Rocklin Unified School District

2615 Sierra Meadows Drive · Rocklin, CA 95677
Phone · (916) 624-2428 Fax · (916) 624-7246



Roger Stock, Superintendent
Jennifer Stahlheber, Deputy Superintendent Business & Operations

Tony Limoges, Associate Superintendent, Human Resources
Marty Flowers, Associate Superintendent, Secondary Education
Bill MacDonald, Associate Superintendent, Elementary Education

INVITATION FOR BID

Whitney High School ADA Upgrades Project

Bid Due Date: November 23, 2026, By 1:00 PM

BIDDING REQUIREMENTS

NOTICE TO BIDDERS
INSTRUCTIONS TO BIDDERS
DESCRIPTION OF THE WORK
PROJECT SCHEDULE

REQUIRED BID FORMS

BID FORM
BID BOND
DESIGNATION OF SUBCONTRACTORS
FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT
NONCOLLUSION DECLARATION
SUFFICIENT FUNDS DECLARATION
IRAN CONTRACTING ACT CERTIFICATION
CONTRACTOR AND GRANTEE COMPLIANCE WITH ECONOMIC SANCTIONS IMPOSED IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE

REQUIRED CONTRACT FORMS

AGREEMENT BETWEEN OWNER AND CONTRACTOR
GENERAL CONDITIONS
PAYMENT BOND
PERFORMANCE BOND
WORKERS' COMPENSATION CERTIFICATION
DRUG-FREE WORKPLACE CERTIFICATION

NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that Rocklin Unified School District (hereinafter referred to as "District") is seeking electronic bids from qualified, experienced, and licensed contractors for construction/installation of the following public-project ("Project"):

Whitney High School ADA Upgrades Project

BID DOCUMENTS: The documents necessary to submit a bid for the Project ("Bid Documents") are available for download, at no cost, from the following link on the District's website: https://www.rocklinusd.org

BID SUBMITTAL: Bidders must submit electronic bids to Kurtis Secor at rusdfacilities@rocklinusd.org. Bids will be opened and posted on the District website noted above. Any bid submitted after this time shall be nonresponsive and will not be accepted or viewed. Each Bidder is solely responsible for timely submission of its bid; the District is not responsible for any technological issues in a Bidder's ability to timely submit its bid or portion thereof.

BID DEADLINE: Bids must be received not later than 1:00pm on Monday, November 23, 2026 ("Bid Deadline").

REQUIRED BID SECURITY: Each bid must be submitted with bid security as described in the Instructions for Bidders. Bid Security is due by the BID DUE DATE and TIME

CONTRACTOR LICENSE: In order to bid on the Work, a contractor must have a CSLB-issued contractor license with the following classification(s):Class B

MANDATORY PRE-BID CONFERENCE: The District will conduct a mandatory pre-bid conference and site visit at 1:00pm. On Thursday, November 5, 2026 at 701 Wildcat Blvd, Rocklin, CA, 95765. Attendance at the pre-bid conference and site visit is required, and any bidder that does not attend the entirety of the conference and site visit shall be deemed nonresponsive. Failure to attend or tardiness will render bid ineligible.

QUESTIONS AND SUBSTITUTION REQUESTS: Questions and substitution requests must be received no later than 1:00 p.m. on Monday, November 9, 2026, as described in the Instruction to Bidders. A final addendum will be issued no later than Friday, November 13, 2026. Substitution requests not approved by addendum shall be deemed rejected, and bidders shall base their bids on the products specified.

AWARD OF CONTRACT: The award of the Contract will be based on the following method of determining the lowest total bid amount: Base Bid.

DVBE REQUIREMENT: This Project is not subject to the DVBE requirements of Education Code Section 17076.11.

SURETY BONDS: The successful bidder must provide a Performance Bond and a separate Payment Bond, each in an amount equal to 100% of the total Contract Amount.

LABOR LAW: The Project is a "public work" that is subject, among other provisions, to Labor Code Sections 1720 through 1861, inclusive. As described in the Instructions for Bidders, each

contractor and subcontractor must be registered with the DIR in accordance with Labor Code Section 1725.5, and bidders must provide evidence of registration for themselves and their subcontractors. Each worker on the Project must be paid not less than the applicable Prevailing Wages. A copy of the applicable rates of Prevailing Wages will be on file and available for review at the Bidding Location, and a copy will be posted at the Project Site. The Project is subject to compliance monitoring and enforcement by the DIR. The successful bidder will be required to post all job-site notices required by DIR regulations and other applicable law. As described in the Special Provisions, the District will conduct a Mandatory Preconstruction Conference for purposes of, among other things, describing labor-law requirements.

RETENTION: Substitution of securities in lieu of retention, pursuant to Public Contract Code Section 22300, will be permitted as provided in the General Conditions.

Advertise: October 23, 2026 _____

October 30, 2026 _____

By:_____
Its:_____

INSTRUCTIONS TO BIDDERS

BID FORMAT

All bids must be submitted electronically, in a single pdf file, attached in an email, at rusdfacilities@rocklinusd.org. The project name and bid number must be clearly identified in the email subject line.

REGISTRATION REQUIRED

The Owner shall not accept any bid or enter into any contract without proof of the bidder's current registration to perform public work under Labor Code Section 1725.5.

The bidder shall not accept any sub-bid or enter into any subcontract without proof of the subcontractor's current registration to perform public work under Labor Code Section 1725.5.

BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1. Bids shall be made on the Bid Form provided in this package. Bids not made on the proper form shall be disregarded. Bids are to be sealed and clearly labeled with the Project Name on the cover of this package. Numbers must be stated in words and figures, and the signatures of all individuals must be in longhand.

2. No bid will be considered which makes exceptions, changes, or in any manner makes reservations to the terms of the drawings or specifications.

3. Questions regarding documents, discrepancies, omissions, or doubt as to meanings shall be emailed to rusdfacilities@rocklinusd.org. The project name and bid number must be clearly identified in the email subject line. Questions must be received no later than 1:00 p.m. on Monday, November 9th. Questions received after this deadline will not be answered. Responses will be in the form of an addendum to the Contract Documents, to be published on the District's website at https://www.rocklinusd.org. It is the responsibility of bidders to check the website for such updates and not rely upon email notifications or other means of communication. Oral responses will not be binding on the District.

4. Each bid must include the full business address of the bidder and be signed by bidder with bidder's usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

5. Pursuant to the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, which are hereby incorporated and made a part hereof and these Instructions to Bidders, every bidder shall set forth in its bid:

A. The name and location of the place of business and the California contractor's license number of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the bidder, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half (½) of one percent (1%) of the bidder's total bid. An inadvertent error in listing a California contractor's license number shall not be grounds for filing a bid protest or for considering the bid nonresponsive if the bidder submits the corrected contractor's license number to the Owner within 24 hours after the bid opening, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

B. The portion of the Work which will be done by each such subcontractor. If the bidder fails to specify a subcontractor for any portion of the Work to be performed under the Contract in excess of one-half (½) of one percent (1%) of the bidder's total bid, the bidder agrees to perform that portion itself. The successful bidder shall not, without the consent of the Owner:

    1. Substitute any person as subcontractor in place of the subcontractor designated in the original bid.
    2. Permit any subcontract to be assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the bid.
    3. Sublet or subcontract any portion of the Work in excess of one-half (½) of one percent (1%) of the total bid as to which the original bid did not designate a subcontractor.

6. The Director of Industrial Relations of the State of California, in the manner provided by law, has ascertained the general prevailing rate of per diem wages and the rate for legal holidays and overtime work. The Contractor must pay for any labor therein described or classified in an amount not less than the rates specified. Copies of the required rates are on file at the Owner's business office and are available to any interested party on request.

7. All bids must be accompanied by a completed Noncollusion Declaration and Sufficient Funds Declaration (Labor Code §2810). All bids must be accompanied by an executed Fingerprinting Notice and Acknowledgment, Iran Contracting Act Certification, and if applicable, Prime Bidder Certification of DVBE Participation and Prime Bidder Good Faith Worksheet.

8. Bids must be accompanied by a certified check, cashier's check, or bidder's bond, for an amount not less than ten percent (10%) of the amount of the base bid, made payable to the order of the Owner. If a bidder's bond accompanies the bid, said bond shall be secured by an Admitted Surety (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). The surety insurer must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurer selected by Contractor and to require Contractor to obtain a bond from a surety insurer satisfactory to the Owner. Said check or bond shall be given as a guarantee that the bidder will enter into the Contract if awarded the Work, and in case

of refusal or failure to enter into said Contract, the check or bond, as the case may be, shall be payable to the Owner and retained as liquidated damages.

9. Bids shall be submitted electronically as indicated in the Notice to Bidders. The bidder is responsible for ensuring that its bid is timely received by the District. The District will not accept any oral bid or bid sent via facsimile. Each bid received by the District after the Bid Deadline will not be viewed and will be considered nonresponsive

10. THIS PROJECT IS NOT SUBJECT TO THE DVBE REQUIREMENTS OF EDUCATION CODE SECTION 17076.11.

WITHDRAWAL OF BIDS

Bids may be withdrawn by bidders prior to the time fixed for the submittal of bids or any authorized postponement thereof. A successful bidder shall not be relieved of the bid unless by consent of the Owner or bidder's recourse to Public Contract Code §5100 *et seq*.

OPENING OF BIDS

The District may open bids at any time subsequent to the Bid Deadline and may require that interested bidders view the bid opening through video conferencing. Bid responses will be posted on the District website.

EXAMINATION OF CONTRACT DOCUMENTS AND SITE

Before submitting a bid, bidders shall examine the drawings, read the specifications, the form of Agreement between Contractor and Owner, and the other Contract Documents. Bidders shall visit the site of the proposed Work, examine the building, or buildings, if any, and any work that may have been done thereon. Bidders shall fully inform themselves of all conditions, in, at, and about the site, the building or buildings, if any, and any work that may have been done thereon.

Pursuant to Public Contract Code Section 1104: (1) bidders shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, except on clearly designated design build projects; (2) however, bidders shall be required to review architectural or engineering plans and specifications prior to submission of their bids and to report any errors and omissions to the Architect or Owner; and (3) the review shall be confined to the bidder’s capacity as a bidder and not as a licensed design professional.

BID PROTESTS

Any bid protest shall be submitted in writing to the District before 4:00 p.m. no later than Seven (7) calendar days following the District’s issuance of the Notice of Intent to Award the contract.

A protest shall comply with the following requirements:

1. The protest shall be in writing;
2. The protest shall clearly identify the specific grounds and facts upon which the protest is based;
3. The protest shall include all supporting documentation;
4. The protest shall refer to the specific portion(s) of the bid documents, statutes, regulations, or other legal authority forming the basis of the protest; and

5. The protest shall include the name, address, telephone number, and signature of the protestor or its authorized representative.

Failure to timely submit a written protest containing all required information shall constitute a waiver of any right to protest the bid award.

The District shall not be obligated to delay award of the contract pending resolution of a protest but may do so if deemed to be in the best interests of the District.

The District reserves the right to waive minor irregularities and to reject any and all bids pursuant to California Public Contract Code section 20118.2 and related applicable law.

The District's decision regarding the protest shall be final.

Any claim concerning the bidding process or contract award shall be governed by applicable California law, including but not limited to the California Public Contract Code and applicable provisions of the California Education Code.

FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

The form of Agreement between Owner and Contractor which the successful bidder will be required to execute, if awarded the Work, is a part of this Bid Package.

ADDENDA OR BULLETINS

Any addenda or bulletins, issued during the time of bidding, shall form a part of the drawings and specifications made available to bidders for the preparation of its bid, shall be covered in the bid, and shall be made a part of the Contract Documents. All addenda or bulletins shall be signed by the Architect and approved by the Division of State Architect.

EVIDENCE OF RESPONSIBILITY

Upon the request of Owner, a bidder shall submit promptly to the Owner or its designee satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work required by the Owner, the bidder's organization available for the performance of the Contract, and any other required evidence of the bidder's or its subcontractor's qualifications to perform the proposed Contract. The Owner may consider such evidence before making its decision awarding the proposed Contract. Failure to submit evidence of the bidder's or its subcontractors' responsibility to perform the proposed Contract may result in rejection of the bid.

AWARD OF CONTRACT

Rejection of any or all bids, to contract work with whomever and in whatever manner, to abandon work entirely, and/or to waive any informality in receiving of bids is reserved as the right of the Owner. Before the Contract is awarded, the Owner may at its sole discretion, require from the proposed Contractor on the Project further evidence of the reasonable qualifications of such contractor to faithfully, capably, and reasonably perform such proposed Contract and may consider such evidence before making its decision on the award of such proposed Contract.
The Contract shall be awarded to the lowest responsible and responsive bidder as interpreted by the Owner under California law and as specified herein and shall be entered into by the successful bidder within ten (10) days after mailing, faxing or delivery of the Notice of Award of Contract.

Owner reserves the right, without any liability, to cancel the award of any bid for any reason at any time before the full execution of the Agreement between Owner and Contractor.

EXECUTION OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

The Agreement between Owner and Contractor shall be signed by the successful bidder in as many originals as the Owner deems necessary and returned, together with the required Contract bonds, insurance certificates, additional insured endorsement, declarations page, a Public Contract Code Section 3006(a) Roof Project Certification, if required, Drug-Free Workplace Certification, and Independent Contractor Student Contact Form, within ten (10) days after the mailing, faxing or delivering of the Notice of Award of Contract. If the ten (10) day period would expire after the date for commencement of the Work, Contractor must submit the documents before the date of commencement of the Work. If the successful bidder does not comply with this paragraph, Owner may revoke and/or cancel the award to the successful bidder and award the Contract to the next lowest bidder, or may otherwise proceed as allowed by law. A Roof Project Certification is not required if (1) the Owner has ADA (average daily attendance) of 2,500 or less, or (2) the Project involves repair of 25% or less of the roof, or costs $21,000 or less.

CONTRACT BONDS

As required by the Contract Documents, two bonds, as itemized below and in the forms presented in these Contract Documents, shall be furnished by the successful bidder on the Project at the time of entering into the Contract and filed with the Owner before the successful bidder commences any Work on the Project. They shall be in the form of surety bonds issued by Admitted Surety insurers (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

Performance Bond in the amount of one hundred percent (100%) of the Contract Sum to insure Owner during construction, and for one year after Completion and during any warranty or guaranty period, against faulty or improper materials or workmanship and to assure Owner of full and prompt performance of the Contract.

Payment Bond (Labor and Material) in the amount of one hundred percent (100%) of the Contract Sum in accordance with the laws of the State of California to secure payment of any and all claims for labor and materials used or consumed in performance of this Contract.

DRAWINGS, SPECIFICATIONS AND ADDENDA OR BULLETINS

Return by each bidder of all drawings, specifications and addenda or bulletins in an unmutilated condition and without any marks or annotations is demanded within the time limit indicated under DEPOSIT in this section.

SUBSTITUTION OF MATERIALS

The Contractor must ensure that the proposed substitutions by the Contractor or its subcontractors are submitted to the Owner and Architect no later than 1:00 p.m. on Monday, November 9, 2026 for review and possible approval of any equipment or materials thought to be equal to or better than those specified in the drawings or specifications. Substitution requests received after this deadline will not be considered. A final addendum will be issued no later than Friday, November 13, 2026, including all equipment and materials deemed equivalent to those specified and approved by the Architect. Substitution requests not approved by addendum shall be deemed rejected, and bidders shall base their bids on the products specified. Submittals shall include comparative spec-data of the specified equipment or material and the proposed substitution as set forth in the Contract Documents. Submittals without this information will be automatically rejected.

PAYMENTS

Payments to the Contractor on account of the Contract shall be made in accordance with the terms of the Contract Documents.

TAXES

The Owner is generally exempt from payment of Federal Excise Tax on materials. The Owner will furnish exemption certificates to the Contractor to be used to obtain materials ordinarily subject to Federal Excise Tax without payment of the tax. Bidder shall deduct Federal Excise Taxes from their bid prices before submitting bids, so that such taxes will not be included in the Contract Sum.

EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order Work on the Project to cease. The Owner will remain obligated to pay for the Work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the Work has not been done.

TIME OF COMPLETION AND LIQUIDATED DAMAGES

Time is of the essence in this Contract, and the time of Completion for the Work ("the Contract Time") shall be Sixty-Three (63) calendar days from the date of commencement of the Work as established in the Owner's Notice to Proceed. If the Owner does not issue a Notice to Proceed establishing a commencement date, the Work shall be completed no later than August 6, 2027.

