settlement of the issues in dispute in accordance with the time periods and procedures specified in Article 73 herein.

(g) **Finality of Decision.** DISTRICT's decision set forth in its response issued pursuant to sub-section (e) above shall be deemed final on the fifteenth (15th) Day after CONTRACTOR's receipt of DISTRICT's response in the case of a failure by CONTRACTOR to demand an informal conference to meet and confer within the time period required by sub-section (f) above.

Article 58. DISPUTES - ARCHITECT'S DECISIONS

(a) ARCHITECT shall within a reasonable time, make decisions on all claims of DISTRICT or CONTRACTOR and on all other matters relating to the execution and progress of the Work. The decisions of ARCHITECT shall not be binding, but shall be advisory only.

(b) ARCHITECT's response to such requests will be made with reasonable promptness, while allowing sufficient time in ARCHITECT's professional judgment, to permit adequate review and evaluation of request. Any delay in the progress of the Work shall not be recognized on account of failure by ARCHITECT to respond to such request until fifteen (15) Days after ARCHITECT's receipt of written request.

(c) Claim Resolution Processes.

(1) All public works claims that arise between CONTRACTOR and DISTRICT shall be subject to the provisions of Article 57 herein.

(2) The claim resolution processes are set forth in Public Contract Code sections 9204 and 20104 et seq., as those sections may be amended from time to time, and apply to any claim between CONTRACTOR and DISTRICT, without regard to the claim's dollar amount, and to any claim between CONTRACTOR and DISTRICT of three hundred seventy-five thousand dollars (\$375,000) or less, respectively.

(3) Public Contract Code sections 9204 and 20104 et seq. are set forth in their entirety in Article 73 herein.

(d) In the event of a dispute between the parties as to performance of the Work, the interpretation of the Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, CONTRACTOR agrees to continue the Work diligently to completion. If the dispute is not resolved, CONTRACTOR agrees it will neither rescind the Contract nor stop the progress of the Work, but CONTRACTOR's sole remedy shall be to submit such controversy to determination by a court of the State of California, in Los Angeles County, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

Article 59. PAYMENTS

(a) CONTRACTOR shall have the right to progress payments only for Work performed after DISTRICT issued the Notice to Proceed. Pursuant to California Public Contract Code section 20104.50, each month within thirty (30) Days after receipt by ARCHITECT of an undisputed and properly submitted progress payment request from CONTRACTOR completed in accordance with the Schedule of Values, there shall be paid to CONTRACTOR a sum equal to ninety-five percent (95%) of value of Work performed and of materials delivered on the ground or stock subject to or under the control of DISTRICT and unused up to the last Day of the previous month, less aggregate previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by CONTRACTOR on a form approved by DISTRICT and filed before the fifth Day of the month during which payment is to be made. Should the Project involve multiple school sites, CONTRACTOR shall prepare a separate progress payment request for each school site. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release CONTRACTOR or Surety from any damages arising from such Work or from enforcing each and every provision of the Contract, and DISTRICT shall have the right subsequently to correct any error made in any estimate for payment. CONTRACTOR shall not be entitled to have any payment estimates processed or be entitled to have any payment for Work performed so long as any lawful or proper direction concerning Work, or any portion thereof, given by DISTRICT or ARCHITECT shall remain uncomplied with. Should DISTRICT fail to make a progress payment to CONTRACTOR within thirty (30) Days after receipt by ARCHITECT of an undisputed and properly submitted payment request from CONTRACTOR, DISTRICT shall pay interest to CONTRACTOR equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

(b) Notwithstanding anything to the contrary stated above, CONTRACTOR may include in its request for payment the value of any structural steel, mail order materials, G.F.R.C. panels and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

(1) The aggregate cost of materials stored off-site shall not exceed Twenty-Five Thousand Dollars (\$25,000) at any time without the written approval of DISTRICT to be given or withheld in DISTRICT's sole discretion;

(2) Title to such materials shall be vested in DISTRICT as evidenced by documentation satisfactory in form and substance to DISTRICT, including, without limitation, recorded financing statements, UCC filings and UCC searches;

(3) With each request for payment, CONTRACTOR shall submit to DISTRICT a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. CONTRACTOR shall procure insurance satisfactory to DISTRICT (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

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

(5) Representatives of DISTRICT shall have the right to make inspections of the storage areas at any time; and

(6) Such materials shall be (i) protected from diversion, destruction, theft and damage to the reasonable satisfaction of DISTRICT; (ii) specifically marked for use on the Project; and (iii) segregated from other materials at the storage facility.

(c) Prior to submitting any progress payment request and for the purpose of expediting the progress payment procedure, CONTRACTOR agrees to meet with DISTRICT's PROJECT INSPECTOR to review and discuss each proposed progress payment request. DISTRICT or ARCHITECT has the discretion to require from CONTRACTOR any of the following information with the application for payment: (i) certified payroll covering the period of the previous application for payment; (ii) unconditional waivers and releases from all Subcontractors/suppliers for which payment was requested under the previous application for payment; or (iii) material invoices, evidence of equipment purchases, rentals, and other support and details of cost. DISTRICT's PROJECT INSPECTOR shall sign the proposed progress payment request as having reviewed the same. If any item submitted for payment is disputed during this review, CONTRACTOR agrees to use its best efforts to resolve the disputed items with DISTRICT's PROJECT INSPECTOR, and ARCHITECT before submitting the progress payment request to ARCHITECT. ARCHITECT and DISTRICT specifically reserve the right to dispute any item submitted in CONTRACTOR's progress payment request, regardless of whether an item was identified as disputed in the review process provided for herein.

(d) The billing process outlined below shall supersede any other billing procedures contained in the Project Specifications.

Based on billing percentages approved by ARCHITECT and PROJECT INSPECTOR, individual CONTRACTOR billings will be generated by ARCHITECT's main office and faxed to CONTRACTORS.

Upon receipt, CONTRACTOR is required to make five (5) copies of the billing, wet sign all copies as indicated, and return the billings to ARCHITECT within three (3) Days of the date received for further processing.

Important Note: Billings must be returned to ARCHITECT's office within the specified time frame. It is strongly recommended that CONTRACTOR use one of the following delivery methods:

- (1) Hand delivered
- (2) Express mail (overnight) to street address
- (3) U.P.S. next day service
- (4) Federal Express next day service

(e) Upon receipt of a payment request, ARCHITECT shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by ARCHITECT as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request. If ARCHITECT determines that the payment request is a proper payment request, DISTRICT shall obtain a written certificate from ARCHITECT stating that the Work for which the payment is demanded has been performed in accordance with the terms of the Contract and that the amount stated in the certificate is due under the terms of the Contract, which certificate shall be attached to and made a part of the claim made and filed with DISTRICT, provided that if

ARCHITECT shall, within three (3) Days after written demand therefore, fail to deliver such certificate to DISTRICT, CONTRACTOR may file its claim with DISTRICT without said certificate, but together with such claim shall be filed a statement that demand was made for such certificate and that the same was refused. Thereupon, DISTRICT will either allow said claim as presented or shall, by an order entered on the minutes of said DISTRICT state the reasons for refusing to allow said claim. It is understood, moreover, that the certificate of ARCHITECT shall not be conclusive upon DISTRICT, but advisory merely.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be processed through DISTRICT for return to CONTRACTOR as soon as practicable, but not later than seven (7) Days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document prepared by ARCHITECT setting forth in writing the reasons why the payment request is not proper.

(f) The number of Days available to DISTRICT to make payment without incurring interest pursuant to this section shall be reduced by the number of Days by which DISTRICT exceeds the seven (7) Day return requirement set forth in paragraph (2) above.

(g) For purposes of this section:

(1) A "progress payment" includes all payments due CONTRACTOR, except that portion of the final payment designated by the Contract as retention earnings.

(2) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of DISTRICT.

(h) **Application for Progress Payments.** On or before the fifth (5th) Day of each calendar month during the progress of the Work, CONTRACTOR shall submit to ARCHITECT an itemized Application for Progress Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as ARCHITECT requires:

(1) The amount paid to the date of the application to CONTRACTOR, to all its Subcontractors, and all others furnishing labor, material, or equipment for the Contract;

(2) The amount being requested under the application for payment by CONTRACTOR on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

(3) The balance that will be due to each of such entities after said payment is made;

(4) A certification that the Record Drawings and Annotated Specifications are current;

(5) Itemized breakdown of Work done for the purpose of requesting partial payment;

(6) An updated construction schedule in conformance with Article 32;

(7) The additions to and subtractions from the Contract Price and Contract Time;

- (8) A summary of the retentions held;
- (9) Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as DISTRICT may require from time to time;
- (10) The percentage of completion of CONTRACTOR's Work by line item; and
- (11) An updated Schedule of Values from the preceding Application for Payment.

