

FIRST AMENDMENT TO CONTRACT DOCUMENTS

(Mills High School Transite Encapsulation [Façade Improvements] Lease-Leaseback Project)

THIS FIRST AMENDMENT TO CONSTRUCTION SERVICES AGREEMENT (this “Amendment”) is made as of the 5th, day of May 2022 (the Effective Date”), by and between **SAN MATEO UNION HIGH SCHOOL DISTRICT**, a California School District organized and existing under the laws of the State of California (the “District”), and **COULTER CONSTRUCTION, INC.** (“COULTER”) a California corporation with its principal place of business at Mountain View, California (“Contractor”).

RECITALS:

A. On November 18, 2021, the Board of Trustees (“Board”) of the District authorized issuance of a Request for Qualification/Request for Proposals for Lease-Leaseback Construction Services for the Mills High School Transite Encapsulation Project (“RFQ/P”), which is incorporated herein by this reference.

B. The Project consists of the installation of a new insulated exterior skin to encapsulate the existing transite panels inclusive of new glazing and exterior doors and other related work at Mills High School located at 400 Murchison Drive, Millbrae, CA 94030.

C. On or about December 21, 2021, Contractor submitted its proposal to the RFQ/P (“Proposal”) and Contractor was awarded the RFQ/P. The Proposal is incorporated herein by this reference.

D. Further to the award of the RFQ/P to Contractor, the District and Contractor are parties to that certain Construction Services Agreement for the Project dated March 24, 2022 (the “Agreement”), which is incorporated herein by this reference.

E. The Agreement is a part of the Contract Documents, as defined in Section 2.E of the Agreement, and the parties desire to amend the Agreement subject to the terms and conditions in this Amendment.

F. COULTER has completed pre-construction services and submitted a final GMP proposal for construction services for the Project in the amount of \$16,600,300 (“Final GMP”), which the Board approved at a duly notice meeting on April 21, 2022.

G. The District and COULTER desire to enter into this Amendment No. 1 to, among other things, amend the Construction Services Agreement to incorporate the final GMP and amend the Facility Lease to finalize the tenant improvement payment schedule based on the final GMP.

AGREEMENT:

NOW, THEREFORE, District and Contractor, in consideration of the mutual promises and covenants contained in this Amendment and in the Agreement, and intending to be legally bound by the terms of this Amendment, agree that the Agreement is amended as follows:

1. **Defined Terms.** All capitalized terms used in this Amendment which are not otherwise defined in this Amendment shall have the meanings given to such terms in the Agreement.
2. **Pre-Construction Services and Fixed Fee; Notice to Proceed.** Contractor hereby agrees to perform the Phase 1 Pre-Construction Services as described in Exhibit A to the Agreement for the stipulated fixed fee of Seven Thousand Five Hundred Dollars (\$34,900). Contractor shall commence Pre-Construction Services immediately upon receipt of a notice to proceed from the District.
3. **Materials Procurement.** Contractor hereby agrees to procure materials in a sum not to exceed Two Hundred Ninety-Seven Thousand Two Hundred Eighty Dollars (\$538,231.22) for aluminum extrusion procurement. In the event the Agreement because the District and Contractor are unable to reach agreement on the final GMP, Contractor agrees the District shall have the right to assume immediate control and use of the aluminum extrusion without additional cost or expense to District.
4. **Final Guaranteed Maximum Price.** The Final Guaranteed Maximum Price is \$11,075,476. A detailed breakdown of the Final Guaranteed Maximum Price is attached hereto as **Exhibit A** and incorporated herein by this reference and is made a part of the Construction Services Agreement and the Contract Documents.
5. **Definition of "Contract Documents" and General Conditions.** Section 2.E of the Agreement is amended to defined "Contract Documents" to include the RFQ/P and the General Conditions attached hereto as **Exhibit B** and incorporated herein by this reference.
6. **Amendment to Construction Services Agreement.** Section 4.a. is amended to state the final GMP for construction services for the Project is \$11,075,476 and is incorporated into the Contract Documents, including, but not limited to, the Construction Services Agreement.
7. **Amendment to Facility Lease; Tenant Improvement Payment Schedule.** The Tenant Improvement Payment Schedule referred in the Contract Documents, including, but not limited to the Facility Lease, is amended to mean the Tenant Improvement Schedule as set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.
8. **Effect of Modification.** Except as modified by this Amendment, all of the terms and conditions of the Agreement remain in full force and effect. If there is any conflict between this Amendment and the Agreement, this Amendment shall control. Except where the context otherwise requires, all references in this Amendment to the "Agreement" shall be deemed to include the provisions of this Amendment, including the modifications to the Agreement set forth above. From and after the Effective Date, this Amendment shall be a part of the Contract Documents as defined in Section 2.E of the Agreement.