Liquidated damages will accrue and may be assessed as provided in the Contract Documents, including Section 7 of the Agreement. Should the Work not be Completed within the Contract Time as adjusted by Change Orders, Owner shall sustain damages. It is understood and agreed that it is and will be impracticable or extremely difficult to determine the actual amount of damages which the Owner will sustain in the event of and by reason of such delay, and it is therefore agreed that the Contractor will pay the Owner the sum of $250 dollars for each and every calendar day of such delay as and for liquidated damages. The Owner may deduct the amount thereof from any money due or that may become due the Contractor under the Contract. Should such money not be sufficient, the Owner shall have the right to recover the balance from the Contractor or its sureties.

If the Contractor causes delay to any other contractor's work on the Project that results in delayed *completion* of the Project, Owner will sustain damages. It is understood and agreed that it is and will be impracticable or extremely difficult to determine the actual amount of damages which the Owner will sustain in the event of and by reason of such delay, and it is therefore agreed that the Contractor will pay the Owner the sum of $250 dollars for each and every calendar day of such delay as and for liquidated damages. The Owner may deduct the amount thereof from any money due or that may become due the Contractor under the Contract. Should such money not be sufficient, the Owner shall have the right to recover the balance from the Contractor or its sureties.

PROJECT SCOPE

Scope- WORK TO INCLUDE DEMOLITION AND INSTALLATION OF CONCRETE WALKWAYS, CURB RAMPS, TRUNCATED DOMES AND DRINKING FOUNTAIN. EXISTING RESTROOMS SHALL RECEIVE MODIFICATIONS THAT COMPLY WITH ACCESSIBILITY STANDARDS.

For copies of drawings use the link here: Drawings

All the work on the football field in the drawings is excluded from this project.

.

1) Saw cut existing concrete and/or AC for ADA ramp renovation.
    a. Approx. 880 SF 4” concrete over 6” AB
2) Remove and replace truncated domes and concrete paving.
3) Remove and replace the drinking fountain.
    a. Approx. 20 SF 4” concrete paving at Drinking Fountain.
    b. Install DF Rails per plan
4) Off haul and disposal of all generated debris.
5) Furnish and Install 6” section of aggregate base rock under new concrete paving sections.
6) Furnish and Install all modifications for ADA restroom upgrades per plan (D 4.1) details A, B & C.
7) Include allowance for any drywall and painting repairs that may be required due to removal of existing wall mounted amenities.

PROJECT SCHEDULE

Project start date June 04, 2027
Project end date August 06, 2027

BID FORM

ROCKLIN UNIFIED SCHOOL DISTRICT
Email bid to: RUSDFacilities@RocklinUSD.org

(*Bid opening are done virtually: Request a link for the bid opening)*

The undersigned, doing business under the firm name of:

_____ hereby proposes and agrees to enter into a Contract, to furnish any and all labor, materials, applicable taxes, equipment and services for the Completion of Work described hereinafter and in the Contract Documents:

_____*Whitney High School ADA Upgrades Project*

prepared by:

_____(*Company NAME, ADDRESS & TELEPHONE NUMBER*)

for the amount of _____Dollars ($_____).

The low bid shall be determined as described in the Notice to Bidders.

11.1.6 BUILDER'S RISK/"ALL RISK"/EARTHQUAKE OVER 3.5/TIDAL WAVE INSURANCE

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, earthquake (for projects not solely funded through revenue bonds, limited to earthquakes equivalent to or under 3.5 on the Richter Scale in magnitude), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

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

11.1.6.2 EARTHQUAKE INSURANCE

If Contractor's bid is accepted by Owner as to earthquake insurance over 3.5 on the Richter Scale, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by earthquake and/or other earth movement, whether seismic or volcanic in origin, over 3.5 on the Richter Scale in magnitude. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.6.3 TIDAL WAVE INSURANCE

If Contractor's bid is accepted by Owner as to insurance coverage for tidal wave, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by tidal wave and other similar acts of God. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.]

If written notice of the Award of Contract is mailed, faxed, or delivered to the undersigned at any time before this bid is withdrawn, the undersigned shall, within ten (10) days after the date of such mailing, faxing, or delivering of such notice, execute and deliver an agreement in the form of agreement present in these Contract Documents and give Performance and Payment Bonds in accordance with the specifications and bid as accepted.

The undersigned hereby designates as the office to which such Notice of Award of Contract may be mailed, faxed, or delivered:

_____

_____

Our Public Liability and Property Damage Insurance is placed with:

_____

_____

Our Workers' Compensation Insurance is placed with:

_____

_____

Circular letters, bulletins, addenda, etc., bound with the specifications or issued during the time of bidding are included in the bid, and, in Completing the Contract, they are to become a part thereof.

The receipt of the following addenda to the specifications is acknowledged:

Addendum No. _____ Date _____ Addendum No. _____ Date _____

Addendum No. _____ Date _____ Addendum No. _____ Date _____

Addendum No. _____ Date _____ Addendum No. _____ Date _____

This bid may be withdrawn at any time prior to the scheduled time for the opening of bids or any authorized postponement thereof.

A bidder shall not submit a bid unless the bidder's California contractor's license number appears clearly on the bid, the license expiration date and class are stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid submitted by a contractor who is not licensed pursuant to Business and Professions Code Section 7028.15 shall be considered nonresponsive and shall be rejected. Any bid not containing the above information may be considered nonresponsive and may be rejected.

NOTE: Each bid must give the full business address of the bidder and be signed by bidder with bidder's usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

The undersigned declares under penalty of perjury under the laws of the State of California that the representations made in this bid are true and correct.

Print or Type Name: _____

Title: _____

Name of Company as Licensed: _____

Business Address: _____

_____

Telephone Number: _____

California Contractor License No.: _____

Class and Expiration Date: _____

DIR Registration No.: _____

State of Incorporation, if Applicable: _____

( ) Evidence of authority to bind corporation is attached.

Dated: _____, _____

Signed: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS that we the undersigned _____ as Principal and _____ as Surety, are hereby held and firmly bound unto the Rocklin Unified School District "Owner" in the sum of _____ Dollars ($_____) for payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the Owner a certain bid, attached hereto and hereby made a part hereof, to enter into a Contract in writing for the construction of _____ in strict accordance with Contract Documents.

NOW, THEREFORE,

a. If said bid shall be rejected, or, in the alternative;

b. If said bid shall be accepted and the Principal shall execute and deliver a contract in the form of agreement attached hereto and shall execute and deliver Performance and Payment Bonds in the forms attached hereto (all properly completed in accordance with said bid), and shall in all other respects perform the agreement created by the acceptance of said bid;

Then this obligation shall be void, otherwise the same shall remain in full force and effect, it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract on the call for bids, or to the Work to be performed hereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or the call for bids, or to the Work, or to the specifications.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under several seals this ____ day of _____, _____, the name and corporate party being hereto affixed and these presents duly signed by its

undersigned representative, pursuant to authority of its governing body. In the presence of:

(Notary Seal)

_____

(Principal)

_____

(Business Address)

_____

_____

(Corporate Surety)

_____

Business Address)

By:_____

_____

The rate or premium of this bond is _____ per thousand, the total amount of premium charged, $_____.

(The above must be filled in by Corporate Surety).

DESIGNATION OF SUBCONTRACTORS

Each bidder shall set forth below the name and the location of the place of business of each subcontractor and the California contractor license number and DIR registration number of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work or improvement, or to a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent (0.5%) of the bidder's total bid, and the portion of the Work which will be done by each subcontractor. An inadvertent error in listing a California contractor's license number shall not be grounds for filing a bid protest or for considering the bid nonresponsive if the bidder submits the corrected contractor's license number to the Owner within 24 hours after the bid opening, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

If the Contractor fails to specify a subcontractor for any portion of the Work to be performed under the Contract in excess of one-half of 1 percent (0.5%) of the Contractor's total bid, the Contractor shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the Work except under the conditions hereinafter set forth.

Subletting or subcontracting of any portion of the Work as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the legislative body of the Owner.

For any bid proposal submitted and for any contract for public work entered into, an inadvertent error in listing a subcontractor who is not registered under Labor Code Section 1725.5 shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that either: the subcontractor is registered prior to the bid opening; or the subcontractor is registered and has paid the penalty registration fee specified in Labor Code Section 1725.5(a)(2)(E), if applicable, within 24 hours after the bid opening; or the subcontractor is replaced by another registered subcontractor under Public Contract Code Section 4107. Failure of a listed subcontractor to be registered shall be grounds under Public Contract Code Section 4107 for the Contractor, with the Owner's consent, to substitute a registered subcontractor for the unregistered subcontractor.

Failure to provide this information in a legible manner may result in the rejection of an otherwise acceptable bid.

NOTE: *Reproduce page two of this section for additional listings needed beyond the length of this form.*

Portion of Work	Name of Subcontractor & Phone No.	Location of Subcontractor	California Contractor License Number	DIR Registration Number

I am the authorized representative of the Bidder submitting this Designation of Subcontractors and I declare that each subcontractor listed holds a valid and current contractor license in good standing in California to perform the portion of work for which the subcontractor is listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20___, at _____[city],_____[state].

Signature: _____

Print Name: _____

Title: _____

FINGERPRINTING NOTICE AND ACKNOWLEDGMENT
(Education Code Section 45125.2(a))

Note: This document must be executed and submitted with the bid.

Business entities entering into contracts with the Owner for the construction, reconstruction, rehabilitation or repair of a facility must comply with Education Code Sections 45125.1 and 45125.2. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law.

1. If the Owner determines your employee(s) will have more than limited contact with students, then you must take one or more of the following steps:

   a. Install a physical barrier at the worksite to limit contact with pupils.

   b. Have an employee, who the Department of Justice has ascertained has not been convicted of a violent or serious felony, continually monitor and supervise employees. The entity shall verify in the Independent Contractor Student Contact Form to the Owner that the employee charged with monitoring and supervising its employees has no such convictions. (See attached.)

   c. Arrange, with Owner's approval, for surveillance by Owner's personnel.

   If one or more of these steps is taken, you are not required to comply with Education Code Section 45125.1.

2. If you are providing the services in an emergency or exceptional situation, you are not required to comply with Education Code Section 45125.2. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. Owner shall determine whether an emergency or exceptional situation exists.

I have read the foregoing and agree to comply with the requirements of Education Code §§45125.1 and 45125.2 as applicable.

Dated: _____ _____
Signature

Name: _____ Title: _____

ATTACHMENT

Under Education Code Section 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

(1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any

methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27)carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

INDEPENDENT CONTRACTOR STUDENT CONTACT FORM

Contractor Name: _____
Supervisor/Foreman Name: _____
Start Date: _____
Completion Date: _____
Location of Work: _____
Hours of Work: _____
Length of Time on Grounds: _____
Number of Employees on the Job: _____

Yes No
[ ] [ ] Employees will have more than limited contact with students as determined by Owner, or if by Contractor, please explain:

_____

_____

If yes, the following steps will be taken to ensure student safety (check):

[ ] A physical barrier will be installed at the worksite to limit contact with pupils.

[ ] Employees will be continually monitored and supervised by an employee who has not been convicted of a violent or serious felony.

Name of Supervising Employee:

_____

Date of Department of Justice verification that supervising employee has not been convicted of a violent or serious felony:

_____

Name of employee who is the custodian of the Department of Justice verification information:

_____

[ ] Owner agrees: Employees will be surveilled by Owner's personnel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: _____

_____
Signature
Typed Name:_____
Title: _____

Note: This document must be executed and submitted with the executed Agreement between Owner and Contractor.

NONCOLLUSION DECLARATION

To Be Executed by Bidder and Submitted With Bid

Owner: Rocklin Unified School District

Contract for: _____Project

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20__, at _____ [*CITY*], _____ [*STATE*].

_____

_____

Signature

_____

_____

Print Name

SUFFICIENT FUNDS DECLARATION

(Labor Code Section 2810)

To Be Executed by Bidder and Submitted with Bid

Owner: Rocklin Unified School District
Contract for: _____Project

I, _____, declare that I am the _____ of _____, the entity making and submitting the bid for the above Project that accompanies this Declaration, and that such bid includes sufficient funds to permit _____ [ENTITY] to comply with all local, state or federal labor laws or regulations during the performance of the Contract for the Project, including payment of prevailing wage, and that _____[ENTITY] will comply with the provisions of Labor Code Section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on _____20__, at _____[CITY], _____[STATE].

Date:_____ _____

Signature

Print Name: _____

Print Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code Sections 2202-2208)
(To be Executed by Bidder and Submitted With Bid)

As required by Public Contract Code ("PCC") Section 2204 for contracts of $1,000,000 or more, please insert bidder's or financial institution's name and Federal ID Number (if available) and complete **one** of the options below. Please note that California law establishes penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (PCC §2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the bidder/financial institution identified below, and the bidder/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by California Department of General Services ("DGS") and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person/bidder, for 45 days or more, if that other person/bidder will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS. (PCC §2204(a).)

Bidder Name/Financial Institution (Printed)	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in*

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code Sections 2203(c) and (d), a public entity may permit a bidder/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services. If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

Bidder Name/Financial Institution (Printed)	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing	*Date Executed*

Russia's Actions in Ukraine
(To be Executed by Bidder and Submitted With Bid)

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (EO) regarding sanctions in response to Russian aggression in Ukraine. The EO is located at https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf. The EO directs all agencies and departments that are subject to the Governor's authority to take certain immediate steps, including notifying all contractors and grantees of their obligations to comply with existing economic sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. This correspondence serves as a notice under the EO that as a contractor or grantee, compliance with the economic sanctions imposed in response to Russia's actions in Ukraine is required, including with respect to, but not limited to, the federal executive orders identified in the EO and the sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programsand-country-information/ukraine-russia-related-sanctions). Failure to comply may result in the termination of contracts or grants, as applicable. Please note that for any agreements or grants valued at $5 million or more, a separate notification may be sent outlining additional requirements specified under the EO.

I, the official named below, certify I am duly authorized to execute this certification on behalf of the bidder/financial institution identified below, and the bidder/financial institution identified below is **not** on the current list of persons engaged in investment activities in Russian actions in Ukraine.

Bidder Name/Financial Institution (Printed)	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing	*Date Executed*

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement between Owner and Contractor ("Agreement") is entered into effective upon receipt of fully executed contract between the Rocklin Unified School District, Placer County, California ("Owner") and **[VENDOR NAME]** ("Contractor"), with Owner and Contractor each a "Party" and together the "Parties" to this Agreement.

Contractor and Owner agree as follows:

1. SCOPE OF WORK. Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, all in strict compliance with the Contract Documents, required for construction of the Project (the "Project") described below and as more fully described in the attached exhibit "A":

[PROJECT NAME]

Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, transportation, and other facilities and services necessary for the proper execution and completion of the Project. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees and subcontractors and shall not employ on the Project anyone not skilled in the task assigned. Any employee of Contractor or employee of Contractor's subcontractors, suppliers or materialmen Owner deems not skilled for the task assigned shall, upon Owner's request, be dismissed from the site.

2. EXAMINATION OF SITE. Contractor has visited the site and investigated the conditions on, in, out and about the site, including any buildings, which might affect the progress of the Project and is satisfied as to those conditions. No claim for money or time will be allowed as to such matters.

3. CONTRACT DOCUMENTS. The Contractor and Owner agree that the Contract Documents are composed of this Agreement, the General Conditions, the Notice to Bidders, the Instructions to Bidders, the Bid Form, all addenda issued prior to bid opening, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code Section 2810), the Fingerprinting Notice and Acknowledgment, Independent Contractor Student Contact Form, any required bonds, the Description of Work attached as Exhibit "A," and the Drawings and Specifications, each of which is incorporated herein by this reference. If there are specifications and plans, the specifications and plans are intended to cooperate, so that any work exhibited in the plans and not mentioned in the specifications, or vice versa, is to be executed the same as if both mentioned in the specifications and set forth in the plans to the true intent and meaning of the

DRAFT

said plans and specifications, when taken together. The Contract Documents are complementary, and each obligation of the Contractor, subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all. In the event of a conflict among the Contract Documents, the following order of precedence shall apply: (1) Modifications issued after execution of this Agreement; (2) this Agreement; (3) addenda, with later addenda governing over earlier addenda; (4) the General Conditions; (5) the Specifications; (6) the Drawings; and (7) the Notice to Bidders, Instructions to Bidders, and Bid Form. Notwithstanding the foregoing, conflicts regarding the quality or quantity of Work shall be resolved as provided in General Conditions Section 1.2.1.3. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws. The work shall constitute a "work of improvement" under Civil Code Section 8050 and Public Contract Code Section 7107.