(i) **First Payment Request.** The following items, if applicable, must be completed before the first payment request will be accepted for processing:

- (1) Installation of the Project sign;
- (2) Receipt by ARCHITECT of submittals;
- (3) Installation of field office;
- (4) Installation of temporary facilities and fencing;
- (5) Submission of documents listed in Article 56 relating to cost breakdown;
- (6) Baseline Project Schedule, due within seven (7) Days after award of Contract;
- (7) Schedule of unit prices, if applicable;
- (8) Copies of necessary permits;
- (9) Copies of authorizations and licenses from governing authorities;
- (10) Initial progress report;
- (11) Surveyor qualifications;
- (12) Written acceptance of DISTRICT's survey of rough grading, if applicable;

(j) **Second Payment Request.** The second payment request will not be processed until all submittals and shop drawings have been accepted for review by ARCHITECT.

(k) **All payment Requests.** No payment requests will be processed until CONTRACTOR has submitted copies of the certified payroll records for the Work which correlates to the payment request and a proper Baseline Project Schedule pursuant to Article 32 is submitted.

(l) Any payments made to CONTRACTOR where criteria set forth in this Article has not been met shall not constitute a waiver of said criteria by DISTRICT. Instead, such payment shall be construed as a good faith effort by DISTRICT to resolve differences so CONTRACTOR may pay its Subcontractors and suppliers and that CONTRACTOR agrees that failure to submit such items may constitute a breach of contract by CONTRACTOR and may subject CONTRACTOR to termination.

(m) DISTRICT shall have the right, if necessary for the protection of DISTRICT, to issue joint checks made payable to CONTRACTOR and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between DISTRICT and a Subcontractor of any tier,

any obligation from DISTRICT to such Subcontractor, or rights in such Subcontractor against DISTRICT.

(n) CONTRACTOR shall update Record Drawings and the progress schedule monthly. CONTRACTOR shall submit the updated schedule prior to or with its application for payment. No payment will be made by DISTRICT until the updated schedule is approved by DISTRICT. DISTRICT shall not be responsible for any delays in payment caused by CONTRACTOR's failure to submit a proper updated schedule or to obtain approval of its updated schedule.

(o) No payment by DISTRICT hereunder shall be interpreted so as to imply that DISTRICT has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, DISTRICT may enforce each and every provision of the Contract. DISTRICT may correct any error subsequent to any payment. The final payment of five percent (5%) of the value of the Work done under the Contract, if unencumbered, shall be made within sixty (60) Days of "completion" as such term is defined in California Public Contract Code section 7107(c).

(p) The final payment shall be processed in accordance with the submission of a final CONTRACTOR payment request. Before final payment is due and will be paid under the Contract, CONTRACTOR shall comply with Article 61 below and deliver certain items to DISTRICT (as reasonably requested by DISTRICT prior to final payment), including, but not limited to:

(1) all maintenance and operating manuals, spare parts, extra stock and special tools required by the Specifications;

(2) the marked sets of Record Drawings;

(3) reproducible Mylar drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components;

(4) any special guaranties and warranties required by the Contract Documents;

(5) assignments of all guaranties and warranties from Subcontractors and materialmen;

(6) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which DISTRICT or DISTRICT's property might be responsible or encumbered (less amounts withheld by DISTRICT) have been paid or otherwise satisfied;

(7) duly executed conditional lien releases and waivers (in the form provided in California Civil Code section 8138) from CONTRACTOR, and all Subcontractors and materialmen providing labor, services, materials or equipment in connection with the Work, whereby such persons conditionally waive all lien and stop notice rights against DISTRICT, the Project and the Project premises with respect to all payments to be made to them from the final payment;

(8) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8138) from CONTRACTOR, and all Subcontractors and materialmen providing labor, services, materials, or equipment in connection with the Work, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against DISTRICT, the Project and Project premises with respect to all payments made pursuant to all previous CONTRACTOR payment requests;

(9) a record drawing review log form for the current payment period and ten (10) copies of all recently issued or final permits or other governmental licenses and approvals with respect to the Work or the Project.

(q) Within ten (10) Days following final payment, CONTRACTOR shall deliver to DISTRICT duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8138) from CONTRACTOR, and all Subcontractors and materialmen providing labor, services, materials or equipment in connection with the Work or the Project, executed by such persons, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against DISTRICT, the Work, the Project and the Project premises arising out of the Contract, the Work or the Project in general.

(r) Unless otherwise provided, on or before making request for final payment of the undisputed amount due under the Contract, CONTRACTOR shall submit to DISTRICT, in writing, all claims for compensation under or arising out of the Contract. The acceptance by CONTRACTOR of the payment of the final amount shall constitute a waiver of all claims against DISTRICT under or arising out of the Contract, except those previously made, in writing, and identified by CONTRACTOR as unsettled at the time of CONTRACTOR's final request for payment.

(s) **Subcontractor Payments.** No later than seven (7) Days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, CONTRACTOR shall pay to each Subcontractor, out of the amount paid to CONTRACTOR on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. CONTRACTOR shall remain responsible, notwithstanding a withholding by DISTRICT pursuant to the terms of these General Conditions, to promptly satisfy from its own funds sums due to all Subcontractors who have performed the Work that is included in CONTRACTOR's application for payment. CONTRACTOR shall by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. DISTRICT shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law. An approved request for payment, a progress payment, or partial or entire use or occupancy of the Project by DISTRICT shall not constitute acceptance of Work not in accordance with the Contract Documents.

(t) **Release of Stop Notices.** Except to the extent of any payments that DISTRICT fails to make to CONTRACTOR under circumstances that constitute a breach by DISTRICT of its payment obligations under the Contract Documents, if any stop notice, whether invalid or valid, is made, filed with, served upon or asserted against DISTRICT by any of the Subcontractors or their agent or employee, for money claimed due for Work of any kind provided to the Project, then CONTRACTOR shall within five (5) Days after written notice by DISTRICT and at CONTRACTOR's own expense, procure, furnish and record appropriate releases or other instruments which under applicable laws will fully release, extinguish and remove such stop notice. Unless and until such stop notice is fully released as aforesaid, DISTRICT shall have the right to retain from any payment then due, or thereafter to become due, an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop notice and any action or proceeding thereon which may be brought to judgment or award. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop notice and any action or proceeding thereon, then CONTRACTOR shall be liable for the difference and upon written demand shall immediately deposit the same with

DISTRICT. The provisions of this paragraph are in addition to such other rights as DISTRICT may have against CONTRACTOR under the Contract Documents or applicable laws.

Article 60. CHANGES AND EXTRA WORK

(a) A Change Order is a written instrument prepared by ARCHITECT and signed by DISTRICT (as authorized by DISTRICT's Governing Board), CONTRACTOR, ARCHITECT, and DSA (if necessary), stating their agreement upon all of the following:

- (1) A description of a change in the Work;
- (2) The amount of the adjustment in the Contract Price, if any; and
- (3) The extent of the adjustment in the Contract Time, if any.

(b) DISTRICT may, as provided by law and without affecting the validity of the Contract, order changes, modifications, deletions and extra Work by issuance of written change orders from time to time during the progress of the Project, with the Contract Price and Contract Time being adjusted accordingly. All such Work shall be executed under conditions of original Contract except that any claim for an extension of time caused thereby shall be adjusted at time of ordering such change. CONTRACTOR shall increase the amounts of its Payment and Performance Bonds in proportion to any increase in the Contract Price. DISTRICT has discretion to order changes on a "time and material" basis with adjustments to time made after CONTRACTOR has justified through documentation the impact on the critical path of the Project.

All changes in Contract or scope of work for construction requires the approval of DSA in accordance with Section 4-338, Part I, T-24 CBC "Addenda and Change Orders."

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to, in writing, in advance by CONTRACTOR and DISTRICT and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that CONTRACTOR proceeds with any change in Work without first notifying DISTRICT and obtaining ARCHITECT's and DISTRICT's consent to a Change Order, CONTRACTOR waives any claim of additional compensation for such additional Work.