9. Captions. The captions and section headings contained in this Amendment are for convenience of reference only and shall not be used in construing or enforcing any of the provisions of this Amendment.

10. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which shall be effective only upon delivery, including delivery by facsimile, Portable Document Format (pdf) email transmission and/or any electronic signature transmission format, and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Amendment may be detached from any counterpart of this Amendment without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Amendment identical in form hereto but having attached to it one or more additional signature pages. Signatures transmitted via facsimile, e-mail and/or by any electronic signature format as shall be considered original, authentic and binding.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, District and Contractor have caused this Amendment to be signed as of the Effective Date.

SAN MATEO UNION HIGH SCHOOL DISTRICT, a California School District

organized and existing under the laws of the
State of California

By: _____

Name: _____

Its: _____

COULTER CONSTRUCTION, INC., a California corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth, A Professional Corporation

By: _____

Name: Sean B. Absher, Esq.

Title: Shareholder

EXHIBIT A

Final Guaranteed Maximum Price

[See Attached]

EXHIBIT B

GENERAL CONDITIONS

FOR

SAN MATEO UNION HIGH SCHOOL DISTRICT

MILLS HIGH SCHOOL

TRANSITE ENCAPSULATION

(FAÇADE IMPROVEMENTS) PROJECT

Dated as of May 5, 2022

Between

SAN MATEO UNION HIGH SCHOOL DISTRICT AND

COULTER CONSTRUCTION, INC.

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GENERAL CONDITIONS

ARTICLE 1. GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 ACT OF GOD. The term “Act of God” shall include earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster.

1.1.2 ALLOWANCES. The term “Allowances” shall mean the allocation of the cost of work for each individual line item, which is identified as an “Allowance” in the Cost Breakdown/Schedule of Values. Each Allowance line item shall be adjusted, either up or down, based on the actual bid amount for each such line item as defined in the Contract Documents. Any adjustment to an Allowance shall be reflected in a Change Order.

1.1.3 APPLICABLE CODE REQUIREMENTS. The term “Applicable Code Requirements” means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the District, the Contractor, any Subcontractor, the Project, the Project site, or the prosecution of the work on the Project.

1.1.4 APPLICATION FOR PAYMENT. The term “Application For Payment” means the submittal from the Contractor wherein payment for certain portions of the completed work on the Project is requested in accordance with Article 9.

1.1.5 CEQA. The term “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* All CEQA compliance documentation prepared for the Project by the District shall be provided to the Contractor, upon request.

1.1.6 CERTIFICATE OF FINAL COMPLETION. See Section 9.8, Final Completion, of the General Conditions.

1.1.7 CERTIFICATE OF SUBSTANTIAL COMPLETION. See Section 9.6, Substantial Completion, of the General Conditions.

1.1.8 CHANGE ORDER. The term “Change Order” means a Contract Document which authorizes, in accordance with Article 7, one or more of the change(s) stated in Subsection 7.2.1 and Subsection 7.2.2.

1.1.9 CHANGE ORDER REQUEST. The term “Change Order Request” means a proposal for a Change Order submitted by the Contractor to the District, either at the request of the District, or at the Contractor’s own initiative.

1.1.10 CLAIM. See Section 4.3, Claims, of the General Conditions.

1.1.11 CONSTRUCTION DOCUMENTS. The term “Construction Documents” shall have the meaning in Section 2 of the Contract. The Construction Documents shall set forth in detail all items necessary approved drawings, plans and specifications for the design and construction of the Project (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. All amendments and modifications to the Construction Documents must be approved by the District in writing.

1.1.12 INTENTIONALLY OMITTED.

1.1.13 CONSTRUCTION PHASE. The term “Construction Phase” shall mean the phase of the Scope of Work that will commence upon final approval of the plans and specifications by the Division of the State Architect (“DSA”) and establishment of the final GMP per Section 4 of the Contract. No construction of the Project shall commence prior to the receipt of the written approval of the plans by DSA.

1.1.14 CONSTRUCTION WORK. The term “Construction Work” shall mean that portion of the work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents, including but not limited to temporary facilities, utilities, structures, fences, dust control, wayfinding, scheduling, noise control, environmental related matters, archeology services, emergency evacuation routes, security, safety, traffic control, scaffolding, and SWPPP.