4. COMPLETION DATE. The work under this Agreement shall commence after Start Date, upon receipt of the fully executed contract and shall be completed on or before End Date (the "Completion Date").

5. CONTRACT SUM. The Contract Sum is the total amount payable by Owner to Contractor for the performance of work under the Contract Documents. The Contract Sum is **[DOLLAR FIGURE SPELLED OUT] ($000,000),** unless modified in accordance with the Contract Documents.

6. CONTRACTOR'S LICENSE, REGISTRATION AND COMPLIANCE MONITORING. In accordance with Section 3300 of the Public Contract Code, Contractor has a Class "**B**," which shall be maintained in good standing for the duration of Contractor's work on the Project. Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The Owner shall not enter into any contract without proof of the Contractor's current registration to perform public work under Labor Code Section 1725.5. The Contractor shall not enter into any subcontract without proof of the subcontractor's current registration to perform public work under Labor Code Section 1725.5. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq*.) of the Labor Code) unless currently registered and qualified under Labor Code Section 1725.5 to perform public work.

7. LIQUIDATED DAMAGES. Failure to complete the Project within the time and in the manner provided for in this Agreement shall subject the Contractor to liquidated damages. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

DRAFT

Accordingly, the Parties agree that the amount herein set forth shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: $250, for each calendar day by which completion of the Project is delayed beyond the Completion Date, as adjusted by change orders.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

8. EARLY COMPLETION. Regardless of the cause therefore, the Contractor may not maintain any claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete its work on the Project in a shorter period than established in this Agreement, the Parties stipulating that the period established in this Agreement is a reasonable time within which to perform the work on the Project.

9. PAYMENT. Owner will pay Contractor on a monthly basis for services satisfactorily performed after receipt of properly documented and submitted applications for payment. On or before the fifth day of each month, Contractor shall submit to Owner an itemized application for payment in the format supplied by the Owner indicating the amount of work completed since commencement of the work or since the last progress payment, as applicable. These applications shall be supported by evidence which is required by this Agreement and such other documentation as the Owner may require. The Contractor shall certify that the work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to submit a detailed schedule of values upon request of the Owner and in such detail and form as the Owner shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments. For each accepted payment, five percent (5%) shall be withheld and retained by the Owner, and the remainder shall be paid to the Contractor.

If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full. Owner may withhold payment and/or retention, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of: (a) Defective work not remedied; (b) Stop Payment Notices filed, unless the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim and which Owner chooses to accept. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties. The surety insurer, at the time of

DRAFT

issuance of the bond, unless otherwise agreed to by Owner in writing, must have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurer selected by Contractor and to require Contractor to obtain a bond from a surety insurer satisfactory to the Owner; (c) Liquidated damages assessed against the Contractor; (d) Reasonable doubt that the work can be completed for the unpaid balance of any Contract Sum or by the completion date; (e) Damage to the Owner, another contractor, or subcontractor; (f) Unsatisfactory prosecution of the work by the Contractor; (g) Failure to store and properly secure materials; (h) Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents; (i) Failure of the Contractor to maintain record drawings; (j) Erroneous estimates by the Contractor of the value of the work performed, or other false statements in an Application for Payment; (k) Unauthorized deviations from the Contract Documents; or (l) Failure of the Contractor to prosecute the work in a timely manner in compliance with established progress schedules and completion dates; (m) Subsequently discovered evidence or observations nullifying the whole or part of a previously issued payment; (n) Failure to pay subcontractors or materialmen; (o) Breach of any provision of the Contract Documents. Owner's failure to withhold any of these sums from a progress payment and/or retention shall not constitute a waiver of Owner's right to such sums.

If the Owner accepts any work or makes any release of payment payments or retention under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

In accordance with Public Contract Code Section 22300, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon completion of the work, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Contract Documents. Securities eligible for investment under this Section shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be substantially similar to the form set forth in Public Contract Code Section 22300.

10. CHANGE ORDERS. The Contractor and the Owner agree that changes in the Project to be done under this Agreement and any plans and specifications shall become effective only when written in the form of a change order approved and signed by the Owner and the Contractor. It is specifically agreed that the Owner shall have the right to request any alterations, deviations, reductions, or additions to the Project and the amount of the cost thereof shall be added to or deducted from the amount of the Contract Sum by fair and reasonable valuations. Contractor also agrees to provide the Owner with all information requested to substantiate the cost of the change order and to inform the Owner whether the work will be done by the

DRAFT

Contractor or by a subcontractor.

This Agreement shall be deemed to be completed when the Project is finished in accordance with this Agreement, and any original plans and specifications as amended by such changes.

The Contractor shall submit with the proposed change order its request for time extension (if any), and include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Project. The time extension shall be agreed to by the Parties and memorialized by a written change order prior to initiation of the work contemplated by the change order.

11. DISPUTES. If a dispute arises between the Owner and the Contractor as to an interpretation of any of the specifications or Contract Documents or as to the quality or sufficiency of materials or workmanship, the decision of the Owner shall for the time being prevail, and the Contractor, without delaying the job, shall proceed as directed by the Owner without prejudice to a final determination of the dispute.

12. CLAIMS. "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to this Agreement, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner. Notwithstanding any other provision herein, Claims shall be handled pursuant to the procedures set forth in Public Contract Code Section 9204, including claim, written response, payments, meet and confer conference, statement of disputed and undisputed portions after the meet and confer conference and non-binding mediation, and Government Code claim provisions. Owner may request additional documentation from Contractor to be provided within applicable time periods, and Owner and Contractor shall reasonably cooperate to schedule and attend mediation as soon as reasonably possible.

As a precedent to initiation of any litigation against the Owner, Contractor must observe and comply with the Government Code claim procedures in Government Code Sections 901 et seq. after completion of the claim procedures above, including but not limited to timely presentation of a Government Code claim. The claim procedures described herein do not supersede or replace the requirement of a Government Code claim, and the two claim procedures shall be sequential. The requirement for mediation shall not toll or supersede the requirement for submission of a Government Code claim. If Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, then Contractor will have waived all rights to further pursue the Claim. The parties shall reasonably cooperate to schedule and attend mediation as soon as reasonably possible.

13. TERMINATION. If the Contractor should be adjudged bankrupt, or if the Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor's insolvency, or if Contractor or any of Contractor's subcontractors should violate any of the provisions of the Agreement, or if Contractor should refuse or fail to supply enough properly skilled workmen or proper materials, or if Contractor

DRAFT

violates Labor Code Section 1771.1(a), subject to the provisions of Labor Code Section 1771.1(f), or should fail to make prompt payment to subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, then the Owner may serve written notice upon the Contractor of its intention to terminate the Agreement. Unless, within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for corrections thereof be made, the Agreement shall, upon the expiration of said five (5) days, at the Owner's option, terminate.

The Owner may then take over the Project and prosecute the same to completion by any method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any excess cost occasioned the Owner thereby. In such event, the Owner may without liability for so doing, take possession of and utilize in completing the Project, such materials, appliances and other property belonging to the Contractor as may be on the site of the Project and necessary therefore. In such case the Contractor shall not be entitled to receive payment until the Project is finished. If the Contract Sum exceeds the expense of finishing the Project, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed the Contract Sum, the Contractor shall pay the difference to the Owner.

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and (3) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination.

14. SUBCONTRACTORS. If Contractor shall subcontract any part of the work, Contractor shall be fully responsible to Owner for acts or omissions of Contractor's subcontractors. Pursuant to Public Contract Code Section 6109, no contractor may perform work on a public works project with a subcontractor who is ineligible to perform work on the project pursuant to California Labor Code Sections 1777.1 or 1777.7.

15. PREVAILING WAGES. The Project is a public work, the Work shall be performed as a public work and under California Labor Section Code 1770 *et seq*., the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall

DRAFT

be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement. Contractor shall post on site all required job site notices as prescribed by regulation.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars ($200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by the Contractor.

Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State Department of Industrial Relations. Contractor and subcontractors shall comply with Labor Code Section 1776.

16. WORKING HOURS. In accordance with the provisions of California Labor Code Sections 1810 to 1815, inclusive, the time of service of any worker employed by the Contractor or a subcontractor doing or contracting to do any part of the work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars ($25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

17. APPRENTICES. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in

DRAFT

accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

18. DSA OVERSIGHT PROCESS. The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Owner's Inspector of Record/Project Inspector ("IOR") upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful act or omissions. If inspected work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

19. FORCE MAJEURE. The Parties shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants, or facilities by the Government when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the nonperformance is not due to the fault or neglect of the Party not performing. A Contractor seeking an extension of time as a result of the above enumerated acts, must present the request for an extension of time to the Owner within fifteen (15) calendar days of the commencement of the act causing the delay. A Contractor's failure to provide notice of a request for an extension of time may result in denial of the request.

20. INDEMNIFICATION. To the fullest extent permitted by law, the Contractor and its Subcontractors shall defend and indemnify the Owner, any construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Governing Boards, members of the Governing Boards, and directors ("Indemnitees"), from and against claims, actions, liability, damages, losses, and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties arising out of or resulting from performance of the work by Contractor or

DRAFT

its subcontractors; or any act, omission, negligence, or willful misconduct of the Contractor or its subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a Party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Party, person, or entity described in this paragraph. This obligation to defend and indemnify includes any claims or actions by third parties arising out of or resulting from Labor Code Section 2810. Contractor and its subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor and its subcontractors.

In the event Contractor brings hazardous materials on the Project site, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project site. In addition, the Contractor shall defend and indemnify the Indemnitees 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, except to the extent the claims, damages, losses, costs, or expenses were caused by Indemnitees' active negligence, sole negligence or willful misconduct.

21. INSURANCE.

a. **Comprehensive General Liability and Automobile Insurance**. Without limiting Contractor's indemnification obligations, Contractor shall maintain in force at all times during the performance of this Agreement the insurance policies described herein. Contractor shall secure and maintain Commercial General Liability Insurance written on an occurrence basis, with limits of not less than Two Million Dollars ($2,000,000) per occurrence and Four Million Dollars ($4,000,000) aggregate for bodily injury, personal injury, property damage, and contractual liability.

Contractor shall also maintain Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the performance of the work, with limits of not less than One Million Dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

The Owner shall be named as an additional insured on these policies by endorsements attached to this Agreement. These policies shall be primary to any insurance or self-insurance maintained by the Owner, and any other insurance carried by the Owner shall be excess and non-contributing. Contractor shall waive all rights of subrogation against the Owner and any

DRAFT

related parties.

Written notification by the carrier to the Owner is required at least thirty (30) days prior to cancellation, failure to renew, or other termination. The Owner may, at its sole discretion, terminate this Agreement for failure to maintain the required insurance or upon non-receipt of such notice.

Certificates of insurance and a copy of the declarations page evidencing the required coverage shall be filed with the Owner prior to commencement of work. Contractor shall maintain such coverage at its sole expense throughout the duration of the Agreement.

c. **Workers' Compensation**. Contractor shall maintain a policy of workers' compensation insurance as required by Labor Code Section 3200 et seq. during the duration of this Agreement. Contractor shall waive all rights of subrogation against the Owner for any loss arising from work performed under this Agreement. A certificate evidencing this coverage shall be filed with the Owner prior to commencement of work. Written notification by the carrier to the Owner is required at least thirty (30) days prior to cancellation, failure to renew, or other termination.

d. **Builder's Risk**. Unless provided by the Owner at Owner's sole discretion, Contractor, during the progress of the work and until final acceptance of the work by Owner upon completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, earthquake (for projects not solely funded through revenue bonds, limited to earthquakes equivalent to or under 3.5 on the Richter Scale in magnitude), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the work as an additional named insured.

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

22. WARRANTY PERIOD. The Contractor shall promptly correct any work found not to be in conformance with the Contract Documents for one year after Owner's written acceptance of the work. Contractor shall correct the work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the work if Owner provided the

DRAFT

written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this section shall survive acceptance of the work under the Contract and termination of the Contract.

23. ASSIGNMENT OF ANTI-TRUST CLAIM. Pursuant to Government Code Section 4552, 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 owner 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. § 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 the purchase 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. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with section 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

24. SUBSTITUTIONS. No substitutions of materials from those specified in this Agreement or the specifications shall be made without prior written approval of the Owner.

25. SUPERVISION AND OWNER ACCESS. Contractor shall provide competent supervision of all persons on the job site. Contractor shall allow Owner access to the site at all times.

26. CLEAN UP, PROTECTION OF WORK AND PROPERTY. Contractor shall maintain site in a clean and safe condition, including the daily removal of flammable material. The Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warnings against hazards created by such features in the course of construction. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Owner, is permitted to act at its discretion to prevent such threatened loss or injury. If at Project completion, the site is not clean, Owner may clean the site and deduct the cost from the Contract Sum.

27. OCCUPANCY. Owner reserves the right to occupy buildings at any time before formal acceptance of contract completion and such occupancy shall not constitute final acceptance or approval of any part of the work covered by this Agreement, nor shall such occupancy extend the date specified for substantial completion of work.

DRAFT

28. ANTI-DISCRIMINATION. It is the policy of the Owner that there shall be no discrimination against any of Contractor's prospective or active employees engaged in the Project because of race, color, ancestry, national origin, sex or religious creed. Therefore, the Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the Project by Contractor.

29. INDEPENDENT CONTRACTOR. While engaged in carrying out the terms and conditions of the Contract Documents, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the Owner.

30. TESTS AND INSPECTIONS. Tests, inspections, and approvals of portions of the work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

31. INDEPENDENT TESTING LABORATORY. The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall pay any additional shipping or transportation costs or expenses (mileage and hours). If Owner pays such additional costs or expenses instead of Contractor, then Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

32. ADVANCE NOTICE TO INSPECTOR OF RECORD. The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

33. TESTING OFF-SITE. Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the work.

34. ADDITIONAL TESTING OR INSPECTION. If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the work require additional testing, inspection, or approval not included under Section 30, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in Section 43.

DRAFT

35. COSTS FOR RETESTING. If such procedures for testing, inspection, or approval under Sections 30, 31, 32, and 34 reveal failure of the portions of the work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

36. COSTS FOR PREMATURE TEST. In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

37. TESTS OR INSPECTIONS NOT TO DELAY WORK. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the work.

38. TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW THE SURFACE. Pursuant to Public Contract Code Section 7104, when any excavation or trenching extends greater than four feet below the surface:

The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, if any:

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

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

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

The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from the Completion Date provided for by the Contract Documents, but

DRAFT

shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by the Contract Documents or by law which pertain to the resolution of disputes and protests between the contracting Parties.

39. EXISTING UTILITY LINES; REMOVAL, RELOCATION. Pursuant to Government Code Section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in this Agreement, the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

40. STORM WATER DISCHARGE PERMIT. If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resource Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, California 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

41. DISCOVERY OF HAZARDOUS MATERIALS. In the event the Contractor encounters or suspects the presence on the site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by California Health and Safety Code Section 25249.5, which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner. The work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

42. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

43. MISCELLANEOUS PROVISIONS.

43.1 **Assignment**. The Contractor shall not assign or transfer by operation of law or

DRAFT

otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on any payment bond, the surety on any performance bond and the Owner.

43.2 **Binding Effect**. This Agreement shall inure to the benefit of and shall be binding upon the Contractor and Owner and their respective successors and assigns.

43.3 **Severability; Governing Law; Choice of Forum**. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Placer, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

43.4 **Amendments**. The terms of the Contract Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Parties and approved or ratified by the Governing Board.

43.5 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate Superior Court in Placer County, California.

43.6 **Written Notice**. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to this Agreement pursuant to Public Contract Code Section 9201.