(c) Notwithstanding any other provision in the Contract Documents, the adjustment in the Contract Price, if any, and the adjustment in the Contract Time, if any, set forth in a change order shall constitute the entire compensation and/or adjustment in the Contract Time due CONTRACTOR arising out of the change in the Work covered by the change order unless otherwise provided in the change order. The amount of the compensation due CONTRACTOR shall be calculated pursuant to subparagraph (f) of this Article. The entire compensation shall not include any additional charges not set forth in subparagraph (f) and shall not include delay damages (due to processing of a change order, refusal to sign a change order), indirect, consequential, and incidental costs including any Project management costs, extended home office and field office overhead, administrative costs and profit other than those amounts authorized under subparagraph (f) of this Article.

(d) In giving instructions, ARCHITECT shall have authority to order minor changes in Work, not involving change in Contract Price or Contract Time, and not inconsistent with purposes of the Project. Such changes shall be effected by written Change Order and shall be binding on DISTRICT and CONTRACTOR. CONTRACTOR shall carry out such written orders promptly. DISTRICT's _____ may authorize changes in Work involving a change in cost

that does not exceed Twenty-Five Thousand Dollars (\$25,000), or ten percent (10%) of the original Contract Price, whichever is lesser. Otherwise, except in an emergency endangering life or property, no extra Work or change shall be made unless made pursuant to a written order from DISTRICT, authorized by action of the Governing Board, and no claim for addition to Contract Price shall be valid unless so ordered.

(e) If ARCHITECT determines that Work required to be done under the Contract constitutes extra Work outside the scope of the original Contract, ARCHITECT shall send a request for a detailed proposal to CONTRACTOR. CONTRACTOR will respond within ten (10) Days of receipt of the Request for Proposal with a detailed proposal which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, and the wage rates required for the change. If the change order involves a change in construction time, a request for the time change shall accompany the change order cost breakdown. All such requests for time shall be specified by CONTRACTOR as either "work days" or "calendar days." Any request for time received with only the designation of "days" shall be considered calendar days. The term "work days" as used in this paragraph shall mean Monday through Friday, excluding Saturdays, Sundays and federal/State of California observed holidays. If CONTRACTOR fails to request a time extension, CONTRACTOR will thereafter be precluded from requesting or claiming a delay. If the Work is to be performed by Subcontractor, CONTRACTOR must include a bid from Subcontractor containing the same detailed information as required for CONTRACTOR. No extension of time will be granted for change orders that, in the opinion of ARCHITECT, do not affect the critical path of the Project. CONTRACTOR shall not be entitled to any additional compensation for preparing a response to a Request for Proposal, whether ultimately accepted or not. If DISTRICT disagrees with the proposal submitted by CONTRACTOR, it will notify CONTRACTOR and DISTRICT will provide its opinion of the appropriate price and/or time extension. If CONTRACTOR agrees with DISTRICT, a Change Order will be issued by DISTRICT. If no agreement can be reached, DISTRICT shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if CONTRACTOR fails to submit a claim in writing to DISTRICT within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order. No dispute, disagreement or failure of the parties to reach agreement on the terms of the change order shall relieve CONTRACTOR from the obligation to proceed with performance of the Work, including extra work, promptly and expeditiously. If CONTRACTOR fails to submit the detailed proposal for a Change Order within the ten (10) Day period (or as requested), DISTRICT has the right to order CONTRACTOR in writing to commence the Work immediately on a force account basis and/or issue a lump sum change to the Contract Price in accordance with DISTRICT's estimate of cost. If the change is issued based on DISTRICT's estimate, CONTRACTOR will waive its right to dispute the action unless, within fifteen (15) Days following completion of the added/deleted Work, CONTRACTOR presents written proof that DISTRICT's estimate was in error.

(f) Value of any such extra Work, change, or deduction shall be determined at the discretion of DISTRICT in one or a combination of the four (4) methods described hereafter in this paragraph (f). In determining the cost of material, labor and/or equipment for any proposed change order, DISTRICT may utilize one (1) or a combination of these four (4) methods. All change orders, regardless of the method(s) utilized by DISTRICT to determine the value of any such extra Work, change, or deduction, shall not exceed the respective percentages listed in items

e. through j. of the form set forth in paragraph (f)(4) below for: (1) CONTRACTOR's and/or Subcontractor's overhead and profit; (2) liability and property damage insurance, workers' compensation insurance, social security, and unemployment taxes; and (3) bond and liability insurance. The amount of any increase or decrease in the Contract Price for the Project shall be determined using one (1) or a combination of the following four (4) methods:

(1) By mutual acceptance of a lump sum proposal from CONTRACTOR properly itemized and supported by sufficient substantiating data to permit evaluation.

(2) By unit prices contained in CONTRACTOR's original bid and incorporated in Contract Documents or fixed by subsequent agreement between DISTRICT and CONTRACTOR.

(3) By using recognized estimating guides for order changes, modifications, deletions and extra Work. These guides include the following:

(i) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800.

(ii) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 1420 Willow Pass Road, Concord, CA 94520.

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

(i) **Daily Reports by CONTRACTOR.**

a. General. At the close of each working day, CONTRACTOR shall submit a daily report to ARCHITECT and PROJECT INSPECTOR, on forms approved by DISTRICT, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that Day, and for other services and expenditures when authorized concerning extra Work items. An attempt shall be made to reconcile the report daily, and it shall be signed by ARCHITECT and CONTRACTOR. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through CONTRACTOR. The Reports shall include the following:

b. Labor. The names of Workers, classifications, hours worked, and hourly rate.

c. Materials. A description of quantities of materials used and unit cost.

d. Equipment. The type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily cost. Move-on and move-off fees shall be noted.

e. Inspection and Testing Activities. A list of inspections performed by name of inspector and testing company and the type of inspection, items of the Work involved and a description of the outcome of such inspection or test.

f. Visitors, Guests, Dignitaries. A list of visitors and guests by name, title, company and purpose of visit.

g. Areas of Work. A statement of the areas of the Project site on which the Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the Day.

h. Accidents, Delays, Defective Work. A description in detail of any injuries to the Workers, accidents, delays, or defective Work that were encountered.

i. Other Services and Expenditures. Other services and expenditures shall be described in such detail as DISTRICT may require.

Timely and complete submission of daily reports and (if required) meeting minutes by CONTRACTOR shall be a condition precedent to CONTRACTOR's right to payment under the construction Contract. If requested by DISTRICT, the daily reports shall be delivered electronically.

(ii) Basis for Establishing Costs.

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

b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus sales tax, freight and delivery.

DISTRICT reserves the right to approve materials and sources of supply, or to supply materials to CONTRACTOR if necessary for the progress of the Work. No markup shall be applied to any material provided by DISTRICT.

c. Tool and Equipment Rental. No payment will be made for the use of tools which have a daily rental rate of less than \$250.00.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to DISTRICT than holding it at the Project site, it shall be returned, unless CONTRACTOR elects to keep it at the Project site at no expense to DISTRICT.

All equipment shall be acceptable to ARCHITECT, 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.

d. Other Items. DISTRICT may authorize other items which may be required on the extra Work. Such items include labor, services, material and equipment which are different in their nature from those required by the Work and which are of a type not ordinarily available from CONTRACTOR or any of the Subcontractors.

Invoices covering all such items in detail shall be submitted with the request for payment.

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

f. Overhead and Profit. Overhead and profit, including direct and indirect costs shall be submitted with the request for payment and include the following: home office overhead, off-site supervision, change order preparation negotiation/research, time delays, Project interference and disruption, additional guaranty and warranty durations, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

With respect to portions of the Work performed by Change Orders on a time-and-material, unit-cost, or similar basis, CONTRACTOR shall keep and maintain cost-accounting records satisfactory to DISTRICT, which shall be available to DISTRICT on the same terms as any other books and records CONTRACTOR is required to maintain under the Contract Documents.

The following format shall be used as applicable by DISTRICT and CONTRACTOR to communicate proposed additions and deductions to the Contract.