1.1.15 CONTRACT. The term “Contract” means the Construction Services Agreement between the Contractor and the District set forth in the Contract Documents.

1.1.16 CONTRACT DOCUMENTS. The “Contract Documents” consist of the following:

1.1.16.1 Request for Qualifications/Proposals (“RFQ/P”) and all addenda, attachments and appendices;

1.1.16.2 Construction Documents, as defined herein;

1.1.16.3 Contract;

1.1.16.4 General Conditions;

1.1.16.5 Facility Lease;

1.1.16.6 Performance Bond;

1.1.16.7 Payment Bond;

1.1.16.8 Required Certifications and Forms; and

1.1.16.9 Site Lease.

1.1.17 CONTRACT SCHEDULE. The term “Contract Schedule” means the graphical representation of a practical plan to complete the work on the Project within the Guaranteed Completion Date as a part of the Master Project Schedule. The detailed requirements for the Contract Schedule are stated in Article 3.

1.1.18 COST BREAKDOWN. See Section 9.1.1. A Cost Breakdown/Schedule of Values for each phase of work shall be submitted by the Contractor as required by these General Conditions and are incorporated into the Contract Documents by reference. The Cost Breakdown shall include a list of Allowances along with a statement of their basis.

1.1.19 INTENTIONALLY OMITTED.

1.1.20 DAY. The term “day,” shall mean calendar day, unless otherwise specifically provided.

1.1.21 DEFECTIVE WORK. The term “Defective Work” means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the District’s Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.22 CONTRACTOR. The term “the Contractor” means the person or firm identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

1.1.23 CONTRACTOR REPRESENTATIVE. The Contractor Representative shall mean the person or firm identified as the primary contact person and representative of the Contractor as designated in the Contract.

1.1.24 DESIGN MATERIALS. The term “Design Materials” shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the District’s Architect of Record.

1.1.25 DESIGN PROFESSIONAL. The term “Design Professional” shall mean that person identified in the Contract that is licensed in the State of California and is retained by the District as the Architect of Record for the Project.

1.1.26 DESIGN WORK. The term “Design Work” shall mean the design services and design deliverables required to be provided by the District’s Architect of Record in connection with the design of the Project as set forth in the Construction Documents.

1.1.27 DISTRICT. The term “District” shall mean the SAN MATEO UNION HIGH SCHOOL DISTRICT.

1.1.28 DISTRICT’S REPRESENTATIVE. The term “The District’s Representative” means the person or firm identified as the Contractor’s primary contact person as designated in the Contract. Contractor reserves the right to review and approve qualifications of the District Representative, which consent cannot be unreasonably withheld.

1.1.29 DRAWINGS. The term “Drawings” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

1.1.30 EQUIPMENT MANUFACTURER. The term “Equipment Manufacturer” shall mean any Separate Contractor that fabricates and/or supplies any of the District’s provided equipment which is installed in the Project by the Contractor.

1.1.31 EXCUSABLE DELAY. The term “Excusable Delay” means a delay that meets the requirements of Articles 7 and 8 of these General Conditions, and may entitle the Contractor to an adjustment of the Guaranteed Completion Date and/or an adjustment to the Guaranteed Maximum Price, as specified in Articles 7 and 8 herein.

1.1.32 EXTRA WORK. The term “Extra Work” means work beyond or in addition to the work required by the Contract Documents, pursuant to Section 8 of the Contract and Article 7 of the General Conditions.

1.1.33 FIELD ORDER. The term “Field Order” means a directive as described in Article 7 of the General Conditions.

1.1.34 FINAL COMPLETION. The term “Final Completion” means the point at which the work on the Project has been fully completed in accordance with the Contract Documents as determined by the District’s Representative pursuant to Section 9.8, Final Completion and Final Payment, of the General Conditions. Final Completion shall mean that point at which the Project has been successfully commissioned and is operational, Substantial Completion has been achieved, all punchlists have been completed to the satisfaction of the District, all documentation has been delivered to the District and all other Contract items have been completed, delivered and accepted by the District.

1.1.35 GOVERNMENTAL APPROVALS. Term “Governmental Approvals” means those governmental (including agency) actions required to be obtained by the District and necessary for the completion of the Project.

1.1.36 GUARANTEE TO REPAIR PERIOD. See Section 12.2, Correction of Defective Work and Guarantee To Repair Period, of the General Conditions.