43.7 **Entire Agreement**. The Contract Documents constitute the entire agreement between the Parties relating to the Project, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure Section 1856. Contractor, by the execution of this Agreement, acknowledges that Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

43.8 **Execution of Other Documents**. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

DRAFT

43.9 **Execution in Counterparts**. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

SIGNATURES ON FOLLOWING PAGE

DRAFT

Rocklin Unified School District,
a California Public School District

By: _____

Jennifer Stahlheber
Name

Its: Deputy Superintendent,
Business & Operations

Date: _____

Contractor

By: _____
Signature

_____
Name

Its: _____

Date: _____

_____
CALIFORNIA CONTRACTOR'S LICENSE NO.

_____
LICENSE EXPIRATION DATE

_____
DIR Number

_____
Email Address

NOTE: Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

DRAFT

GENERAL CONDITIONS

for

CONTRACT OF CONSTRUCTION

FOR WHITNEY HIGH SCHOOL ADA UPGRADES PROJECT

ROCKLIN UNIFIED SCHOOL DISTRICT

_____, 20__

SUMMARY OF CONTENTS

ARTICLE 1: GENERAL CONDITIONS	10
ARTICLE 2: OWNER	16
ARTICLE 3: THE CONTRACTOR	19
ARTICLE 4: ADMINISTRATION OF THE CONTRACT	36
ARTICLE 5: SUBCONTRACTORS	51
ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS	57
ARTICLE 7: CHANGES IN THE WORK	59
ARTICLE 8: TIME	67
ARTICLE 9: PAYMENTS AND COMPLETION	71
ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY	82
ARTICLE 11: INSURANCE AND BONDS	87
ARTICLE 12: UNCOVERING AND CORRECTION OF WORK	92
ARTICLE 13: MISCELLANEOUS PROVISIONS	94
ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT	106

TABLE OF CONTENTS

ARTICLE 1
GENERAL CONDITIONS 10
1.1 BASIC DEFINITIONS 10
1.1.1 The Contract Documents 10
1.1.2 The Contract 10
1.1.3 The Work 10
1.1.4 The Project 11
1.1.5 The Drawings 11
1.1.6 The Specifications 11
1.1.7 The Project Manual 11
1.1.8 OR 11
1.1.9 COMPLETION 11
1.1.10 COMPLETION OF THE PROJECT 12
1.2 EXECUTION, CORRELATION AND INTENT 12
1.2.1 Correlation and Intent 12
1.2.1.1 *Documents Complementary and Inclusive* 12
1.2.1.2 *Coverage of the Drawings and Specifications* 12
1.2.1.3 *Conflicts* 12
1.2.1.4 *Conformance With Laws* 12
1.2.1.5 *Ambiguity* 13
1.2.1.6 *Execution* 13
1.2.2 Addenda and Deferred Approvals 14
1.2.2.1 *Addenda* 14
1.2.2.2 *Deferred Approvals* 14
1.2.3 Specification Interpretation 14
1.2.3.1 *Titles* 14
1.2.3.2 *As Shown, Etc* 14
1.2.3.3 *Provide* 14
1.2.3.4 *General Conditions* 14
1.2.3.5 *Abbreviations* 14
1.2.3.6 *Plural* 14
1.2.3.7 *Metric* 14
1.2.3.8 *Standard Specifications* 15
1.2.3.9 *Absence of Modifiers* 15
1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS 15
ARTICLE 2
OWNER 16
2.1 DEFINITION 16
2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER 16
2.2.1 Intentionally Left Blank 16
2.2.2 Site Survey 16
2.2.3 Soils 16
2.2.3.1 *Owner Furnished Services* 16
2.2.3.2 *Contractor Reliance* 16
2.2.4 Utility Survey 17
2.2.5 Information 17
2.2.6 Existing Utility Lines; Removal, Relocation 17
2.2.6.1 *Removal, Relocation* 17
2.2.6.2 *Assessment* 17
2.2.6.3 *Notification* 17
2.2.6.4 *Underground Utility Clearance* 18
2.2.7 Easements 18
2.2.8 Reasonable Promptness 18
2.2.9 Copies Furnished 18
2.2.10 Duties Cumulative 18
2.3 OWNER'S RIGHT TO STOP THE WORK 18
2.4 OWNER'S RIGHT TO CARRY OUT THE WORK 18
ARTICLE 3
THE CONTRACTOR 19
3.1 DEFINITION 19
3.2 SUPERVISION AND CONSTRUCTION PROCEDURES 19
3.2.1 Contractor 19
3.2.2 Contractor Responsibility 20
3.2.3 Obligations not Changed by Others' Actions 20
3.2.4 Contractor Responsibility for Readiness for Work 20
3.2.5 Project Meetings 20
3.3 SUPERINTENDENT 21
3.3.1 Full Time Superintendent 21
3.3.2 Staff 21
3.3.3 Right to Remove 21
3.4 LABOR AND MATERIALS 21
3.4.1 Contractor to Provide 21

3.4.2 Quality 21
3.4.3 Replacement 22
3.4.4 Discipline 22
3.5 WARRANTY 22
3.6 TAXES 22
3.7 PERMITS, FEES AND NOTICES 22
3.7.1 Payment 22
3.7.2 Compliance 23
3.7.3 Contract Documents 23
3.7.4 Responsibility 23
3.8 ALLOWANCES 23
3.8.1 Contract 23
3.8.2 Scope 23
3.8.2.1 *Prompt Selection* 23
3.8.2.2 *Cost* 23
3.8.2.3 *Cost Included in Contract Sum* 23
3.8.2.4 *Contract Sum Adjustment* 23
3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES 24
3.9.1 Requirements 24
3.9.2 DSA Oversight Process 26
3.9.3 Failure to Meet Requirements 26
3.10 DOCUMENTS AND SAMPLES AT THE SITE 26
3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES 27
3.11.1 Submittals Defined 27
3.11.1.1 *Shop Drawings* 27
3.11.1.2 *Samples* 27
3.11.1.3 *Contractor's Responsibility* 27
3.11.1.4 *Extent of Review* 28
3.11.2 Drawing Submission Procedure 28
3.11.2.1 *Transmittal Letter and Other Requirements* 28
3.11.2.2 *Copies Required* 29
3.11.2.3 *Corrections* 29
3.11.2.4 *Approval Prior to Commencement of Work* 29
3.11.3 Sample Submissions Procedure 29
3.11.3.1 *Samples Required* 29
3.11.3.2 *Labels and Instructions* 29
3.11.3.3 *Architect's Review* 30
3.11.3.4 *Record Drawings and Annotated Specifications* 30
3.11.3.5 *Equipment Manuals* 30
3.11.3.6 *Owner's Property* 30
3.11.4 Substitutions 30
3.11.4.1 *One Product Specified* 30
3.11.4.2 *Two or More Products Specified* 31
3.11.4.3 *Substitution Request Form* 31
3.11.4.4 *List of Manufacturers and Products Required* 31
3.11.5 Deferred Approvals 32
3.12 CUTTING AND PATCHING 32
3.12.1 Scope 32
3.12.2 Consent 32
3.12.3 Structural Members 32
3.12.4 Subsequent Removal 32
3.13 CLEANING UP 33
3.13.1 Contractor's Responsibility 33
3.13.2 Failure to Cleanup 33
3.13.3 Construction Buildings 33
3.14 ACCESS TO WORK 33
3.15 ROYALTIES AND PATENTS 34
3.15.1 Payment and Indemnity 34
3.15.2 Review 34
3.16 INDEMNIFICATION 34
3.16.1 Scope: Contractor 34
3.16.2 Scope: Subcontractors 35
3.16.2.1 *Indemnity* 35
3.16.2.2 *Joint and Several Liability* 35
3.16.3 No Limitation 36
3.17 OWNER AS INTENDED BENEFICIARY 36
3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE 36
ARTICLE 4
ADMINISTRATION OF THE CONTRACT 36
4.1 ARCHITECT 36
4.1.1 Definition 36
4.1.2 Modification 37
4.1.3 Termination 37
4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT 37
4.2.1 Status 37
4.2.2 Site Visits 37
4.2.3 Limitations of Construction Responsibility 37

4.2.4 Communications Facilitating Contract Administration 37
4.2.5 Payment Applications 38
4.2.6 Rejection of Work 38
4.2.7 Change Orders 38
4.2.8 Warranties Upon Completion 38
4.2.9 Interpretation 38
4.2.10 Additional Instructions 39
4.2.10.1 *Architect's Interpretations and Decisions* 39
4.2.10.2 *Typical Parts and Sections* 39
4.2.10.3 *Dimensions* 39
4.3 INSPECTOR OF RECORD 39
4.3.1 General 39
4.3.2 Inspector of Record's Duties 39
4.3.3 Inspector of Record's Authority to Reject or Stop Work 40
4.3.4 Inspector of Record's Facilities 40
4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES 40
4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS 41
4.5.1 Notice of Potential Change 41
4.5.2 Change Orders Requests 42
4.5.3 Definition of Claim 43
4.5.4 Time for Submitting Claim; Waiver 43
4.5.5 Content of Claim 44
4.5.5.1 *Claim Format; Waiver* 44
4.5.5.2 *Claims for Additional Money* 46
4.5.5.3 *Claims for Additional Time* 46
4.5.5.3.1 *Notice of Extent of Claim* 46
4.5.5.3.2 *Unusually Severe Weather Claims* 46
4.5.5.4 "*Pass Through" Claims* 46
4.5.6 Procedures for Claims (Public Contract Code section 9204) 47
4.5.6.1 *Claims* 47
4.5.6.2 *Meet and Confer* 48
4.5.6.3 *Government Code Claim* 48
4.5.7 Continuing Contract Performance 49
4.5.8 Claims for Concealed or Unknown Conditions 49
4.5.8.1 *Trenches or Excavations Less Than Four Feet Below the Surface* 49
4.5.8.2 *Trenches or Excavations Greater Than Four Feet Below the Surface* 49
4.5.9 Injury or Damage to Person or Property 50
ARTICLE 5 SUBCONTRACTORS 51
5.1 DEFINITIONS 51
5.1.1 Subcontractor 51
5.1.2 Sub-Subcontractor 51
5.1.3 Specialty Contractors 51
5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK 51
5.2.1 Assignment or Substitution - Consent of Owner 51
5.2.2 Grounds for Substitution 52
5.2.2.1 *No Change in Contract* 52
5.2.2.2 *Substitution Due to Clerical Error* 52
5.3 SUBCONTRACTUAL RELATIONS 53
5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS 54
5.5 SUBCONTRACTOR'S RESPONSIBILITIES 54
5.5.1 Supervision by Subcontractors 54
5.5.2 Discipline and Order 54
5.5.3 Defects Discovered 55
5.5.4 Subcontractor Information 55
5.5.5 Temporary Structures 55
5.5.6 Charges to Subcontractor 55
5.5.7 Fines Imposed 55
5.5.8 Project Signs 56
5.5.9 Remedies for Failure to Perform 56
5.5.10 Disputes Not to Affect Work 56
5.5.11 Application for Payment 56
5.5.12 Compliance with Procedures 56
5.5.13 On-Site Record Keeping 57
5.5.14 Non-Exclusive Obligations 57

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS 57
6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS 57
6.1.1 Owner's Rights 57
6.1.2 Designation as Contractor 57
6.1.3 Contractor Duties 57
6.1.4 Owner Obligations 58
6.2 MUTUAL RESPONSIBILITY 58
6.2.1 Delivery and Storage 58
6.2.2 Notice by Contractor 58
6.2.3 Costs Incurred 58
6.2.4 Correction of Damage 59
6.3 OWNER'S RIGHT TO CLEAN UP 59
ARTICLE 7
CHANGES IN THE WORK 59
7.1 CHANGES 59
7.1.1 No Changes Without Authorization 59
7.1.2 Authority to Order Minor Changes 60
7.2 CHANGE ORDERS ("CO") 60
7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD") 60
7.3.1 Definition 60
7.3.2 Use to Direct Change 60
7.4 REQUEST FOR INFORMATION ("RFI") 61
7.4.1 Definition 61
7.4.2 Scope 61
7.4.3 Response Time 61
7.4.4 Costs Incurred 62
7.5 REQUEST FOR PROPOSAL ("RFP") 62
7.5.1 Definition 62
7.5.2 Scope 62
7.6 CHANGE ORDER REQUEST ("COR") 62
7.6.1 Definition 62
7.6.2 Changes in Price 62
7.6.3 Changes in Time 62
7.7 PRICE OF CHANGE ORDERS 62
7.7.1 Scope 62
7.7.2 Determination of Cost 63
7.7.3 Format for Proposed Cost Change 65
7.7.4 Discounts, Rebates, and Refunds 66
7.7.5 Accounting Records 66
7.7.6 Notice Required 66
7.7.7 Applicability to Subcontractors 67
7.8 Waiver of Right to Claim Money or Time 67
ARTICLE 8
TIME 67
8.1 DEFINITIONS 67
8.1.1 Contract Time 67
8.1.2 Notice to Proceed 67
8.1.3 Days 67
8.2 HOURS OF WORK 67
8.2.1 Sufficient Forces 67
8.2.2 Performance During Working Hours 67
8.2.3 Labor Code Application 68
8.2.4 Costs for After Hours Inspections 68
8.2.5 Time for Commencement By Subcontractors 69
8.3 PROGRESS AND COMPLETION 69
8.3.1 Time of the Essence 69
8.3.2 No Commencement Without Insurance 69
8.3.3 Expeditious Completion 69
8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES 69
8.4.1 Conditions Allowing for Extensions of Time to Complete the Work Only (Excusable Delay) 69
8.4.2 Compensable Delay (Time and Money) 69
8.4.3 Notice by Contractor Required; Procedures for Demanding Additional Time or Money 70
8.4.4 Early Completion 70
8.4.5 Liquidated Damages 70
8.5 Government Approvals 71
ARTICLE 9
PAYMENTS AND COMPLETION 71
9.1 CONTRACT SUM 71
9.2 COST BREAKDOWN 72

9.2.1 Required Information 72
9.2.2 Owner Acceptance Required 72
9.3 APPLICATIONS FOR PAYMENT 73
9.3.1 Procedure 73
9.3.2 Purchase of Materials and Equipment 74
9.3.3 Warranty of Title 74
9.4 REVIEW OF PROGRESS PAYMENT 74
9.4.1 Owner Acceptance 74
9.4.2 Owner's Review 74
9.5 DECISIONS TO WITHHOLD PAYMENT 75
9.5.1 Reasons to Withhold Payment 75
9.5.2 Payment After Cure 77
9.5.3 Overpayment / Failure to Withhold 77
9.6 PROGRESS PAYMENTS 77
9.6.1 Payments to Contractor 77
9.6.2 Payments to Subcontractors 78
9.6.3 Percentage of Completion or Payment Information 78
9.6.4 No Obligation of Owner for Subcontractor Payment 78
9.6.5 Payment to Suppliers 78
9.6.6 Payment Not Constituting Approval or Acceptance 78
9.6.7 Joint Checks 79
9.7 COMPLETION OF THE WORK 79
9.7.1 Close-Out Procedures 79
9.7.2 Costs of Multiple Inspections 79
9.8 PARTIAL OCCUPANCY OR USE 80
9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION 80
9.9.1 Final Application for Progress Payment 80
9.9.2 Procedures for Application for Final Progress Payment 80
9.9.3 Release of Retainage 81
9.10 SUBSTITUTION OF SECURITIES 81
ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY 82
10.1 SAFETY PRECAUTIONS AND PROGRAMS 82
10.1.1 Contractor Responsibility 82
10.1.2 Subcontractor Responsibility 82
10.1.3 Cooperation 82
10.1.4 Accident Reports 82
10.1.5 First-Aid Supplies at Site 83
10.2 SAFETY OF PERSONS AND PROPERTY 83
10.2.1 The Contractor 83
10.2.2 Contractor Notices 83
10.2.3 Safety Barriers and Safeguards 83
10.2.4 Use or Storage of Hazardous Material 84
10.2.5 Fingerprinting 84
10.3 PROTECTION OF WORK AND PROPERTY 84
10.3.1 Protection of Work 84
10.3.2 Protection for Elements 84
10.3.3 Shoring and Structural Loading 84
10.3.4 Conformance Within Established Limits 85
10.3.5 Subcontractor Enforcement of Rules 85
10.3.6 Site Access 85
10.3.7 Protection of Materials 85
10.4 EMERGENCIES 85
10.4.1 Emergency Action 85
10.4.2 Accident Reports 85
10.5 HAZARDOUS MATERIALS 86
10.5.1 Discovery of Hazardous Materials 86
10.5.2 Hazardous Material Work Limitations 86
10.5.3 Indemnification By Owner for Hazardous Material Not Caused by Contractor 86
10.5.4 Indemnification by Contractor for