	<u>EXTRA</u>	<u>CREDIT</u>
a. Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
b. Labor (attach itemized hours and rates)	_____	_____
c. Equipment (attach invoices)	_____	_____
d. Subtotal	_____	_____
e. If Subcontractor performed Work, add Subcontractor's overhead and profit, to portions performed by him, not to exceed 10% of Item d.	_____	_____

f. Liability and Property
 Damage Insurance,
 Workers' Compensation
 Insurance, Social Security,
 and Unemployment Taxes, **not**
to exceed 25% of Item b. _____

g. Subtotal _____

h. Overhead and Profit _____

The allowance for the combined overhead and profit included in the total cost to DISTRICT shall be based on the following schedules.

Schedule 1. Twenty percent (20%) combined overhead and profit, of the total estimated costs of the extra Work to be performed. All subcontracted Work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the Work performed by Subcontractor. This schedule #1 shall apply to all changes totaling less than five hundred dollars (\$500.00).

Schedule 2. Fifteen percent (15%) combined overhead and profit, of the total estimated costs of the extra Work to be performed.
 All subcontracted Work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the Work performed by Subcontractor. This schedule #2 shall apply to all changes totaling more than five hundred dollars (\$500.00) but less than seven thousand five hundred dollars (\$7,500.00).

Schedule 3. Ten percent (10%) combined overhead and profit of the total estimated costs of the extra Work to be performed.
 All subcontracted Work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the Work performed by Subcontractor.
 This Schedule #3 shall apply to all changes totaling more than seven thousand five hundred dollars (\$7,500.00), but less than fifteen thousand dollars (\$15,000.00).

Schedule 4. Five percent (5%) combined overhead and profit, of the total estimated costs of the extra Work to be performed.
 All subcontracted Work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the Work performed by Subcontractor.
 This schedule #4 shall apply to all changes totaling more than fifteen thousand dollars (\$15,000.00).

i. Subtotal _____

j.	Bond and Liability Insurance not to exceed 1% of Item i	_____	_____
k.	Total	_____	_____

(g) It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of CONTRACTOR's costs and expenses, both direct and indirect, resulting from additional time required on the Project, or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

(h) For purposes of determining the cost, if any, of any change, addition or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to CONTRACTOR, and CONTRACTOR shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of CONTRACTOR's cost in determining the actual cost of construction for purposes of any change, addition or omissions in the Work as provided herein.

(i) CONTRACTOR expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

(j) If CONTRACTOR should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates DISTRICT to pay additional compensation to CONTRACTOR or to grant an extension of time for the completion of the Contract, or constitutes a waiver of any provision in the Contract, CONTRACTOR shall notify DISTRICT and ARCHITECT, in writing, in accordance with the provision of Article 57 herein. Any such claim must include all documents supporting the claim and schedule showing the impact, if any, of any delay. A time extension shall be CONTRACTOR's sole remedy and compensation for the delays identified in Article 64(a). CONTRACTOR's failure to timely notify DISTRICT and ARCHITECT shall be deemed a waiver and relinquishment of such a claim against DISTRICT. No claim shall be considered unless made in accordance with this subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Price. CONTRACTOR shall proceed to execute the Work even though the adjustment has not been agreed upon. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in this Article.

(k) CONTRACTOR shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for the Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to multiplicity of changes and/or clarifications. CONTRACTOR may not change or modify DISTRICT's Change Order form in an attempt to reserve additional rights.

Article 61. COMPLETION

(a) Close-out Procedures

(1) Punch List Items

(i) When CONTRACTOR considers the Work complete, CONTRACTOR shall prepare and submit to ARCHITECT a comprehensive list of minor items to be completed or corrected ("Punch List"). CONTRACTOR shall proceed promptly to complete and correct the items on the Punch List. Failure to include an item on such list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents.

(ii) Upon receipt of CONTRACTOR's Punch List, and not before, DISTRICT, ARCHITECT, and PROJECT INSPECTOR will perform an inspection to determine whether the Work, or designated portion thereof, is complete. If the inspection discloses any item, whether or not included on CONTRACTOR's list, is not completed in accordance with the requirements of the Contract Documents, CONTRACTOR shall complete or correct such item promptly.

(iii) CONTRACTOR shall proceed without delay and within a reasonable period of time to correct and complete all items on the Punch List. Unless agreed to by DISTRICT in advance, "a reasonable period of time" to correct and complete all items on the list shall be deemed to mean sixty (60) Days or less. CONTRACTOR shall then submit a request for an additional inspection by DISTRICT to determine completion. When the Work, or designated portion thereof, is complete, DISTRICT will file a Notice of Completion.

(iv) If CONTRACTOR fails to complete the minor corrective items prior to the expiration of the sixty (60) Day period, DISTRICT shall withhold from the final payment an amount equal to one and one-half times the estimated cost, as determined by DISTRICT, of each item until such time as the item is completed. At the end of such sixty (60) Day period, if there are items remaining to be corrected, DISTRICT may elect to proceed as provided in the Article entitled "Adjustments to Contract Price."

(2) Close-out Requirements

(i) **Utility Connections.** Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

(ii) Record Drawings

a) The purpose of this procedure is to obtain an exact set of record drawings (hereinafter referred to as "as builts") of the Work upon completion of the Project. CONTRACTOR shall prepare and maintain a complete set of "as-builts" and shall require each trade to prepare its own as-builts. The as-builts must correctly show the entire site for each major trade, including, but not limited to, water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing. CONTRACTOR shall mark the as-builts to show the actual installation where the installation varies from the Work as originally indicated on the Drawings. CONTRACTOR shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, CONTRACTOR must record a cross-reference at the corresponding location on the Drawings. CONTRACTOR shall give particular attention to concealed elements that would be

difficult to measure and record at a later date. CONTRACTOR shall use colors to distinguish variations in separate categories of the Work.

b) CONTRACTOR shall note related change order numbers where applicable. Upon completion of the Work and as a condition precedent to approval of final payment, CONTRACTOR shall obtain approval from the PROJECT INSPECTOR of the corrected prints and employ a competent draftsman to transfer the "as-built" information to the most current version of Autocad or as presently being utilized for plan check submission by either DISTRICT, Office of Public School Construction, or DSA and print a complete set of transparent sepia.

c) CONTRACTOR shall organize as-builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Prior to filing of the Notice of Completion, complete as-builts for the Project shall be turned over to the ARCHITECT. CONTRACTOR shall deliver corrected sepia and Diskette with Autocad file to DISTRICT. CONTRACTOR shall also provide an electronic version of the as-builts. The suitability of the as-builts will be determined by the ARCHITECT.

d) CONTRACTOR is liable and responsible for inaccuracies in as-built drawings, even though they become evident at some future date.

(iii) **Maintenance Manuals.** At least thirty (30) Days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, equipment warranties, and guarantees shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½" x 11" binders. The manual binders shall provide a table of contents in front and all items shall be indexed with tabs. Each manual binder shall also contain a list of subcontractors, with their addresses and the names of persons to contact in case of emergency. Identifying labels shall provide names of manufacturers, their addresses, and ratings and capacities of equipment and machinery. Unless otherwise provided in the Contract Documents, warranties and guarantees required by the Contract Documents shall commence on the date of completion of the Work.

(iv) **Inspection Requirements**

a) Prior to calling for final inspection, CONTRACTOR shall determine that the following Work, as applicable, has been performed:

1) The Work has been completed
2) All life safety items are complete and in working order

3) Mechanical and electrical Work is complete and fixtures are in place, connected, and ready for tryout and test

4) Electrical circuits are scheduled in panels and disconnect switches are labeled

5) Painting and special finishes are complete

6) Doors are complete with hardware, cleaned of protective film, relieved of sticking or binding, and are in working order

7) Tops and bottoms of doors are sealed

8) Floors are waxed and polished, as specified

9) Broken glass has been replaced and cleaned

10) Grounds are cleared of CONTRACTOR's equipment and raked clean of debris, and trash has been removed from Project site

11) Marks, dirt and superfluous labels have been removed from finished and decorative work

12) Final clean-up has been performed, as specified in Article 44

b) At the appropriate time, CONTRACTOR shall furnish a letter to DISTRICT stating that a responsible representative of DISTRICT has been instructed in working characteristics of mechanical and electrical equipment.

(b) Costs of Multiple Inspections

More than two (2) requests of DISTRICT to make inspections required under paragraph (a) of this Article shall be considered an additional service of ARCHITECT and PROJECT INSPECTOR, and all subsequent costs will be invoiced to CONTRACTOR and, if funds are available, withheld from remaining payments.