1.1.37 GUARANTEED COMPLETION DATE. The term “Guaranteed Completion Date” also referred to as “GCD” herein, shall mean the date by which the Contractor guarantees that all work described in the Scope of Work shall be completed, as is set forth in Section 7 of the Contract.

1.1.38 GUARANTEED MAXIMUM PRICE. The term “Guaranteed Maximum Price” also referred to as “GMP” herein, shall mean the guaranteed maximum price the District will pay for the completion of all work described in the Scope of Work as is set forth in Section 4 of the Contract.

1.1.39 HAZARDOUS MATERIALS. The term “Hazardous Materials” means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a “hazardous waste,” “hazardous substance,” pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* (“CERCLA”), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.* (“RCRA”); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Contractor or the District; or as defined in the California Health and Safety Code. For the purposes of this Contract, “Hazardous Materials” shall also include, but are not limited to, “Underground Storage Tanks.” “Underground Storage Tank” shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

1.1.40 INEXCUSABLE DELAY. The term “Inexcusable Delay” means any delay other than an Excusable Delay, as described in Articles 7 and 8 of these General Conditions, that does not entitle the Contractor to an adjustment of the Guaranteed Maximum Price and does not entitle the Contractor to an adjustment of the Guaranteed Completion Date.

1.1.41 LIQUIDATED DAMAGES. The term “Liquidated Damages” shall mean the penalty due by the Contractor for each and every calendar day beyond the GCD that Substantial Completion of the Project has not been achieved as described in Section 10 of the Contract.

1.1.42 LOSSES. The term “Losses” means any and all losses, costs, liabilities, claims, damages, and expenses; provided, however, that Losses shall not mean special, indirect, consequential damages.

1.1.43 NOTICE TO PROCEED. The term “Notice to Proceed” shall mean the written notice given by the District to the Contractor advising that the Site is available to the Contractor and directing the Contractor to commence work on the Project.

1.1.44 PROJECT. The term “Project” means the Burlingame High School HVAC project (“Project”) as approved and authorized by the District as set forth in the Construction Documents.

1.1.45 PROPOSAL. The term “Proposal” means the proposal submitted by the Contractor in response to the Request for Qualification/Proposals for this Project.

1.1.46 INTENTIONALLY OMITTED.

1.1.47 RFQ/P. The term “RFQ/P” means the Request for Qualifications and Proposals for Lease-Leaseback Construction Services for the Project issued by the District for the Project and includes all documents, exhibits, attachments, and addenda thereto.

1.1.48 SCHEMATIC DESIGN PHASE. The term “Schematic Design Phase” shall mean the phase of the design of the Project by the Architect of Record.

1.1.49 SCOPE OF WORK. The term “Scope of Work” shall mean all the all labor, materials, and services required to be performed or provided by the Contractor pursuant to the Contract Documents necessary to construct, and complete the Project.

1.1.50 SEPARATE CONTRACTOR. The term “Separate Contractor” means a person, or firm, under separate contract with the District performing other work at the Project site which may affect the work performed under the Contract Documents.

1.1.51 INTENTIONALLY OMITTED.

1.1.52 SPECIFICATIONS. The term “Specifications” means that portion of the Construction Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work on the Project, and performance of related services prepared by the District’s Architect of Record.

1.1.53 SUBCONTRACTOR. The term “Subcontractor” means any person or firm that has a contract with the Contractor or with a Subcontractor of the Contractor to perform a portion of the work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.54 SUBSTANTIAL COMPLETION. See Section 9.6, Substantial Completion, of the General Conditions.

1.1.55 SUPERINTENDENT. The term “Superintendent” means the person designated by the Contractor to represent the Contractor at the Project site, in accordance with Article 3.

1.1.56 TIER. The term “tier” means the contractual level of a Subcontractor or supplier or consultant with respect to the Contractor. For example, a first tier Subcontractor is under subcontract with the Contractor, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.

1.2 OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS

1.2.1 The Construction Documents, and all copies thereof, furnished to, or provided by, the Contractor are the property of the District. The District and the Contractor explicitly agree that all materials and documents developed in the performance of this Contract are the property of the District. Contractor shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Contractor, a party for which the Contractor is legally responsible or liable, or anyone approved by the Contractor.