Hazardous Material Caused by Contractor 86
10.5.5 Terms of Hazardous Material Provision 87
10.5.6 Archeological Materials 87
ARTICLE 11 INSURANCE AND BONDS 87
11.1 CONTRACTOR'S LIABILITY INSURANCE 87
11.1.1 Liability Insurance Requirements 87
11.1.2 Subcontractor Insurance Requirements 88
11.1.3 Owner's Insurance 89
11.1.4 Additional Insured Endorsement Requirements 89
11.1.5 Workers' Compensation Insurance 89
11.1.6 Builder's Risk/"all risk" insurance 89
11.1.6.1 Course-of-Construction Insurance Requirements 89
11.1.7 Consent of Insurer for Partial Occupancy or Use 90
11.1.8 Fire Insurance 90
11.1.9 Other Insurance 90
11.1.10 Proof of Carriage of Insurance 90
11.1.11 Compliance 91
11.2 PERFORMANCE AND PAYMENT BONDS 92
11.2.1 Bond Requirements 92
11.2.2 Surety Qualification 92
ARTICLE 12 UNCOVERING AND CORRECTION OF WORK 92
12.1 UNCOVERING OF WORK 92
12.1.1 Uncovering Work for Required Inspections 92
12.1.2 Costs for Inspections not Required 92
12.2 CORRECTION OF WORK; WARRANTY 93
12.2.1 Correction of Rejected Work 93
12.2.2 Removal of Nonconforming Work 93
12.2.3 Owner's Rights if Contractor Fails to Correct 93
12.2.4 Cost of Correcting the Work 93
12.2.5 Warranty Corrections (Includes Replacement) 94
12.2.6 No Time Limitation 94
12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT 94
ARTICLE 13 MISCELLANEOUS PROVISIONS 94
13.1 GOVERNING LAW 94
13.2 SUCCESSORS AND ASSIGNS 94
13.3 WRITTEN NOTICE 95
13.4 RIGHTS AND REMEDIES 95
13.4.1 Duties and Obligations Cumulative 95
13.4.2 No Waiver 95
13.5 TESTS AND INSPECTIONS 95
13.5.1 Compliance 95
13.5.2 Independent Testing Laboratory 95
13.5.3 Advance Notice to Inspector of Record 96
13.5.4 Testing Off-Site 96
13.5.5 Additional Testing or Inspection 96
13.5.6 Costs for Retesting 96
13.5.7 Costs for Premature Test 96
13.5.8 Tests or Inspections Not to Delay Work 97
13.6 [INTENTIONALLY LEFT BLANK] 97
13.7 TRENCH EXCAVATION 97
13.7.1 Trenches Greater Than Five Feet 97
13.7.2 Excavation Safety 97
13.7.3 No Tort Liability of Owner 97
13.7.4 No Excavation Without Permits 97
13.8 WAGE RATES 97
13.8.1 Wage Rates 97
13.8.2 Holiday and Overtime Pay 98

13.8.3 Wage Rates Not Affected by Subcontracts 98
13.8.4 Change in Prevailing Wage During Bid or Construction 98
13.8.5 Forfeiture and Payments 98
13.8.6 Minimum Wage Rates 99
13.8.7 Per Diem Wages 99
13.8.8 Posting of Wage Rates and Other Required Job Site Notices 99
13.9 RECORD OF WAGES PAID: INSPECTION 99
13.9.1 Application of Labor Code 99
13.10 APPRENTICES 101
13.10.1 Apprentice Wages and Definitions 101
13.10.2 Apprentice Labor Pool 101
13.10.3 Journeyman/Apprentice Ratio; Computation of Hours 102
13.10.4 Journeyman/Apprentice Ratio 102
13.10.4.1 *Apprenticeable Craft or Trade* 103
13.10.5 Ratio Exemption 103
13.10.6 Apprentice Fund 103
13.10.7 Prime Contractor Compliance 104
13.10.8 Decisions of Joint Apprenticeship Committee 104
13.10.9 No Bias 104
13.10.10 Violation of Labor Code 104
13.11 ASSIGNMENT OF ANTITRUST CLAIMS 105
13.11.1 Application 105
13.11.2 Assignment of Claim 105
13.12 AUDIT 105
13.13 STORM WATER DISCHARGE PERMIT 106
ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT 106
14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE 106
14.2 TERMINATION BY THE OWNER FOR CAUSE 107
14.2.1 Grounds for Termination 107
14.2.2 Notification of Termination 107
14.2.3 Payments Withheld 107
14.2.4 Payments Upon Completion 108
14.2.5 Inclusion of Termination for Convenience 108
14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE 108
14.3.1 Suspension by Owner 108
14.3.1.1 *Adjustments* 108
14.3.1.2 *Adjustments for Fixed Cost* 108
14.3.2 Termination by the Owner for Convenience 108
14.4 NOT A WAIVER 109
14.5 MUTUAL TERMINATION FOR CONVENIENCE 109
14.6 EARLY TERMINATION 109

ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The "Contract Documents" consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, Instructions to Bidders, Notice to Bidders, the Bid Form, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code Section 2810) and the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The "Contract" represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

1.1.3 THE WORK

The "Work" shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including but not limited to punch list items and submission of documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner's representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings,

Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work. The Work shall constitute a "work of improvement" under Civil Code Section 8050 and Public Contract Code Section 7107.

1.1.4 THE PROJECT

The "Project" is the total construction of the Work performed in accordance with the Contract Documents but may also include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The "Drawings" are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

The "Project Manual" is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

1.1.8 OR

"Or" shall include "and/or."

1.1.9 COMPLETION

Statutory definitions of "Completion" and "Complete" shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims and warranties, "Completion" and "Complete" mean the point in the Work where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list work, and (2) Owner's representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute "Completion" or "Complete".

1.1.10 **COMPLETION OF THE PROJECT**

For purposes of accrual of liquidated damages for delays to the Project, *completion* shall mean the point in the Project where (1) all contractors and Owner have fully and correctly performed all work of the entire Project in all parts and requirements, including corrective and punch list work, and (2) Owner's representatives have conducted a final inspection of the entire Project that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance of the entire Project shall not constitute *completion* or *complete*.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. 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.

1.2.1.2 ***Coverage of the Drawings and Specifications.*** The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to Complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in the Drawings or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Contractor.

1.2.1.3 ***Conflicts.*** Without limiting Contractor's obligation to identify conflicts for resolution by the Owner, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

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

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 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. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall promptly notify Architect and Owner 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 Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

If, as and to the extent that Public Contract Code Section 1104 is deemed to apply after the award of the Contract, Contractor shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Contract Documents, except to the extent that Contractor discovered or should have discovered and reported any errors and omissions to the Architect and Owner, including but not limited to as the result of any review of the plans and specifications by Contractor required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Contractor.

1.2.1.5 ***Ambiguity.*** 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 Owner 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 the 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 Sum or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Sum or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

1.2.1.6 ***Execution.*** Execution of the Agreement Between Owner and Contractor by the Contractor is a representation that the Contractor has visited the Site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 ***Addenda.*** Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect ("DSA").

1.2.2.2 ***Deferred Approvals.*** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 ***Titles.*** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3.2 ***As Shown, Etc.*** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 ***Provide.*** "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 ***General Conditions.*** The General Conditions and any supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.5 ***Abbreviations.*** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

1.2.3.6 ***Plural.*** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 ***Metric.*** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

1.2.3.8 ***Standard Specifications.*** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Owner and Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 ***Absence of Modifiers.*** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Contract. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other contracts or projects or for additions to this Contract or Project outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect.

ARTICLE 2

OWNER

2.1 DEFINITION

The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner and/or the Owner's authorized representatives, including but not limited to architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or any construction manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Intentionally Left Blank

2.2.2 Site Survey

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and Site work shall be provided by the Contractor.

2.2.3 Soils

2.2.3.1 ***Owner Furnished Services.*** When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall 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.

2.2.3.2 ***Contractor Reliance.*** Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that

unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Work and Project, and prior experience with similar projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

2.2.6.1 ***Removal, Relocation.*** Pursuant to Government Code Section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

2.2.6.2 ***Assessment.*** These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

2.2.6.3 ***Notification.*** If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, Contractor shall immediately notify the Owner and the utility in writing.

2.2.6.4 ***Underground Utility Clearance.*** It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code Section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to the Owner.

2.2.7 EASEMENTS

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

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any delays caused by factors beyond the Owner's control including but not limited to DSA's or any other local, State or federal agency's review of bids, change order requests, RFI's or any other documents.

2.2.9 COPIES FURNISHED

The Contractor will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, after providing Notice pursuant to paragraph 2.4, may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the

Contract with Contractor. Owner may exercise this right at any time during the Contractor's Work.

Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the retention, or progress payments due the Contractor, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

If part of the Project is performed by other contractors Owner directly retains, and the Owner does not retain a construction manager for the Project, Contractor shall be responsible for the coordination and sequencing of its Work with those other contractors so as to avoid any impact on the Contract schedule pursuant to the requirements of Article 6. If Contractor fails to fulfill these obligations, Owner may exercise its rights under Section 2.4. The right of Owner to carry out the Work under Section 2.4 shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.1.4.

If part of the Project is performed by other contractors Owner directly retains, and Owner retains a construction manager, the construction manager shall schedule and coordinate the activities of Contractor with the other contractors and Owner. Contractor agrees to accept the Owner's, and any construction manager's, construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Contractor realizes that work by other contractors or Owner may occur simultaneously with Contractor's Work in any given area. Contractor is responsible for its own sequences within a given activity or set of activities. Contractor shall not commit, or permit, any act which will adversely affect the work of any other contractor or Owner. Contractor shall provide layout of its Work at the request of any other contractor or Owner.

Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code Sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.2 Contractor Responsibility

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

3.2.3 Obligations not Changed by Others' Actions

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.2.4 Contractor Responsibility for Readiness for Work

The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.2.5 Project Meetings

During its Work, Contractor shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and Project and the future progress of the Work and the Project. Contractor shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections.

3.3 SUPERINTENDENT

3.3.1 Full Time Superintendent

The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

3.3.2 Staff

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

3.3.3 Right to Remove

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS

3.4.1 Contractor to Provide

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

3.4.2 Quality

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these standards may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Contractor at no cost to the Owner.

3.4.4 DISCIPLINE

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

3.5 WARRANTY

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5 and 12.2.6), the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

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. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

3.7.2 **COMPLIANCE**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.7.3 **CONTRACT DOCUMENTS**

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 **RESPONSIBILITY**

If the Contractor performs any work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such work, and shall bear the attributable cost of correction and delays to the Work, other contractors' work, and the Project.

3.8 **ALLOWANCES**

3.8.1 **CONTRACT**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.8.2 **SCOPE**

3.8.2.1 ***Prompt Selection.*** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 ***Cost.*** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 ***Cost Included in Contract Sum.*** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.4 ***Contract Sum Adjustment.*** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of

the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the Contractor's costs under paragraph 3.8.2.3.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

Before the Contractor's commencement of Work or within two (2) weeks of award of the Contract, whichever is earlier, Contractor shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work, which shall conform to the Contract Documents' requirements.

Contractor shall submit a monthly updated schedule of the Work that will include an accurate as-built schedule and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. Contractor shall submit its daily logs for the prior month with the updated schedule.

The schedule and updates shall conform, at a minimum, to industry standards for critical path scheduling and shall facilitate Owner's Project management and evaluation of Contractor Claims for additional money or time.

The schedule and updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Contractor at the beginning of the Work. The original schedule and all updates shall accurately reflect work performed to date, all construction tasks (including procurement), the critical path schedule for Completion of the remainder of the Work, and the percentage of the Work completed. The original schedule and updates shall include all delay days for weather not unusually severe, even though that weather will not entitle Contractor to additional time or money.

The construction schedule shall be in the form of either a tabulation, chart, or graph, unless otherwise stated in Division 1 of the Specifications, and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Project. Whenever in the Contract Documents Contractor is required to provide a schedule and/or schedule updates, the Contractor shall provide the schedule and updates in electronic format as well as hard copy. Contractor shall be solely responsible for the accuracy, utility and reasonableness of all of its schedules. Owner's acceptance, approval or non-rejection of Contractor's schedules shall not affect Contractor's responsibility for its schedules.

The Contractor and Owner shall use any float on a "first come, first served" basis. The original schedule and updates shall reflect Contractor's and Owner's use of float. Float is not for the exclusive use or benefit of either Owner or Contractor, but it is a jointly owned expiring Project

resource available to both parties as needed to meet schedule milestones. For the original schedule and updates, Contractor shall use a critical path network format with the critical paths clearly indicated. Contractor shall use an MS Project, Primavera, or an equivalent or better program. Contractor shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Contractor shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Contractor shall use calendar days.

If any change in Contractor's method of operations will cause a change in the construction schedule, Contractor shall submit to Owner, Architect, and any construction manager, a revised construction schedule within seven (7) days of the change, unless a different time period is stated in Division 1 of the Specifications.

If, in the Owner's opinion, the Contractor is not prosecuting the Work at a rate sufficient to meet the Work schedule or a contractual milestone, or to Complete the Work within the Contract Time (as adjusted by change orders) or if the Contractor's actual progress falls behind the Work schedule or it is apparent to Owner or Contractor that Contractor will not meet contractual milestones or Complete the Work within the Contract Time (as adjusted by change orders), the Owner may require that the Contractor prepare and submit a recovery plan. Contractor must submit a recovery plan within seven (7) days of a demand for the plan, unless a different time period is stated in Division 1 of the Specifications. At a minimum, the recovery plan must include a revised schedule that gets the Work back on schedule and Completes all Work by the contractual milestones and within the Contract Time (as adjusted by change orders) or by other dates Owner specifies in the demand for a recovery plan. The recovery plan shall state the corrective actions Contractor will undertake to implement it. The recovery plan shall also list any additional money that Contractor believes it should receive if Owner orders Contractor to fully or partially implement the recovery plan. If the Owner orders Contractor to implement the recovery plan, Contractor shall do so, but the order shall not act constitute an admission by Owner that Contractor is entitled to additional money. To recover additional money, Contractor must comply with General Conditions Articles 4.5, 7 and 8.

All schedules Contractor submits shall be certified as true and correct, as follows:

> I, _____[NAME OF DECLARANT], declare the following:
>
> _____[CONTRACTOR COMPANY NAME] has entered into a Contract with on the _____ [NAME OF PROJECT] Project. _____[CONTRACTOR COMPANY NAME] authorized me to prepare the schedules for Rocklin Unified School District for _____[CONTRACTOR COMPANY NAME] Work on the Contract, and I prepared the attached schedule. I am the most knowledgeable person at _____[CONTRACTOR COMPANY NAME] regarding the scheduling of the Work for this Contract.
>
> The attached schedule does not breach the Contract between _____ [CONTRACTOR COMPANY NAME] and Rocklin Unified School District

for this Project, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of schedules, only contains truthful and accurate as-built and as-planned dates of work on the Contract (including supporting data), and is not a false claim.

The attached schedule is submitted in compliance with all laws applicable to submission of a Claim, including but not limited to California Penal Code Section 72 (Fraudulent Claims), Government Code Sections 12650 et seq. (False Claims Act; for example, Government Code Section 12651(a)(7)), and Business and Professions Code Sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself and/or _____ [CONTRACTOR COMPANY NAME].

While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for _____ [CONTRACTOR COMPANY NAME]) when necessary to ensure that the statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20__, at _____, California.

_____
_____[NAME OF DECLARANT]

3.9.2 DSA Oversight Process

In connection with the DSA Construction Oversight Process which includes inspection cards and review of changes to the DSA-approved construction documents, the Contractor must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures.

3.9.3 Failure to Meet Requirements

Failure of the Contractor to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during

construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings,

Product Data, Samples, and similar required submittals. These documents shall be available to the Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner, upon Completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 ***Shop Drawings.*** The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

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

3.11.1.3 ***Contractor's Responsibility.*** Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" provisions in Division 1 of the Specifications and in accordance with the Contractor's original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Contractor may be assessed $100 a day for each day it is late in submitting a shop drawing or sample. 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 the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, field conditions, 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. 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 paragraph 3.11.4, "Substitutions." Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner's or Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor will be returned unreviewed for resubmission by the Contractor.