(c) Final Inspection

(1) CONTRACTOR shall comply with Punch List procedures under paragraph (a)(1) of this Article, and maintain the presence of project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall CONTRACTOR demobilize its forces prior to completion of the Punch List. Upon receipt of CONTRACTOR's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, ARCHITECT shall inspect the Work and shall submit to CONTRACTOR and DISTRICT a final inspection report noting the work, if any, required to be completed in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

(2) Upon completion of the Work contained in the final inspection report, CONTRACTOR shall notify DISTRICT and ARCHITECT, who shall again inspect such Work. If DISTRICT and ARCHITECT find the Work contained in such final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall notify CONTRACTOR, who shall then submit to ARCHITECT its final Application for Payment.

(3) Upon receipt and approval of such final Application for Payment, ARCHITECT and PROJECT INSPECTOR shall issue a final Certificate for Payment stating that to the best of their knowledge, information, and belief, and on the basis of their observations, inspections, and all other data accumulated or received by ARCHITECT and PROJECT INSPECTOR in connection with the Work, such Work has been completed in accordance with the Contract Documents. DISTRICT shall thereupon inspect such Work and either accept the Work

as complete or notify ARCHITECT, PROJECT INSPECTOR, and CONTRACTOR in writing of reasons why the Work is not complete. The Work may be accepted as complete only by action of DISTRICT's Governing Board. Upon acceptance of the Work of CONTRACTOR as fully complete (which, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed and when the entire Work, including all records, certificates, permits, warranties, and other documentation has been completed to the satisfaction of DISTRICT and approved by DSA), DISTRICT shall record a Notice of Completion with the County Recorder.

(d) Retention and Final Payment

(1) Upon the recordation of the Notice of Completion, CONTRACTOR may submit the final Certificate for Payment for the retentions. Within sixty (60) Days after the recordation of Notice of Completion and DISTRICT's receipt of approved Certificate for Payment, DISTRICT shall process the final payment to CONTRACTOR. The value of any Mechanics Liens, Stop Notices, incomplete or unsatisfactory Work, any amounts disputed by DISTRICT, and any other amounts which DISTRICT has the right to withhold shall be withheld as appropriate from the final payment by DISTRICT until such time as all Work and payments for said Work have been made in accordance with the Contract Documents and to the satisfaction of DISTRICT. No interest shall be paid on any retention, or on any amounts withheld due to a failure of CONTRACTOR to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between DISTRICT and CONTRACTOR pursuant to Public Contract Code section 22300.

(2) **Prerequisites for Final Payment.** The following conditions must be fulfilled prior to Final Payment:

(i) A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by CONTRACTOR, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights.

(ii) CONTRACTOR shall have made all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of DISTRICT required under the Contract Documents.

(iii) Each Subcontractor shall have delivered to CONTRACTOR all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

(iv) CONTRACTOR must have completed all close-out requirements set forth in paragraph (a)(2) of this Article.

(v) ARCHITECT, PROJECT INSPECTOR, and CONTRACTOR shall have approved a Final Certificate for Payment.

(vi) CONTRACTOR shall have delivered to DISTRICT all manuals and materials required by the Contract Documents.

(vii) CONTRACTOR shall have completed final clean up as required by Article 44.

(3) Acceptance of final payment by CONTRACTOR shall constitute a waiver for claims by CONTRACTOR except those previously made in writing and identified by CONTRACTOR as unsettled at the time of Final Application for Payment. The making of final payment shall constitute a waiver of claims by DISTRICT except those arising from:

- (i) Liens, claims, security interests or encumbrances arising out of the Contract and unsettled
- (ii) Failure of the Work to comply with the requirements of the Contract Documents
- (iii) Terms of warranties and guarantees required by the Contract Documents

(4) In the event of a dispute between DISTRICT and CONTRACTOR, DISTRICT may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

(5) In the event any stop notice filed by a Subcontractor or supplier of material, equipment, labor or services results in the commencement of any court action involving DISTRICT, CONTRACTOR agrees to hold DISTRICT harmless from any and all costs of said action and shall pay or reimburse DISTRICT for all reasonable costs, including attorney's fees, arising out of said action.

Article 62. ADJUSTMENTS TO CONTRACT PRICE

(a) If CONTRACTOR defaults or neglects to carry out the Work or any scheduled activity in accordance with the Contract Documents, including, but not limited to:

- (1) Failure to supply adequate Workers on the entire Project or any part thereof;
- (2) Failure to supply a sufficient quantity of materials;
- (3) Failure to perform any provision of the Contract;
- (4) Failure to comply with safety requirements or creation of an unsafe condition due to CONTRACTOR's actions;
- (5) Failure to order materials in a timely manner;
- (6) Failure to prepare deferred-approval items or shop drawings in a timely manner;
- (7) Failure to comply with CONTRACTOR's schedule which would result in a delay to the critical path;

(8) Failure to comply with the Subletting and Subcontracting Fair Practices pursuant to Public Contract Code section 4100, et seq. and fails (within three (3) calendar day period after receipt of written notice or the time expressly stated in the written notice from DISTRICT) to commence and continue correction of such default or neglect with diligence and promptness, DISTRICT may correct such deficiencies without prejudice to other remedies DISTRICT may have.

(b) DISTRICT shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If DISTRICT deems it inexpedient to correct Work

incomplete or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefore. In such case, CONTRACTOR will be invoiced the cost to correct such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect, or failure. The invoice amount shall be deducted from the next payment due CONTRACTOR. If payments then or thereafter due CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the difference to DISTRICT.

Article 63. CORRECTION OF WORK

(a) CONTRACTOR shall promptly remove from premises all Work identified by DISTRICT as failing to conform to Contract, whether incorporated or not. CONTRACTOR shall promptly replace and re-execute its own Work to comply with Contract Documents without additional expense to DISTRICT or extension of time and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

(b) If CONTRACTOR does not remove such Work within a reasonable time, fixed by written notice, DISTRICT may remove it and may store the material at CONTRACTOR's expense. If CONTRACTOR does not pay expenses of such removal within ten (10) Days thereafter, DISTRICT may, upon ten (10) Days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by CONTRACTOR.

(c) If, within three (3) years after the date of completion of the Work or a designated portion thereof, or after the date for commencement of warranties established under Article 61, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, CONTRACTOR shall correct it promptly after receipt of written notice from DISTRICT to do so unless DISTRICT has previously given CONTRACTOR a written acceptance of such condition. The period of three (3) years shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. DISTRICT shall give such notice promptly after discovery of the condition.

Article 64. DELAYS AND EXTENSION OF TIME

(a) CONTRACTOR shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of Work due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including but not restricted to: acts of God, or of public enemy, acts of Government, acts of DISTRICT or anyone employed by it or acts of another contractor in performance of a contract (other than the Contract) with DISTRICT, fires, floods, epidemics, quarantine restrictions, strikes, the results of viral pandemics such as shelter-in-place orders, quarantines, government shutdowns, substantial interruption to air travel, substantial interruptions in supply chains, equipment, materials and/or personnel shortages, and other economic by-products caused by the response to an epidemic or pandemic, and unusually severe weather or delays of Subcontractors due to such causes, provided that CONTRACTOR has taken reasonable precautions to prevent further delays owing to such causes. A ten (10) year average of the normal seasonal rainfall for the San Dimas, La Verne and Los Angeles County area,

as determined by the National Weather Service, and any resulting “dry-out” time shall not be considered reason for a time extension.

(1) CONTRACTOR will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in CONTRACTOR’s schedule for each winter weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the Project’s use. CONTRACTOR will not be allowed a day-for-day weather delay when the Contract is bid for construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those Days in excess of the norm. CONTRACTOR is expected to work seven (7) Days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the Work under construction from the effects of inclement weather.

(2) If the weather is unusually severe in excess of the NOAA data norm and prevents CONTRACTOR from beginning work at the usual daily starting time, or prevents CONTRACTOR from proceeding with seventy-five percent (75%) of the normal labor and equipment force towards completion of the Day’s current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, ARCHITECT will designate such time as unavoidable delay and grant one (1) calendar-day extension.