3.11.1.4 ***Extent of Review.*** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect's review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 **Drawing Submission Procedure**

3.11.2.1 ***Transmittal Letter and Other Requirements.*** All shop drawings must be properly identified with the name of the Project and Contractor's name and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and Contractor and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing

shall have a clear space for the stamps of Architect and Contractor. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 ***Copies Required.*** Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 ***Corrections.*** The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

3.11.2.4 ***Approval Prior to Commencement of Work.*** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.3 **Sample Submissions Procedure**

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 ***Record Drawings and Annotated Specifications.*** The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all 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. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Contractor. In the event of a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Contractor's Work and prior to Application for Final Progress Payment, the Contractor will provide one complete set of Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 ***Equipment Manuals.*** Contractor shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Progress Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 ***Owner's Property.*** All shop drawings and samples submitted shall become the Owner's property.

3.11.4 **SUBSTITUTIONS**

3.11.4.1 ***One Product Specified.*** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," 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." Contractor may, 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 and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 ***Two or More Products Specified.*** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, the Contractor will be responsible for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution which fees may be withheld from progress payments and/or retention.

3.11.4.3 ***Substitution Request Form.*** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner prior to the date of the bid opening. Any Requests submitted after the substitution request deadline stated in the Instructions to Bidders will not be considered, except as noted in paragraph 3.11.4.2. 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 Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including but not limited to all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. If Contractor requests substitutions that require approval by the Division of the State Architect ("DSA") or another governmental entity with jurisdiction, Contractor shall bear all risks of delay.

3.11.4.4 ***List of Manufacturers and Products Required.*** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

3.11.5 Deferred Approvals

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 CUTTING AND PATCHING

3.12.1 Scope

The Contractor shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

3.12.2 Consent

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or a separate contractor by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 Structural Members

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 the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

3.12.4 Subsequent Removal

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 Contractor's Responsibility

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall continuously remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

3.13.2 Failure to Cleanup

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Contractor must do so.

3.13.3 Construction Buildings

When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Contractor shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Contractor shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 Payment and Indemnity

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

3.15.2 Review

The review by the Owner or 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 the Contractor in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 Scope: Contractor

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, any construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor's, its Subcontractors', or its suppliers' performance of the Work, including but not limited to the Contractor's or its Subcontractors' use of the Site; the Contractor's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to

defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code Section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

3.16.2 **SCOPE: SUBCONTRACTORS**

3.16.2.1 ***Indemnity.*** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code Section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 ***Joint and Several Liability.*** In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

3.16.3 No Limitation

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.17 OWNER AS INTENDED BENEFICIARY

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Contractor to fulfill its obligations under the Contract. Contractor shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE

If Contractor believes that acts or omissions of Owner (including but not limited to Owner caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code Section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things, Contractor's requests for time extensions under Section 4.5, below, Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 Definition

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

4.1.2 MODIFICATION

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect will provide administration of the Contract and may be one of several Owner's representatives during construction, through release of all retention, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement. The Architect will have all responsibilities and power established by law, including California Code of Regulations, Title 24, to the extent set forth in the Owner/Architect agreement.

4.2.2 SITE VISITS

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when Completed, will be in accordance with the Contract Documents.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

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

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and the Contractor shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Contractor.

4.2.5 Payment Applications

The Contractor shall submit payment applications to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise.

4.2.6 Rejection of Work

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 Change Orders

The Architect will prepare change orders and construction change directives and may authorize minor changes in the Work.

4.2.8 Warranties Upon Completion

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Contractor's comprehensive list of items to be completed or corrected for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and withheld from payment and/or retention.

4.2.9 Interpretation

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

4.2.10 Additional Instructions

4.2.10.1 ***Architect's Interpretations and Decisions.*** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Contractor and will not show partiality to either. The Work shall be executed in conformity with, and the Contractor shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 ***Typical Parts and Sections.*** Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 ***Dimensions.*** Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 General

One or more Project inspectors ("Inspector of Record") employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector of Record's duties will be as specifically defined in Title 24.

4.3.2 Inspector of Record's Duties

All Work shall be under the observation of or with the knowledge of the Inspector of Record. The Inspector of Record shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications nor shall the Inspector of Record's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 Inspector of Record's Authority to Reject or Stop Work

The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any work which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 Inspector of Record's Facilities

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector of Record with the temporary facilities as required under Division 1 of the Specifications.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

A. Services made necessary by the default of the Contractor.

B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.

C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.

D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the 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).

E. Services for evaluating and processing Claims submitted by the Contractor in connection with the Work outside the established Change Order process.

F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time for Completion.

G. 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.

H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS

If the Contractor identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Contractor requests additional money or time, or if the Contractor believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Contractor shall follow the procedures in this Section 4.5 and Article 7, otherwise Contractor shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Contractor specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Contractor's obligation to know and comply with the requirements of Section 4.5 and Article 7, and Owner has no obligation to notify Contractor of any failure to comply with those requirements.

4.5.1 Notice of Potential Change

Contractor shall submit a written Notice of Potential Change for extra work, critical path delay, or additional money or time. Contractor shall submit written Notices of Potential Change to Owner within five (5) days of Contractor becoming aware of the issues creating the potential for change, unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Contractor must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change so the Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work, Contractor shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Contractor shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Contractor intends to rely on Owner's acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in Section 3.18, above.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Contractor of any right to later submit a change order request or pursue a Claim on that issue,

or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

4.5.2 CHANGE ORDERS REQUESTS

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Contractor continues to believes that it is entitled to additional money or time (including but not limited to grant of a time extension; payment of money or damages arising from work done by, or on behalf of, the Contractor, payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or an amount the payment of which is disputed by the Owner) based on an issue, then Contractor shall submit a Change Order Request ("COR") to Owner within twenty (20) days of (i) becoming aware of the issues creating a potential change, or (ii) the date by which it should have become aware of the issues creating a potential change. A rejection at any time or a lack of a rejection by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to comply with any of the COR requirements in the Contract shall constitute a complete waiver by Contractor of any right to later submit a COR or Claim on that issue, or to later pursue any additional money (including time extensions) in any manner related to that issue, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Contractor shall include all information supporting the COR.

Contractor shall certify the COR using the form set forth in Section 4.5.5.1, except that every reference to "Claim" shall be changed to "COR." If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of Section 4.5.2. If the COR is not timely certified, Contractor will have completely waived its rights to any money or time for that issue. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days by accepting the entire COR, accepting part of the COR and rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. If the Owner requests additional information, then the Contractor shall submit the information within fifteen (15) days of the date of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

4.5.3 **Definition of Claim**

A "Claim" is a separate demand by the Contractor sent by registered or certified mail, return receipt requested, for (a) a time extension, including without limitation, a request for relief from damages for delay assessed by Owner under the Contract Documents, (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, 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 Owner. A claim includes any claim within the scope of Public Contract Code Section 20104 et seq. Resubmittal in any manner of a COR which was previously rejected under Section 4.5.2 constitutes a Claim, whether the COR was rejected in whole or in part, and whether the COR was rejected expressly or deemed rejected by Owner inaction. A Claim includes any dispute Contractor may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and includes an alleged breach of contract by the Owner. A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. In the event of a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, Section 4.5 shall take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; **except that** if insufficient time remains before the Claim deadline (see Article 4.5.4) for Contractor to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Contractor may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and Article 7 for COR's and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

A Claim does not include vouchers, invoices, progress payment applications, or other routine or authorized forms of requests for progress payments on the Contract; however, those documents remain "claims" for purposes of the California False Claims Act. A Claim does not include a Government Code Claim. ("Government Code Claim" means a claim under Government Code Sections 900 *et seq*. and 910 *et seq*.)

4.5.4 **Time for Submitting Claim; Waiver**

Contractor shall submit a Claim to the Owner's construction manager (or in the absence of a construction manager, to Architect and Owner) on or before the date of the Final Progress Payment [within fifteen (15) days of the earliest of the following events: (a) The Completion of the Work; (b) the thirtieth (30th) continuous day without labor by Contractor; and (c) Contractor's submission of a final progress payment application.] Owner's rejection, or lack of rejection, of a COR at any time does not affect the deadline for filing a Claim.

In addition, on or before submitting its request for a final progress payment based on 100% Completion of the Work [the fifteenth (15th) day after Completion of the Work or earlier applicable deadline], Contractor shall submit to Owner, in writing, a summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed and

which were fully compliant with the Contract's requirements for Claims. The submission of an Application for Payment for the Final Progress Payment shall constitute a complete waiver of all Claims against Owner under or arising out of this Contract, except those identified in the above summary. All Claims by Contractor, except those identified in the above summary, shall be waived after the fifteenth (15th) day after Completion of the Work or earlier applicable deadline, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim, failure to include a Claim in the Claim summary, or failure to comply with any of the Claim requirements in the Contract, including but not limited to this Article 4, will act as a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6.3), and (c) initiate any action, proceeding or litigation for the money or time, regardless of the merits. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Contractor reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

4.5.5 CONTENT OF CLAIM

4.5.5.1 *Claim Format; Waiver*

Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Contractor, and the Contractor shall furnish reasonable documentation to support each Claim, including as applicable, that documentation set forth in Sections 4.5.5.2 through 4.5.5.4.

In addition, the Contractor shall include a certification with each and every Claim at the time of submission, as follows:

> I, _____ [NAME OF DECLARANT], declare the following:
>
> _____[CONTRACTOR COMPANY NAME] has entered into a Contract Rocklin Unified School District on the _____ [NAME OF PROJECT] Project. _____ [CONTRACTOR COMPANY NAME] authorized me to prepare the attached Claim for money and/or time extension for Rocklin Unified School District regarding ____ [CONTRACTOR COMPANY'S NAME] Work on the Contract, and requesting $_____ and/or ___ additional days, and I prepared the attached Claim. I am the most knowledgeable person at _____ [CONTRACTOR COMPANY NAME] regarding this Claim.

The attached Claim complies with all laws applicable to submission of a Claim, including but not limited to California Penal Code Section 72, Government Code Sections 12650 *et seq*. (False Claims Act), and Business and Professions Code Sections 17200 *et seq*. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself or _____[CONTRACTOR COMPANY NAME].

The attached Claim does not breach the Contract between _____[CONTRACTOR COMPANY NAME] and Rocklin Unified School District for this Project, is not a false claim, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate supporting data, and only requests money and/or time extensions that accurately reflect the adjustments to money and time for which I believe that Rocklin Unified School District is responsible under its Contract with _____ [CONTRACTOR COMPANY NAME].

While preparing this declaration and Claim, I consulted with others (including attorneys, consultants, or others who work for _____[CONTRACTOR COMPANY NAME]) when necessary to ensure that the statements were true and correct.

Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents; that Owner, or Owner's representatives, may reject the Claim on that basis; and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum and all rights to additional money or time for the issues covered by the Claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20__, at _____, California.

_____

_____ [NAME OF DECLARANT]

Contractor's failure to timely submit a certification will constitute a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.3) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.2 ***Claims for Additional Money***

Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Contractor could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Contractor be allowed to reserve its rights to assert a Claim for money at a later time, unless the Owner expressly agrees in writing to allow the reservation. Any costs, direct or indirect, not asserted shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

4.5.5.3 ***Claims for Additional Time***

4.5.5.3.1 ***Notice of Extent of Claim***

If the Contractor wishes to make a Claim for an increase in the Contract Time (including but not limited to Section 4.5.3(a), the Claim shall include, but not be limited to, all facts supporting the Claim, all documentation of such facts, all information required by the Contract Documents, and a current schedule and delay analysis explaining (a) the nature of the delay, (b) the Owner's responsibility for the claimed delay, (c) the claimed delay's impact on the critical path, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), and (e) why Contractor could not mitigate the delay impacts.

In the case of a continuing delay, only one (1) initial Claim is necessary that is based on estimates of when the continuing delay will end, but within thirty (30) days of the end of the continuing delay an updated final Claim must be submitted, which shall also be certified. In no event will the Contractor be allowed to reserve its rights to assert a Claim for a time extension, unless the Owner expressly agrees in writing to allow the reservation. Any time extension not asserted shall be waived.

4.5.5.3.2 ***Unusually Severe Weather Claims***

If unusually severe weather is the basis for a Claim for additional time, Contractor must provide Owner data and facts showing that the weather conditions were abnormal for the period of time, could not have been reasonably anticipated or mitigated, and had an adverse effect on the critical path of the scheduled construction.

4.5.5.4 ***"Pass Through" Claims***

A Subcontractor or supplier to Contractor may not submit a request for additional time or money directly to the Owner. If a subcontractor or supplier submits a request for additional money or time to Contractor and Contractor wishes to pass it through to Owner, then Contractor must comply with all requirements of Section 4.5, including Notices of Potential Change, Change

Order Requests, and Claims, and Public Contract Code Section 9204, subdivision (d)(5). Contractor must prepare and submit its own analysis of the Subcontractor's request, and the Claim must include a copy of the Subcontractor's request along with any other necessary supporting documentation.

In addition to the other requirements in the Contract Documents, including but not limited to this Section 4.5, the Contractor's analysis of the Subcontractor's request must include Contractor's detailed explanation as to why the Subcontractor or supplier's request is the Owner's responsibility, including Contractor's analysis of (a) why the amount of damages the Subcontractor or supplier requests is justified and appropriate, (b) how Contractor's breach of the subcontract caused the Subcontractor or supplier to incur these damages, and (c) how the Owner's breach of the Contract caused the Contractor's breach of the subcontract. Any Contractor Claim that fails to include the above information, or that states that Owner is responsible for the Subcontractor's request only in the event that Contractor is found to owe money to Subcontractor, shall act as a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.3) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTION 9204)

Claims are subject to this Section 4.5.6, as well as the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5.

4.5.6.1 *Claims*

The Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45 day period, plus any extension, Owner may request in writing additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor. Owner shall review any additional documentation Contractor supplies in response to that request within the 45 day, plus any extension, timeline.

After receipt of a Claim, the 45-day period may be extended by Owner and Contractor. The written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its governing board to provide the written response, and the governing board does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the governing board to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.2 *Meet and Confer*

If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner'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 written demand sent by registered or certified mail return receipt requested, the Owner shall schedule a meet and confer conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Contractor, the conference may take place during regularly scheduled Project meetings.

If Contractor fails to timely notify the Owner that it wishes to meet and confer pursuant to the previous paragraph, then Contractor will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6) for such money or time, and (c) initiate any action, proceeding or litigation for such money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the meet and confer conference, the Owner shall give a written statement to the Contractor 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 sixty (60) days after the Owner issues the written statement. Within ten (10) business days of issuance of Owner's written statement, Contractor shall identify in writing the disputed portion of the Claim that shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Contractor sharing the costs equally. The Owner and Contractor shall mutually agree to a mediator within ten (10) business days after the Contractor has identified in writing the disputed portion of the Claim. If they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. (Each party shall bear the fees and costs its respective mediator charged in connection with the selection of the neutral mediator). The parties may mutually waive in writing the requirement for mediation. If Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, Contractor will have waived all right to further pursue the Claim pursuant to Section 4.5.4. The parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible. Owner's failure to respond to the Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.3 *Government Code Claim*

If the Claim or any portion remains in dispute after the mediation and Contractor wishes to pursue it, the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures

described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures coming first.

Failure to timely file a Government Code Claim shall act as complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Contractor shall proceed with the Government Code Claim according to Government Code, Section 900 *et seq*., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code Section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall be tolled from the time the Contractor submits a written Claim under Article 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process.

4.5.7 CONTINUING CONTRACT PERFORMANCE

Despite submission or rejection of a Notice of Potential Change, COR or Claim, the Contractor shall proceed diligently with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract.

4.5.8 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.8.1 *Trenches or Excavations Less Than Four Feet Below the Surface*

If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, Contractor must comply with the provisions above for Notice of Potential Change, Change Order Request, and Claims (beginning with Section 4.5.1).

4.5.8.2 *Trenches or Excavations Greater Than Four Feet Below the Surface*

Pursuant to Public Contract Code Section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.8.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

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

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

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

4.5.8.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.

4.5.8.2.3 In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from the Contract Completion deadline, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.9 Injury or Damage to Person or Property

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Contractor shall follow Section 4.5.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 Subcontractor

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 Sub-Subcontractor

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 Specialty Contractors

If a Subcontractor is designated as a "Specialty Contractor" as defined in Section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100, *et seq*.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Assignment or Substitution - Consent of Owner

In accordance with Public Contract Code Sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 **GROUNDS FOR SUBSTITUTION**

Pursuant to Public Contract Code Section 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the Contractor;

B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;

C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;

D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code Section 4108.

E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code Section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;

F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or

G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.

H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.

I. When the awarding authority determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 ***No Change in Contract.*** Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of time for Completion of the Work.

5.2.2.2 ***Substitution Due to Clerical Error.*** The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public

Contract Code Section 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefore. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code Section 4107. The determination by the awarding authority shall be final.

5.3 **SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of Section 5.3.

5.5.1 Supervision by Subcontractors

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 Discipline and Order

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 Defects Discovered

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Contractor, the Owner and Architect, or other Subcontractors as Contractor elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

5.5.4 Subcontractor Information

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

5.5.5 Temporary Structures

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 Charges to Subcontractor

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 Fines Imposed

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 Project Signs

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 Remedies for Failure to Perform

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

5.5.10 Disputes Not to Affect Work

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, the Subcontractor shall continue to proceed diligently with the performance of the Work. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

5.5.11 Application for Payment

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 Compliance with Procedures

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various

Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 On-Site Record Keeping

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 Non-Exclusive Obligations

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 Owner's Rights

The Owner reserves the right to perform Project work with the Owner's own forces, or to award separate contracts in connection with such other work or other construction or operations on the Site under contract conditions identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall proceed pursuant to Section 4.5 in the Contract Documents.

6.1.2 Designation as Contractor

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Contractor agreement.

6.1.3 Contractor Duties

The Contractor shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who

shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised. If Contractor fails to fulfill these obligations, Owner may exercise its rights under Section 2.4. The right of Owner to carry out the Work under Section 2.4 shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.1.4.

6.1.4 **Owner Obligations**

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 **Delivery and Storage**

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 **Notice by Contractor**

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 **Costs Incurred**

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work or property shall be borne by the party responsible. Should Contractor cause damage to the work or property of any other contractor on the Project, or to the Project or property of a third party, or cause any delay to any such contractor or third party, the Contractor shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, above. Owner may withhold from progress payments and/or retention the cost of delay or damage to another contractor's work or damage to another

contractor's property or to the property of Owner caused by Contractor.

6.2.4 Correction of Damage

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 No Changes Without Authorization

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Contractor to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Contractor with money or grant extra time for any extra work ordered by the Owner to be performed. Contractor shall follow the provisions of 7.6 and 7.7 when requesting additional money or additional time. Contractor shall expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Contractor shall follow 7.5 and 7.7 in providing the credit to Owner. Contractor shall bring all potential credits to the Owner's attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work or payments under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under Section 4.5 and authorized by, and the cost thereof approved in writing by, Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless request for such extension is properly made under Section 4.5 and such time is thereof approved in writing by Change Order or Construction Change Directive. The provisions of the

Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

7.1.2 AUTHORITY TO ORDER MINOR CHANGES

The Owner has authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Construction Change Directive and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDERS ("CO")

A CO is a written instrument signed by the Owner and the Contractor, stamped (or sealed) and signed by Architect, and approved by the Owner's Governing Board and DSA, stating the agreement of Owner and Contractor upon all of the following:

A. A change in the Work;

B. The amount of the adjustment in the Contract Sum, if any; and

C. The extent of the adjustment in the Contract Time, if any.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Contractor constitutes and includes full and complete money and time (including but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Contractor waives all Claims for all costs and effects caused by any of the changes, including but not limited to labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier.

7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")

7.3.1 DEFINITION

A CCD is a written unilateral order signed by the Owner, and if necessary by the Architect, directing a change in the Work and stating an adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

7.3.2 USE TO DIRECT CHANGE

A CCD shall be used in the absence of agreement on the terms of a CO. If Contractor disagrees

with the terms of a CCD, it shall nevertheless perform the work directed by the CCD, but it may pursue the Notice of Potential Change, COR and Claim procedures of Section 4.5 if Contractor believes it is entitled to changes in the Contract Sum or Contract Time.

7.4 REQUEST FOR INFORMATION ("RFI")

7.4.1 DEFINITION

An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

7.4.2 SCOPE

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

7.4.3 RESPONSE TIME

Unless Owner expressly directs otherwise in writing, Contractor shall submit RFIs directly to the Architect, with copies forwarded to the Owner. Contractor shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Contractor's requested order of priorities. The Owner and Contractor agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect's receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect's professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI's submitted concurrently and the reprioritization of pending RFI's submitted by the Contractor, among other things. If Contractor believes that the Architect's response results in a change in the Work that warrants additional money or time, or that Architect's response was unreasonably delayed and caused delay to the Work's critical path, Contractor shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect's receipt of the RFI. Contractor shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold $100 from progress payments or retention in addition to any other remedies which Owner may have the right to pursue.

7.4.4 COSTS INCURRED

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

An RFP is Owner's written request asking the Contractor to submit to the Owner an estimate of the effect, including credits, of a proposed change on the Contract Sum and the Contract Time.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 7.7. The Contractor shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST ("COR")

7.6.1 DEFINITION

A COR is a written request prepared by the Contractor asking the Owner for additional money or time.

7.6.2 CHANGES IN PRICE

A COR shall include breakdowns per Section 7.7 to validate any proposed change in Contract Sum.

7.6.3 CHANGES IN TIME

Where a change in Contract Time is requested, a COR shall also include delay analysis to validate any proposed change to the Contract Time, and shall meet all requirements in these General Conditions, including but not limited to Section 8.4. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Work schedule as defined in Section 3.9 and Division 1 of the Specifications.

7.7 PRICE OF CHANGE ORDERS

7.7.1 SCOPE

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the

effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

7.7.2 Determination of Cost

The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;

C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. **Daily Reports by Contractor**.

a) General: At the close of each working day, the Contractor shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the work, 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 the Inspector of Record and the 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 the Contractor.

b) Labor: Show names of workers, classifications, and hours worked.

c) Materials: Describe and list quantities of materials used.

d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

e) Other Services and Expenditures: Describe in such detail as the Owner may require.

2. **Basis for Establishing Costs**.

a) 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 a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

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

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of $100 or less.

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 the Owner than holding it at the work Site, it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and

equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the Application for Payment.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the Application for Payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead, premiums and profit. For overhead, including direct and indirect costs, submit with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research for Owner initiated changes, 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.

7.7.3 FORMAT FOR PROPOSED COST CHANGE

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

	EXTRA	**CREDIT**
A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____
C. Equipment (attach any invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of item D.	_____	_____

F. Liability and Property Damage Insurance, Worker's Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G. Subtotal	_____	_____
H. General Contractor's Overhead and Profit, not to exceed fifteen percent (15%) of Item G; and for work performed by subcontractors, not to exceed five percent (5%).	_____	_____
I. Subtotal	_____	_____
J. Bond not to exceed one percent (1%) of Item I.	_____	_____
K. TOTAL	_____	_____

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including but not limited to delay analysis. Any costs or expenses not included are deemed waived.

7.7.4 Discounts, Rebates, and Refunds

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 the Contractor, and the 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 the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.5 Accounting Records

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

7.7.6 Notice Required

Contractor shall submit a written Notice of Potential Change for additional money or time

pursuant to Section 4.5.1.

7.7.7 Applicability to Subcontractors

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

7.8 Waiver of Right to Claim Money or Time

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Contractor's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Contract Time

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

8.1.2 Notice to Proceed

Contractor shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 Days

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 Sufficient Forces

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

8.2.2 Performance During Working Hours

Work shall be performed during regular working hours except that in the event of an emergency

or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 Labor Code Application

As provided in Article 3 (commencing at §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 the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.2.4 Costs for After Hours Inspections

If the work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector of Record's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Contractor by the Owner and withheld from progress payments and/or retention. Contractor shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Contractor elects to perform work outside the Inspector of Record's regular working hours, costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Contractor by the Owner and withheld from progress payments and/or retention.

8.2.5 Time for Commencement By Subcontractors

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 Time of the Essence

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.3.2 No Commencement Without Insurance

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 Expeditious Completion

The Contractor shall proceed expeditiously to perform the Work, with adequate forces, labor, materials, equipment, services and management, and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 Conditions Allowing for Extensions of Time to Complete the Work, Only (Excusable Delay)

If Contractor exercises due diligence, but the critical path schedule of the Work is unavoidably delayed due to acts of God, acts of public enemy, acts of the Government, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusually severe weather, or delays of subcontractors due to such causes, the Owner shall extend the Contract Time if Contractor complies with Section 4.5 and Article 7. Owner shall take into consideration other relevant factors such as concurrent delays. Contractor has the burden of proving that any delay was excusable.

8.4.2 Compensable Delay (Time and Money)

Compensable delays are those excusable delays for which Contractor is also entitled to money. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not

within the contemplation of the parties; ***however***, Contractor shall not be entitled to monetary compensation when (a) Contractor could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner or the delay was caused by factors beyond the control of the Owner, including but not limited to a delay under Section 2.2.8 above or a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance; or (d) any other defense available to Owner under law or equity applies. Contractor has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency.

8.4.3 Notice by Contractor Required; Procedures for Demanding Additional time or money

For notice and other required procedures related to requests by Contractor for additional time or money related to delay, Contractor shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7, above.

8.4.4 Early Completion

Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the Work on the Project.

8.4.5 Liquidated Damages

Failure to Complete the Work within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages in the amount, and as described, in Section 7 of the Contractor's Agreement. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of such delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration and supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount set forth in the Contractor's Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work is delayed beyond the Contract Time as adjusted by Change Orders.

If Contractor causes delay to any other contractor's work on the Project that results in delayed *completion* of the Project, Contractor shall be subject to liquidated damages for the delay in

completion of the Project for each calendar day of delay in the amount set forth in Article III of the Contractor's Agreement. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer for such delayed completion of the Project are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of such delay include, but are not limited to, loss of the use of the other contractor's work and the Project, disruption of activities, costs of administration and supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount set forth in the Contractor's Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day that *completion* of the Project is delayed as a result of Contractor caused delays to other contractors' completion of their work.

For Contractor's obligations regarding claims against Owner from other contractors on the Project alleging that Contractor caused delays to their work, see Sections 3.7.4, 3.16 and 6.2.3 herein.

If liquidated damages accrue as described above, the Owner, in addition to all other remedies provided by law, shall have the right to assess the liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all retention or progress payments, which would otherwise be or become due the Contractor. In addition, it if is reasonably apparent to the Owner before liquidated damages begin to accrue that Contractor cannot or will not complete the Work within the Contract Time, Owner may assess and withhold, from retention or progress payments, the estimated amount of liquidated damages that will accrue in the future. If the retained percentage or withheld progress payments are not sufficient to discharge all liabilities of the Contractor incurred under this Section, the Contractor and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If Owner accepts any work or makes any payment under the Contract after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Contract provisions regarding time of Completion and liquidated damages.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement, later adjusted by Change Orders and Construction

Change Directives, and is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 COST BREAKDOWN

9.2.1 Required Information

On forms approved by the Owner, the Contractor shall furnish the following:

A. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a detailed breakdown of the Contract Sum (Schedule of Values) for each Project or Site. Each item in the schedule of values shall include its proper share of the overhead and profit.

B. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a schedule of estimated monthly payment requests (cash flow) due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the Owner may require;

C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;

D. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, the name, address, telephone number, fax number, license number, and classification of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.2.2 Owner Acceptance Required

The Owner shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be accepted by the Owner before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise, an itemized Application for Payment for operations completed in accordance with the Schedule of Values through the end of the previous calendar month. Such application shall be notarized, if required, and supported by the following or such portion thereof as the applicable entity requires:

A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

B. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

C. The balance that will be due to each of such entities after said payment is made;

D. A certification that the Record Drawings and Annotated Specifications are current;

E. The Owner approved additions to and subtractions from the Contract Sum and Time;

F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6);

G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;

H. The percentage of Completion of the Contractor's Work by line item;

I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment. Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to subcontractors or others because of a dispute or other reason; and

J. Contractor's monthly reports, daily reports, and monthly schedule updates for all months of Work prior to the Application for Payment that Contractor has not previously submitted.

9.3.2 Purchase of Materials and Equipment

As the 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 Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

9.3.3 Warranty of Title

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the 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. Transfer of title to Work does not constitute a waiver by Owner of any defects in the Work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 Owner Acceptance

The Owner will, within seven (7) days after receipt of the Contractor's Application for Payment, either accept such payment or notify the Contractor in writing of the Owner's reasons for withholding acceptance in whole or in part as provided in paragraph 9.5.1.

9.4.2 Owner's Review

The review of the Contractor's Application for Payment by the Owner will be based, at least in part, on the Owner's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the Application for Payment if it is not complete under Section 9.3. The issuance of a Certificate for

Payment will constitute a representation that the Contractor is entitled to payment in the amount certified, subject to any specific qualifications Owner expresses in the Certificate for Payment. However, Contractor's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to Completion. The issuance of a Certificate for Payment will not be a waiver by the Owner of any defects in the Work covered by the Application for Payment, nor will it be a representation that the Owner has:

A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;

B. Reviewed construction means, methods, techniques, sequences, or procedures;

C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or

D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may withhold from a progress payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

A. Defective or incomplete Work not remedied;

B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop notice claimant's anticipated interest and court costs and an amount to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds withheld to the Contractor, except that Owner may permanently withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the

payment and performance bond sureties.

C. Liquidated damages against the Contractor, whether already accrued or estimated to accrue in the future;

D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Sum or within the Contract Time;

E. Damage to the property or work of the Owner, another contractor, or subcontractor;

F. Unsatisfactory prosecution of the Work by the Contractor;

G. Failure to store and properly secure materials;

H. Failure of the 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;

I. Failure of the Contractor to maintain record drawings;

J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

K. Unauthorized deviations from the Contract Documents;

L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules Completion deadlines;

M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Certificate for Payment;

N. Failure by Contractor to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Contractor's failure to pay prevailing wage and any assessment of statutory penalties;

O. Overpayment to Contractor on a previous payment;

P. Credits owed to Owner for reduced scope of work or work that Contractor will not perform;

Q. The estimated cost of performing work pursuant to Section 2.4;

R. Actual damages related to false claims by Contractor;

S. Breach of any provision of the Contract Documents;

T. Owner's potential or actual loss, liability or damages caused by the Contractor; and

U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties Owner or other entities assessed against Contractor. (See e.g., Labor Code Section 1813 (working hours) or Public Contract Code Section 4110 (subcontractor listings and substitutions))

Owner may, but is not required to, provide to Contractor with the progress payment written notice of the items for which Owner is withholding amounts from the payment. To claim wrongful withholding by the Owner, or if Contractor otherwise disputes any amount being withheld, Contractor must submit an inquiry in writing to Owner within thirty (30) days of receipt of the notice, and Owner shall respond within fifteen (15) days of receipt of the inquiry. If any disputed issues remain unresolved after Owner's response, Contractor shall timely submit a Claim pursuant to Section 4.5.

For any withhold amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Contractor to cover the excess amount. If available funds are not sufficient, Contractor shall pay Owner the difference.

9.5.2 PAYMENT AFTER CURE

When Contractor removes or cures the grounds for withholding amounts, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

9.5.3 OVERPAYMENT AND/OR FAILURE TO WITHHOLD

Neither Owner's overpayment to Contractor, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Contractor or to otherwise pursue recovery of those amounts from Contractor.

9.6 PROGRESS PAYMENTS

9.6.1 PAYMENTS TO CONTRACTOR

Unless otherwise stated in the Contract Documents, within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment, Contractor shall be paid a sum

equal to ninety-five percent (95%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments; and Owner shall retain the other five percent (5%) of the undisputed value of the Work. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall base an Application for Payment only on the original Contract Sum plus any fully executed and Board-approved Change Orders. Contractor shall not include Notices of Potential Claims, CORs, Claims or disputed amounts.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplied with. Payment shall not be a waiver of any such direction.

9.6.2 Payments to Subcontractors

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code Section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 Percentage of Completion or Payment Information

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of Completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

9.6.4 No Obligation of Owner for Subcontractor Payment

The Owner 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.

9.6.5 Payment to Suppliers

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 Payment Not Constituting Approval or Acceptance

An accepted Application for Payment, issuance of a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance or approval of any portion of the Work, especially any Work not in accordance with the Contract

Documents.

9.6.7 JOINT CHECKS

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the 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. However, Owner has no duty to issue joint checks. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

9.7 COMPLETION OF THE WORK

9.7.1 CLOSE-OUT PROCEDURES

When the Contractor considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Contractor a comprehensive list of items to be completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Contractor, including training, start-up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds and the documents described in Sections 9.3 and 9.9). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the Work so long as the statute of limitations (or repose) has not run.