(b) CONTRACTOR shall within ten (10) calendar days of beginning of any such delay notify DISTRICT in writing of causes of delay. If CONTRACTOR submits a request for an extension of time, CONTRACTOR shall also submit an analysis of the Baseline Project Schedule, which demonstrates the cause for the delay, the length of the delay, and an explanation of why CONTRACTOR believes it is entitled to the time extension. CONTRACTOR shall also submit documentation, data and a delay analysis showing that the delay could not be avoided or mitigated by revising the Baseline Project Schedule. Thereupon DISTRICT shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. DISTRICT’s findings of fact thereon shall be final and conclusive on the parties hereto. Failure to submit such analysis will result in CONTRACTOR waiving his/her right to obtain any extension of time. Extension of time shall apply only to that portion of Work affected by the delay, and shall not apply to other portions of Work not so affected. CONTRACTOR agrees that the extension of time granted under this Article shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the active negligence of ARCHITECT, DISTRICT, or their officers, agents, and employees, CONTRACTOR shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.

(c) CONTRACTOR acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that DISTRICT will suffer extreme prejudice should CONTRACTOR fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Article shall constitute a waiver of such request. Evidence presented by CONTRACTOR that DISTRICT had actual notice of the time extension request, that DISTRICT was not prejudiced by CONTRACTOR’s failure to comply with this requirement, and/or that DISTRICT considered

CONTRACTOR's request despite CONTRACTOR's failure to strictly comply with this provision shall not render this requirement unenforceable.

(d) CONTRACTOR is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from DISTRICT to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials, except DISTRICT-furnished materials, unless CONTRACTOR furnishes to ARCHITECT documented proof that CONTRACTOR has made every effort to obtain such materials from every known source within reasonable reach of the Work. CONTRACTOR shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in final completion of the Work which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of ARCHITECT that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

(e) CONTRACTOR shall not be entitled to additional compensation for delays within its control. CONTRACTOR is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve CONTRACTOR-prepared drawings or approve a proposed installation. CONTRACTOR has included delays and damages which may be caused by such agencies in CONTRACTOR's bid. Thus, CONTRACTOR is not entitled to make claim upon DISTRICT for damages or delays arising from the delays caused by such agencies. Furthermore, CONTRACTOR has scheduled for such delays and is not entitled to an extension of time for delays caused by governmental agencies which CONTRACTOR must obtain approvals from and, thus, CONTRACTOR is not entitled to an extension of time.

(f) Liquidated Damages. CONTRACTOR and DISTRICT hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that DISTRICT will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed CONTRACTOR shall pay to DISTRICT as fixed and liquidated damages, and not as a penalty, the amount specified in the Agreement. CONTRACTOR expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if CONTRACTOR does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestone established in or pursuant to the Baseline Project Schedule. Any liquidated damages recovered by DISTRICT shall not, however, limit DISTRICT's right to separately recover any actual out-of-pocket damages it suffers due to CONTRACTOR's delay. CONTRACTOR and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

(g) In the event DISTRICT reasonably determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, DISTRICT shall have the right, but not the obligation, to order CONTRACTOR to take corrective measures necessary to expedite the progress of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and

(iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. In no event shall CONTRACTOR be entitled to an adjustment in the Contract Price in connection with any Extraordinary Measures required by DISTRICT under or pursuant to this paragraph unless the delay requiring Extraordinary Measures is caused by DISTRICT. DISTRICT may exercise the rights furnished DISTRICT under or pursuant to this paragraph as frequently as DISTRICT deems necessary to ensure that CONTRACTOR's performance of Work will comply with progress required by the Contract Documents.

(h) In the event CONTRACTOR falls behind the Baseline Project Schedule to such an extent that DISTRICT in good faith determines that CONTRACTOR will be unable to achieve Substantial Completion by the date set forth in the Baseline Project Schedule, as such date may be extended as provided in the Contract Documents, CONTRACTOR shall, within two (2) working days following DISTRICT's demand therefor, provide to DISTRICT, in writing, a detailed explanation of the measures CONTRACTOR will take in order to recover from the delay so that the progress of the Work complies with the Baseline Project Schedule. If in DISTRICT's good faith business judgment, CONTRACTOR's intended recovery measures will not cause CONTRACTOR to recover from the delay (provided such delay arises from a cause which is CONTRACTOR's or its Subcontractor's responsibility) so as to achieve Substantial and Final Completion on schedule, DISTRICT may direct CONTRACTOR to accelerate the progress of the Work, at CONTRACTOR's sole cost (which acceleration costs shall not cause an adjustment to the cost of the Work). Such methods of acceleration may, at DISTRICT's election, include, without limitation, employing such additional forces or paying such additional overtime wages and the actual, reasonably necessary, compression and inefficiency costs attributable to such acceleration, as may be required in order to assure that the progress of the Work is in compliance with the Baseline Project Schedule and assure timely Substantial and Final Completion of the Work. The cost of such overtime work, together with the actual, reasonably necessary compression and inefficiency costs attributable to such acceleration shall be borne entirely by CONTRACTOR and not increase the cost of the Work unless the delays were caused by DISTRICT or an entity controlled by DISTRICT, or something not the fault of CONTRACTOR and then such costs may be included in the cost of the Work.

Article 65. PAYMENTS WITHHELD

(a) In addition to any amounts which DISTRICT may retain under Article entitled "COMPLETION" and Article entitled "PAYMENTS," DISTRICT may withhold a sufficient amount or amounts of any payment or payments otherwise due to CONTRACTOR, as in its judgment may be necessary to cover:

(1) Payments which may be past due and payable for just claims against CONTRACTOR or any Subcontractors for labor or materials furnished in the performance under the Contract, including, without limitation, payments made pursuant to the Article entitled "PAYMENTS BY CONTRACTOR."

(2) The cost of defective or incomplete Work which CONTRACTOR has not remedied and DISTRICT was required to repair and/or complete.

(3) Liquidated damages assessed against CONTRACTOR.

(4) Penalties for violation of labor laws.

(5) The cost of materials ordered by DISTRICT pursuant to the Article 33 entitled "MATERIALS AND WORK."

(6) The cost of completion of the Contract if there exists a reasonable doubt that the Contract can be completed for the balance then unpaid to CONTRACTOR.

(7) Damage to DISTRICT, another contractor, or Subcontractor.

(8) Site clean-up as provided in Article 44 entitled "CLEANING UP."

(9) Failure of CONTRACTOR to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders and verified reports.

(10) Extra services for ARCHITECT.

(11) Extra services for DISTRICT's PROJECT INSPECTOR including but not limited to re-inspection required due to CONTRACTOR's failed tests or installation of unapproved or defective materials, and CONTRACTOR's failure to attend an inspection requested by CONTRACTOR.

(12) CONTRACTOR's failure to perform any portion of the Work in accordance with the Contract Documents, including progress schedules, or other violation of any provision of the Contract Documents or failure to discharge any CONTRACTOR obligation thereunder.

(13) Any claims, liens or stop notices filed in connection with the Work or asserted against DISTRICT, the Project or the Project premises or when DISTRICT has reasons to believe it is probable that a claim, lien or stop notice will be filed or asserted in connection with any portion of the Work.

(14) CONTRACTOR's failure to reimburse DISTRICT for any costs or expenses incurred by DISTRICT, or amounts advanced by DISTRICT, on behalf of CONTRACTOR as may be provided or permitted in the Contract.

(15) Expected charges when notification has been given that a penalty will be assessed by any State, local or municipal agency or by DISTRICT for violations of any applicable laws, including, but not limited to, labor laws and/or fair employment laws.

(16) Failure to store and properly secure materials.

(17) Failure of CONTRACTOR to maintain Record Drawings.

(18) Erroneous estimates by CONTRACTOR of the value of the Work performed, or other false statements in an Application for Payment.

(19) Any payments due to DISTRICT but not limited to payments for failed tests, or utilities changes or permits.

(20) Failure to provide release from material suppliers or Subcontractors when requested to do so.

(21) Failure of CONTRACTOR to pay contributions due and owing to employee benefits funds.

(22) Failure of CONTRACTOR or any Subcontractor to properly pay prevailing wages as defined in California Labor Code section 1720 et seq. or to comply with the requirements of the DLSE.

(23) A breach by CONTRACTOR of any obligation or provision of the Contract Documents, which is not cured within ten (10) Days from the date CONTRACTOR receives notice of such breach.

(b) If the above grounds are in the opinion of DISTRICT removed by or at the expense of CONTRACTOR, payment shall be made for amounts withheld because of them.

(c) DISTRICT may apply such withheld amount or amounts for payment of such claims or obligations at its discretion. In so doing, DISTRICT shall make such payments on behalf of CONTRACTOR. If any payment is so made by DISTRICT, then such amount shall be considered as a payment made under Contract by DISTRICT to CONTRACTOR and DISTRICT shall not be liable to CONTRACTOR for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. DISTRICT shall submit to CONTRACTOR an accounting of such funds disbursed on behalf of CONTRACTOR.

(d) As an alternative to payment of such claims or obligations, DISTRICT, in its sole discretion, may reduce the total Contract Price as provided in the Article entitled "ADJUSTMENTS TO CONTRACT PRICE."

Article 66. EXCISE TAXES

(a) CONTRACTOR will pay all applicable Federal, State and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents.

(b) If under Federal excise tax law any transaction hereunder constitutes a sale on which a Federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, DISTRICT, upon request, will execute documents necessary to show (1) that DISTRICT is a political subdivision of the State for the purposes of such exemption and (2) that the sale is for the exclusive use of DISTRICT. No excise tax for such materials shall be included in any bid price.

Article 67. NO ASSIGNMENT

CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or of its rights, title or interest in or to the same or any part thereof, without the previous consent in writing of DISTRICT; and CONTRACTOR shall not assign, by power of attorney or otherwise, any of the monies to become due and payable under the Contract unless by and with the like consent signified in like manner. If CONTRACTOR shall, without previous written consent, assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest therein, or of any of the monies to become due under the Contract, to any other person, company, or other corporation, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Contract may, at the option of DISTRICT, be terminated, revoked and annulled, and DISTRICT shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to CONTRACTOR, and to its purported assignee or transferee. No right under the Contract, nor any right to any money to become due hereunder, shall be asserted against DISTRICT in law or equity by reason of any purported assignment of the Contract, or any part thereof, or by reason

of the purported assignment of any monies to become due hereunder, unless authorized as set forth herein by written consent of DISTRICT. Any assignment of money due or to become due under the Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under said Contract in favor of all persons, firms or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, Government Code and/or Code of Civil Procedure and shall also be subject to deductions for liquidated damages or withholding of payments as determined by DISTRICT in accordance with the Contract.

Article 68. NOTICE AND SERVICE THEREOF

Any notice from one party to the other or otherwise under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

(a) If notice is given to DISTRICT by personal delivery thereof to DISTRICT or by depositing same in United States mails, enclosed in a sealed envelope addressed to DISTRICT, and sent by registered or certified mail with postage prepaid;

(b) If notice is given to CONTRACTOR by personal delivery thereof to said CONTRACTOR or to CONTRACTOR's superintendent at site of Project, or by depositing same in United States mails, enclosed in a sealed envelope addressed to said CONTRACTOR at its regular place of business or at such other address as may have been established for the conduct of Work under the Contract, and sent by registered or certified mail with postage prepaid; or

(c) If notice is given to Surety or other persons by personal delivery to such Surety or other person or by depositing same in United States mails, enclosed in a sealed envelope, addressed to such Surety or person at the address of such Surety or person last communicated by Surety or other person to party giving notice, and sent by registered or certified mail with postage prepaid.

Article 69. NO WAIVER

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

Article 70. DVBE COMPLIANCE

(a) If required by the Contract Documents, CONTRACTOR shall comply with the terms set forth in paragraph (b) of this Article.

(b) Pursuant to Public Contract Code section 2001, CONTRACTOR shall include in the Designation of Subcontractors form the following information:

(1) The name and the location of the place of business of each Subcontractor certified as a disabled veteran business enterprise ("DVBE") who will perform Work or labor or render service to CONTRACTOR in connection with the performance of the Contract and who will be used by CONTRACTOR to fulfill disabled veteran enterprise participation goals.

(2) The portion of Work that will be done by each Subcontractor under paragraph (1). CONTRACTOR shall list only one Subcontractor for each portion of Work as is defined by CONTRACTOR in his or her bid.

Article 71. COMMUNICATIONS

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, DISTRICT and CONTRACTOR shall communicate through ARCHITECT. Where direct communication is necessary between DISTRICT and CONTRACTOR, DISTRICT's communication shall be through DISTRICT's authorized designee. ARCHITECT shall be promptly informed, and shall receive copies of all written communications. CONTRACTOR shall not rely upon any communication from DISTRICT that is not from DISTRICT's authorized designee. Communications by and with ARCHITECT's consultants shall be through ARCHITECT. Communications by and with Subcontractors and material or equipment suppliers shall be through CONTRACTOR.

Article 72. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

Article 73. MEDIATION AND ARBITRATION OF CLAIMS

(a) Consistent with Article 58(c) of these General Conditions, and pursuant to Public Contract Code sections 9204(e) and 20104(c), Public Contract Code sections 9204 and 20104 et seq. are incorporated herein and set forth below in their entirety:

(b) **Public Contract Code Section 9204.**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

(c) **Public Contract Code Sections 20104 et seq.** Per Public Contract Code section 9204(d)(2)(B), if mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside Public Contract Code section 9204. Among these procedures are those set forth in Public Contract Code sections 20104 et seq.:

Public Contract Code Section 20104. Application of article; provisions included in plans and specifications.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or Specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

Section 20104.2. Claims; requirements; tort claims excluded.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may 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 Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by 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 Government Code.

Section 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

Section 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

Article 74. SOLID WASTE MANAGEMENT

CONTRACTOR shall comply with all provisions of applicable laws, including, without limitation, the requirements of the California Public Resources Code, rules and regulations of the California Integrated Waste Management Board and provisions of any site-specific Plans adopted by DISTRICT, that are applicable to the activities of contractors performing construction or related activities on the Project site.

Article 75. COMPLIANCE WITH STATE STORM WATER PERMIT

(a) Unless otherwise specified in the Contract Documents, CONTRACTOR shall be required to comply with all aspects of the State Water Resources Control Board ("State Water Board") Water Quality Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity ("Permit") for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.

(b) CONTRACTOR shall be responsible for filing the Notice of Intent ("NOI") and for obtaining coverage under the Permit. This includes preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") for the Project Site. Before any NOI, SWPPP, or other Permit-related document may be submitted to the State Water Board or implemented on the Project Site, it must first be reviewed and approved by DISTRICT. CONTRACTOR shall include all costs of compliance with specified requirements in the Contract Price.

(c) DISTRICT retains the right to procure coverage under the Permit for the Project Site if CONTRACTOR fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is

satisfactory to DISTRICT. Any cost incurred by DISTRICT in procuring coverage under the Permit, or drafting an NOI or SWPPP shall be paid by CONTRACTOR.

(d) CONTRACTOR shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. CONTRACTOR shall provide copies of all reports and monitoring information to DISTRICT Representative. If CONTRACTOR has failed or is unable to maintain compliance with the Permit, DISTRICT reserves the right to implement its own SWPPP at the Project Site, and hire additional contractors to maintain compliance. DISTRICT shall solely determine whether CONTRACTOR has adequately maintained compliance with the Permit. Any costs incurred by DISTRICT in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Contract General Permit shall be paid by CONTRACTOR.

(e) In bidding on this Contract, it shall be CONTRACTOR's responsibility to evaluate and include in the Contract Price the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to DISTRICT, and complying with SWPPP and any revisions to the SWPPP that become necessary during the course of construction.

(f) In addition to compliance with the Permit, CONTRACTOR shall comply with the lawful requirements of any applicable municipality, DISTRICT, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

(g) Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. CONTRACTOR, by submitting a bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its bid accordingly, and assumes any and all risks and liabilities arising therefrom.

(h) Failure to comply with the Permit is a violation of federal and state law. CONTRACTOR hereby agrees to indemnify and hold harmless DISTRICT, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which DISTRICT, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of DISTRICT, its officials, officers, agents, employees or authorized volunteers. DISTRICT may seek damages from CONTRACTOR for delay in completing the Contract in accordance with the Contract Documents, caused by CONTRACTOR's failure to comply with the Permit.