When the Contractor believes the Punch List work is complete and in accordance with the Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Contractor of any items that are not complete or correct. Contractor shall promptly complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner's governing body may formally accept the Work as Complete at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Contractor's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6).

9.7.2 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests by Contractor to make inspections to confirm Completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed, or partially completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of it, nor shall such occupancy or use relieve Contractor of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. When the Contractor considers a portion complete, the Contractor may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner, the Architect and the Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION

9.9.1 Final Application for Progress Payment

When, pursuant to Section 9.7.1, the Owner finds all of the Work is Completed in accordance with the Contract Documents, it shall so notify Contractor, who shall then submit to the Owner its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Owner shall issue a final Certificate of Payment, based on its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Owner in connection with the Work, that such Work has been Completed in accordance with the Contract Documents.

9.9.2 Procedures for Application for Final Progress Payment

The Application for Final Progress Payment pursuant to Section 9.9.1 shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

A. The Work shall be Complete, and the Contractor shall have made, or caused to have been 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 Owner required under the Contract.

B. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work, and Contractor delivered them to the Owner.

C. The Contractor shall deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work "as built," with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents.

D. Contractor shall provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

Acceptance of Final Progress Payment shall constitute a complete waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of Final Progress Payment.

9.9.3 Release of Retainage

Owner may withhold from release or payment of retainage (or "retention") up to 150% of disputed amounts listed in Section 9.5. If retainage is held in an escrow account pursuant to an escrow agreement under Public Contract Code Section 22300 (see Section 9.10) and Owner withholds from release of retainage based on a breach of the Contract, or other default, by Contractor, Owner may withdraw the withheld retainage from the escrow account. Owner shall release the undisputed retainage within sixty (60) days after Completion of the Work. For this purpose, "Completion" is defined in Public Contract Code Section 7107(c). No interest shall be paid on any retainage, or on any amounts withheld, except as provided to the contrary in any Escrow Agreement and General Conditions between the Owner and the Contractor under Public Contract Code Section 22300.

9.10 SUBSTITUTION OF SECURITIES

In accordance with Section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon Completion of the Contract, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Contract Documents.

Securities eligible for investment under this Section shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing,

demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner.

The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

Any escrow agreement entered by Owner and Contractor pursuant to Public Contract Code Section 22300, shall be substantially similar to the form set forth in Public Contract Code Section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor Responsibility

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor 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. Contractor will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

10.1.2 Subcontractor Responsibility

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the 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.

10.1.3 Cooperation

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

10.1.4 Accident Reports

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which

caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

10.1.5 First-Aid Supplies at Site

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

A. Employees on the Work and other persons who may be affected thereby;

B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 Contractor Notices

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 Safety Barriers and Safeguards

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 Use or Storage of Hazardous Material

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.2.5 Fingerprinting

At its own expense, Contractor shall comply with all fingerprinting requirements under law and Contract, including but not limited to the requirements of Education Code Section 45125.2 and the Independent Contractor Student Contact Form which is a part of the Contract. Contractor shall hold harmless, defend and indemnify the Owner under Section 3.16, for any costs, including attorneys' fees, Owner incurs from Contractor's failure to comply.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 Protection of Work

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work or Completion of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

10.3.2 Protection for Elements

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 Shoring and Structural Loading

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the 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. The 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 or cause damage to the Work

in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

10.3.4 Conformance Within Established Limits

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 Subcontractor Enforcement of Rules

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.3.6 Site Access

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.3.7 Protection of Materials

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

10.4 EMERGENCIES

10.4.1 Emergency Action

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

10.4.2 Accident Reports

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious

property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS

10.5.1 Discovery of Hazardous Materials

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by Section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Contractor, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

10.5.2 Hazardous Material Work Limitations

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 Indemnification By Owner for Hazardous Material Not Caused by Contractor

In the event the presence of hazardous materials on the Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any delay or additional costs incurred in accordance with the applicable provisions of Article 7 and 8 herein. Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Contractor's active negligence, sole negligence or willful misconduct. By providing this indemnification, District does not waive any immunities.

10.5.4 Indemnification by Contractor for Hazardous Material Caused by Contractor

In the event the presence of hazardous materials on the Site is caused by Contractor,

Subcontractors, materialmen or suppliers, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner 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 Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

10.5.5 Terms of Hazardous Material Provision

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

10.5.6 Archeological Materials

In the event the Contractor encounters or reasonably suspects the presence on the Site of archeological materials, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Contractor's receipt of written notice form the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Liability Insurance Requirements

By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as

Insurance Services Office (ISO) Form CG 0001 11188;

11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;

11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and

11.1.1.4 claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and

11.1.1.5 claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and

11.1.1.6 claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

11.1.3 Owner's Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 Additional Insured Endorsement Requirements

The Contractor shall name, on any policy of insurance, the Owner and the Architect as additional insureds. Subcontractors shall name the Contractor, the Owner and the Architect as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall 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 excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 Workers' Compensation Insurance

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

If the contractor fails to maintain such insurance, the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Contractor being injured or killed, and withhold from progress payments and/or retention the amount of the premium for such insurance.

11.1.6 Builder's Risk/"All Risk" Insurance

11.1.6.1 Course-of-Construction Insurance Requirements

Unless provided by Owner at Owner's sole discretion, Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This

insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, earthquake (for projects not solely funded through revenue bonds, limited to earthquakes equivalent to or under 3.5 on the Richter Scale in magnitude), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

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

11.1.7 Consent of Insurer for Partial Occupancy or Use

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.1.8 Fire Insurance

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.9 Other Insurance

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

11.1.10 Proof of Carriage of Insurance

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence

Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

(a) Certificates and insurance policies shall include the following clause:

> This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

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

(c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.

(d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

11.1.11 **COMPLIANCE**

In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 Bond Requirements

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

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

11.2.2 Surety Qualification

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure Section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 Uncovering Work for Required Inspections

If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, Contractor must, if required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Contractor's expense without change in the Contract Sum or Time.

12.1.2 Costs for Inspections not Required

If a portion of the Work has been covered which the Owner has not specifically requested to

observe prior to its being covered, the Owner may request to see such work, and it shall be uncovered by the Contractor. If such work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such work is not in accordance with Contract Documents, the Contractor shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

12.2 CORRECTION OF WORK; WARRANTY

12.2.1 Correction of Rejected Work

The Contractor shall promptly correct the work rejected by the Owner for failing to conform to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting the rejected work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

12.2.2 Removal of Nonconforming Work

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted or approved by the Owner.

12.2.3 Owner's Rights if Contractor Fails to Correct

If the Contractor fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. As part of Owner's correction of the work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If progress payments or retention then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.4 Cost of Correcting the Work

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming work.

12.2.5 Warranty Corrections (includes replacement)

Pursuant to the warranty in Section 3.5, if within one (1) year after the Completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, the Contractor shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under the Contract and termination of the Contract.

12.2.6 No Time Limitation

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5 and 12.2.5 relates only to the specific warranty obligation of the Contractor to correct the Work after the date of commencement of warranties and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT

If it is found at any time before Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any amount due or to become due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural related work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code Section 9201.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and Obligations Cumulative

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 No Waiver

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.5 TESTS AND INSPECTIONS

13.5.1 Compliance

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 Independent Testing Laboratory

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours).

Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall pay any additional shipping or transportation costs or expenses (mileage and hours). If Owner pays such additional costs or expenses instead of Contractor, then Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

13.5.3 Advance Notice to Inspector of Record

The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

13.5.4 Testing Off-Site

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 Additional Testing or Inspection

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in Section 13.5.6.

13.5.6 Costs for Retesting

If such procedures for testing, inspection, or approval under Sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

13.5.7 Costs for Premature Test

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and

expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

13.5.8 Tests or Inspections Not to Delay Work

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 [INTENTIONALLY LEFT BLANK]

13.7 TRENCH EXCAVATION

13.7.1 Trenches Greater Than Five Feet

Pursuant to Labor Code Section 6705, if the Contract Sum exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.7.2 Excavation Safety

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

13.7.3 No Tort Liability of Owner

Pursuant to Labor Code Section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

13.7.4 No Excavation Without Permits

The Contractor shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

13.8 WAGE RATES

13.8.1 Wage Rates

Pursuant to the provisions of Article 2 (commencing at §1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner 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 for this Project from the Director of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's Governing Board, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

13.8.2 Holiday and Overtime Pay

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) 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.

13.8.3 Wage Rates Not Affected by Subcontracts

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

13.8.4 Change in Prevailing Wage During Bid or Construction

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

13.8.5 Forfeiture and Payments

Pursuant to Labor Code Section 1775, the Contractor and any subcontractor under the Contractor shall as a penalty to the Owner, forfeit not more than two hundred dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Contractor or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code Section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the 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 upon being brought to the attention of the contractor or subcontractor; and (2) whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Contractor or subcontractor.

13.8.6 Minimum Wage Rates

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

13.8.7 Per Diem Wages

Pursuant to Labor Code Section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

13.8.8 Posting of Wage Rates and Other Required Job Site Notices

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

13.9 RECORD OF WAGES PAID: INSPECTION

13.9.1 Application of Labor Code

Pursuant to Section 1776 of the Labor Code:

(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that 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 Sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

(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 the Owner and the Division of Labor Standards Enforcement of the Department of Industrial Relations ((“DIR”) and as may be required by the Labor Commissioner under Labor Code Section 1771.4). The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

(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 body awarding the contract or the Division of Labor Standards Enforcement of the …(DIR). 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 the preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Contractor.

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code Section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement (of the DIR) or shall contain the same information as the forms provided by the 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 (a) above.

(d) A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement (of the DIR) shall be marked or obliterated to prevent disclosure of an individual’s name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract 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.

(f) 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. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement (of the DIR), these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this Section due to the failure of the subcontractor to comply with this Section.

13.10 APPRENTICES

13.10.1 Apprentice Wages and Definitions

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

13.10.2 Apprentice Labor Pool

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under

him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this Section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this Section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the 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 Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 JOURNEYMAN/APPRENTICE RATIO

The Contractor or Subcontractor, if he or she is covered by this Section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of

not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this Section. This Section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars ($30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this Section.

13.10.4.1 ***Apprenticeable Craft or Trade.*** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting 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:

A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.

C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.

D. Assignment of an apprentice to any work performed under this 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.

13.10.5 RATIO EXEMPTION

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.

13.10.6 APPRENTICE FUND

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are

contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code Section 227.

13.10.7 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with Section 13.10 and Section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this Section13.10 and Labor Code Section 1777.5 are subject to Labor Code Section 3081.

13.10.9 NO BIAS

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 the Labor Code Section 3077.

13.10.10 VIOLATION OF LABOR CODE

Pursuant to Labor Code Section 1777.1, in the event a Contractor or Subcontractor willfully fails to comply with the provisions of this Section 13.10 and Labor Code Section 1777.5, among other things:

> (a) The Labor Commissioner may deny to the contractor or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.
>
> (b) A contractor or subcontractor who violates Section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of one hundred dollars ($100) for each full calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the contract progress payments or retention then due or to become due.
>
> (c) In lieu of the penalty provided, the Labor Commissioner may for a first time

violation and with the concurrence of an applicable apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this Section shall be deposited in the General Fund.

(e) The interpretation and enforcement of Section 1777.5 and this Section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code Section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 Application

Pursuant to Public Contract Code Section 7103.5 and Government Code Section 4552, 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 Owner 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. §15) or under the Cartwright Act (Chapter 2 [commencing with §16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase 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 Progress Payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with §4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 Assignment of Claim

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

13.12 AUDIT

Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any

Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars ($10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after release of all retention under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period. During the progress of the Work and for three (3) years after release of all retention under the Contract, Owner shall also have the right to an audit, and Contractor must cooperate by producing all information requested within seven (7) days.

13.13 STORM WATER DISCHARGE PERMIT

If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

Contractor may not terminate for convenience. Contractor may only terminate for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 Grounds for Termination

The Owner may terminate the Contract if the Contractor:

A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work toward Completion within the Contract Time;

B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code Section 10262 or Business and Professions Code Section 7108.5, as applicable;

C. Violates Labor Code Section 1771.1(a), subject to the provisions of Labor Code Section 1771.1(f);

D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or

E. Otherwise is in breach of the Contract Documents.

14.2.2 Notification of Termination

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a "Notice of Intent to Terminate"). If Contractor fails to **either** (a) completely cure the grounds for termination within seven (7) days **or** (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate the Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Contractor's surety on the performance bond ("Surety"):

A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

B. Accept assignment of subcontracts pursuant to Section 5.4; and

C. Complete the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 Payments Withheld

If the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is Complete.

14.2.4 **Payments Upon Completion**

If the unpaid balance of the Contract Sum exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive Completion of the Contract.

14.2.5 **Inclusion of Termination for Convenience**

Any purported termination by Owner for cause under this Section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 **Suspension by Owner**

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 ***Adjustments.*** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 ***Adjustments for Fixed Cost.*** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 **Termination by the Owner for Convenience**

14.3.2.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice;

2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 NOT A WAIVER

Any suspension or termination by Owner for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

14.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree in writing to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

PAYMENT BOND
(Labor and Material)

KNOW ALL MEN BY THESE PRESENTS:

That WHEREAS, Rocklin Unified School District (the "Owner" of the public works project described below) and _____,
hereinafter designated as the "Principal," have entered into a Contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct:

(DESCRIPTION AND LOCATION OF PROJECT)

Which said agreement dated _____, _____, and all of the Contract Documents are hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by whom the Contract is awarded to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons, and bound for all amounts due, referred to in Civil Code Section 9554, subdivision (b), in the sum of _____ Dollars ($_____) which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code Section 9100, or any of the amounts due, as specified in Civil Code Section 9554, subdivision (b), that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety this _____ day of _____, _____.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

_____
Principal

_____

_____
Surety

_____

By:_____
Attorney-in-Fact

_____

The above bond is accepted and approved this ____ day of _____.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____ _____ as Principal and _____ as Surety, are held and firmly bound unto Rocklin Unified School District, in the County of Placer, State of California, hereinafter called the "Owner", in the sum of _____ Dollars ($_____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, to the Owner for the full performance of a certain contract with the Owner, the terms of which are incorporated herein by reference, dated _____, 20___, for construction of:

(DESCRIPTION AND LOCATION OF PROJECT)

The condition of this obligation is such that**,** if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Owner, with or without notice to the Surety, and for the period of time specified in the Contract after completion for correction of faulty or improper materials and workmanship and during the life of any guaranty or warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the specifications.

No further agreement between Surety and Owner shall be required as a prerequisite to the Surety performing its obligations under this bond.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, _____ hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

(Affix Corporate Seal)

_____
(Individual Principal)

_____
(Business Address)

(Affix Corporate Seal)

_____
(Corporate Principal)

_____
(Business Address)

(Affix Corporate Seal)

_____
(Corporate Surety)

_____
(Business Address)

_____

By:_____

_____

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged is _____.

The above must be filled in by Corporate Surety.

WORKERS' COMPENSATION CERTIFICATE

Labor Code Section 3700, in relevant part, provides:

> "Every employer except the state shall secure the payment of compensation in one or more of the following ways:
>
> (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
>
> (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers. Said certificate may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees, … "

I am aware of the provisions of the Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. I shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

_____

_____

_____

_____

Name of Contractor

_____

Signature

_____ _____

Print Name Date

(In accordance with Article 5 (commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

DRUG-FREE WORKPLACE CERTIFICATION

This Drug Free Workplace Certification is required pursuant to Government Code Sections 8350 *et seq*., the Drug Free Workplace Act of 1990. The Drug Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or services from any State agency must certify that it will provide a drug free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, or both, and the contractor may be subject to debarment from future contracting if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug free workplace by doing all of the following:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

(b) Establishing a drug-free awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace;
(2) The person's or organization's policy of maintaining a drug free workplace;
(3) The availability of drug counseling, rehabilitation and employee assistance programs;
(4) The penalties that may be imposed upon employees for drug abuse Violations;

(c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug free awareness program, and (c) requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the Owner determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract or grant awarded herein is subject to suspension of payments, termination, or both. I further understand that should I violate the terms of the Drug Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 *et seq*.

I acknowledge that I am aware of the provisions of Government Code Section 8350 *et seq*. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Name of Contractor

Signature

Print Name

Date