Article 76. INDEMNIFICATION

(a) To the fullest extent permitted by law, CONTRACTOR agrees to indemnify, defend at its own expense and hold harmless, DISTRICT, its Board, and each of their members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel reasonably acceptable to DISTRICT, from any and all losses, whether real or alleged, regardless of whether caused in part by such Indemnitee, arising out of or relating to any of the following: (1) any act or omission of CONTRACTOR or a Subcontractor, (2) the activities of CONTRACTOR or a Subcontractor, on the Project site or on other properties related to performance of the Work or the preparation for performance of the Work; (3) the payment or nonpayment of any Subcontractor for the Work performed; (4) the existence or dispersal of any

Hazardous Substances or Mold on the Project site as a result of CONTRACTOR's or a Subcontractor's failure to comply with its obligations under the Contract Documents; (5) the violation by CONTRACTOR or a Subcontractor of any patent, copyright or trademark rights; (6) the violation by CONTRACTOR or a Subcontractor of applicable law, including, without limitation, the violation of any requirement of the Storm Water Permit or the Storm Water Management or Storm Water Pollution Prevention Plans or violation of local storm water requirements; (7) the violation by CONTRACTOR or a Subcontractor of any of the labor requirements pertaining to the Project; (8) liability for (i) death or bodily injury to persons, (ii) damage or injury to, loss (including theft), or loss of use of, any property, (iii) any failure or alleged failure to comply with any provisions of law or the Contract Documents; or (iv) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in the Contract Documents; (9) any dispute between CONTRACTOR and Subcontractors, suppliers, or sureties, including, but not limited to, any failure or alleged failure of CONTRACTOR (or any person hired or employed directly or indirectly by CONTRACTOR) to pay any Subcontractor or supplier or any person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims; provided, however, that nothing contained herein shall be construed as obligating CONTRACTOR to indemnify an Indemnitee for losses resulting from that Indemnitee's sole negligence, that Indemnitee's active negligence or willful misconduct of such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee, where such sole negligence, active negligence or willful misconduct has been determined by agreement of CONTRACTOR and that Indemnitee, or has been adjudged by the final and binding findings of a court or arbitrator of competent jurisdiction. In instances where the active negligence or willful misconduct of an Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee accounts for only a percentage of the loss involved, the obligation of CONTRACTOR will be for that portion of the loss not due to the active negligence or willful misconduct of such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee.

(b) Pursuant to Public Contract Code section 9201, DISTRICT shall provide CONTRACTOR with timely notification of the receipt of any third-party claim relating to the Contract.

(c) In the event CONTRACTOR enters into any agreement with the owners of any adjacent property to enter upon such property for the purpose of performing the Work or other activities incidental to the Work, CONTRACTOR shall fully indemnify, defend and hold harmless any person or entity which owns or has any interest in such adjacent property.

(d) The indemnification, defense and hold harmless obligations of CONTRACTOR under this Article as well as any such obligations stated elsewhere in the Contract Documents: (1) shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which CONTRACTOR or any Subcontractor is required to carry under the terms of the Contract Documents; (2) are independent of and in addition to the Indemnitees' rights under the insurance to be provided by CONTRACTOR or any Subcontractor; and (3) shall not be limited, in the event of a claim against an Indemnitee by an employee of CONTRACTOR, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, by a limitation on amount or type of damages, compensation or benefits payable by or for CONTRACTOR or Subcontractor under any worker's compensation act, disability benefit act or other employee benefit program.

(e) CONTRACTOR agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Article from each and every Subcontractor. In the event CONTRACTOR fails to do so, CONTRACTOR agrees to be fully responsible to provide such defense and indemnification on Subcontractor's behalf according to the terms of this Article.

(f) Notwithstanding anything stated in this Article or elsewhere in the Contract Documents to the contrary, an Indemnitee's right to seek equitable indemnity and contribution from CONTRACTOR is in no way diminished or precluded by any agreement by CONTRACTOR to provide express contractual indemnity to such Indemnitee. CONTRACTOR's obligations under this Article shall be deemed to completely eliminate and preclude any right by CONTRACTOR to seek contractual or equitable indemnity or contribution from any Indemnitee for any loss covered by CONTRACTOR's express indemnification obligations under this Article.

(g) CONTRACTOR's obligation to defend under this Article includes, without limitation, the obligation to immediately reimburse an Indemnitee for any attorney's fees, court costs (statutory and non-statutory), arbitration and mediation expenses, professional, expert and consultant fees, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses associated with defense of such Indemnitee as and when incurred by any Indemnitee in defense of a claim by any third person or entity as a result of CONTRACTOR's failure or refusal to comply with its immediate defense obligation to such Indemnitee. Nothing stated in this Article or elsewhere in the Contract Documents shall be interpreted as providing or implying that the obligation of CONTRACTOR to defend an Indemnitee against an alleged loss that is within the scope of CONTRACTOR's indemnification obligation under this Article or under any other provision of the Contract Documents is to any extent released, excused, limited or relieved by a finding, determination, award or judgment by a court or arbitrator that the alleged loss was due to circumstances not within the scope of such indemnification obligation.

Article 77. MISCELLANEOUS PROVISIONS

(a) **Pre-Bid Conference.** Regardless of whether the Pre-Bid Conference(s) as described in the bidding documents or otherwise conducted are mandatory or optional, CONTRACTOR shall be deemed charged with knowledge of all facts, circumstances and other information that was available or provided to bidders at any Pre-Bid Conference, including, without limitation, any and all of the physical conditions of the land and existing improvements at the Project site that were visible and/or available for inspection or review by the bidders attending the Pre-Bid Conference.

(b) **Governing Law.** The interpretation and enforcement of the Contract Documents and the performance by the parties thereunder shall be governed by the laws of the State of California. The Superior Court of the County of Los Angeles shall have exclusive jurisdiction and venue over any legal proceedings arising out of or involving the interpretation or enforcement of, or other matters relating to, the Contract Documents or the performance of the parties thereunder.

(c) **Assignment.** Neither the performance of the Contract nor the Contract Documents, nor any monies due or to become due thereunder, nor any claim thereunder, may be assigned by CONTRACTOR without the prior written consent and approval of DISTRICT, which may be granted or withheld in DISTRICT's sole discretion. Any assignment by CONTRACTOR in violation of the section shall be null and void from its inception.

(d) **Written Notice.** Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall be deemed to have been duly served if served in the following manner:

(1) **Notice to DISTRICT.** If notice is given to DISTRICT, by personal delivery thereof to DISTRICT or by depositing same in United States mail, enclosed in a sealed envelope addressed to DISTRICT at its address shown in the bidding documents, and sent by registered or certified mail with postage prepaid.

(2) **Notice to CONTRACTOR.** If notice is given to CONTRACTOR, by personal delivery thereof to CONTRACTOR or to CONTRACTOR's project manager or superintendent at the Project site, or by depositing same in United States mail, enclosed in a sealed envelope addressed to CONTRACTOR at its last known address for its regular place of business and sent by registered or certified mail with postage prepaid.

(3) **Notice to Surety.** If notice is given to Surety, by personal delivery to the Surety or by depositing same in United States mail, enclosed in a sealed envelope, addressed to the Surety at the address of the Surety shown in the applicable Performance Bond or Payment Bond (or, if none is shown, the last known address for the Surety), and sent by registered or certified mail with postage prepaid.

(e) **Severability.** Should any part, term, portion or provision of the Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with any applicable laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstance, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by applicable laws.

(f) **Provisions Required by Applicable Laws.** Each and every provision of law and clause required by applicable laws to be inserted in the Contract Documents shall be deemed to be inserted and the Contract Documents shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party the Contract Documents shall be amended by the parties to make such insertion or correction.

(g) **Survival.** All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by CONTRACTOR of an obligation that extends beyond termination of the Contract or final completion of the Work, including, without limitation, CONTRACTOR's obligations of, or relating to, indemnification, insurance, confidentiality, ownership of documents, retention and audit of books and records, warranties and guaranties and resolution of claims shall be deemed to survive either termination of the Contract or final completion of the Work.

(h) **Waiver.** Provisions of the Contract Documents may be waived by DISTRICT only in writing, stating expressly that it is intended as a waiver of specified provisions of the Contract Documents. A waiver, by either DISTRICT or CONTRACTOR, of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character. DISTRICT's approval, acceptance, use or payment for any or part of

CONTRACTOR's performance of the Work shall not in any way alter CONTRACTOR's obligations, or waive any of DISTRICT's rights, under the Contract Documents. No certification for payment, payment, nor partial or entire use or occupancy of the Project or Work by DISTRICT shall constitute acceptance of Work not in accordance with the Contract Documents.