1.3 INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE

1.3.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the work on the Project by the Contractor in conformity with the Construction Documents. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2 In the case of conflict or inconsistency, the following order of precedence shall apply, in decreasing order of precedence:

1.3.2.1 Change Orders/Modifications

1.3.2.2 Addenda

1.3.2.3 Contract

1.3.2.4 General Conditions

1.3.3 The District and the Contractor acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFQ/P upon which the Contractor based its response(s) to the RFQ/P. Prior to the determination of the final GMP for the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control the Contractor in dividing portions of the work necessary

for the Project among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may 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. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.8 Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents 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.

1.3.9 Before commencing any work on the Project, the Contractor shall check and review the plans and specifications and Contract Documents 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 Project, including but not limited to fingerprinting of employees, and Division of the State Architect standards, all quasi-governmental and other regulations affecting the construction and operation of the Project, and other special requirements, if any, designated in the Contract. In the event the Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Contractor shall immediately notify the District’s Representative in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Contractor shall be solely liable for any such violation, inconsistency or special requirement, if Contractor fails to conduct such review or notification to the District.

1.3.10 Before commencing any work on the Project, the Contractor shall carefully examine all Specifications, Contract, Contract Documents and other information given to the Contractor as to Project requirements. The Contractor shall immediately notify the District's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Contractor nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Specifications, the Contract, Contract Documents or other information given to Contractor. 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, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Contractor shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Guaranteed Completion Date. In no case shall any Subcontractor proceed with work if uncertain without the Contractor's written direction and/or approval.

ARTICLE 2. DISTRICT

2.1 FEE AND PERMIT REQUIREMENTS

2.1.1 Cost for on-site inspection by a DSA-approved inspector shall be borne by the District. The District will pay for and obtain the following permits and fees:

2.1.1.1 DSA plan check and/or approval fees

2.1.1.2 California Department of Education plan check and/or approval fees

2.2 ACCESS TO PROJECT SITE

2.2.1 The District will provide, as reasonably required by the work on the Project, but in no event later than the date designated in the Notice to Proceed, access to the lands and facilities upon which the Construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by the Contractor, subject to the hours of work specified in the Contract Documents and as may be otherwise be specified by the District.

2.2.2 As specified in the Contract, the District requires Contractor and all of its Tier Subcontractors to comply with the requirements of California Education Code Section 45125.2 with respect to fingerprinting of employees who may have contact with the District's students. In no event shall any employees of Contractor and all Tier Subcontractors come into contact with the District's students before complying with the fingerprinting requirements of California Education Code Section 45125.2.

2.3 THE DISTRICT'S RIGHT TO STOP WORK ON THE PROJECT

2.3.1 If the Contractor fails to correct Defective Work as required by Section 12.2 or fails to perform the Work in accordance with the Contract Documents, the District or the District's Representative may direct the Contractor to stop work on the Project, or any portion thereof, until the cause for such order has been eliminated by the Contractor. The Contractor shall not be entitled to any adjustment of Guaranteed Completion Date or the Guaranteed Maximum Price as a result of any such order. The District and the District's Representative have no duty or responsibility to the Contractor or any other party to exercise the right to stop work on the Project.

2.4 THE DISTRICT'S RIGHT TO CARRY OUT WORK ON THE PROJECT

2.4.1 If the Contractor fails to carry out the Scope of Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Pre-Construction or Construction Phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within five (5) days after receipt of notice from the District to promptly commence and thereafter diligently continue to completion, the correction of such failure, the District may, without prejudice to other remedies the District may have, correct such failure at the Contractor's expense. In such case, the District will be entitled to deduct from payments then or thereafter due the Contractor the cost of correcting such failure, including compensation for the additional services and expenses of the District's Representative and the District's consultants made reasonably necessary thereby. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the additional amount to the District.

2.5 THE DISTRICT'S RIGHT TO REPLACE THE DISTRICT'S REPRESENTATIVE

2.5.1 The District may at any time and from time to time, without prior notice to or approval of the Contractor, replace the District's Representative with a new District's Representative. Upon receipt of notice from the District informing the Contractor of such replacement and identifying the new the District's Representative, the Contractor shall recognize such person or firm as the District's Representative for all purposes under the Contract Documents.

ARTICLE 3. CONTRACTOR

3.1 CONTRACTOR RESPONSIBILITY; INDEPENDENT CONTRACTOR

3.1.1 The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with the Contractor or any of its Subcontractors. The District retains the Contractor on an independent contractor basis. The Contractor is not an employee, agent or representative of the District. The Contractor represents that it is fully experienced and properly qualified to perform the

class of work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform work on the Project. The Contractor shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Contractor shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR; SINGLE POINT RESPONSIBILITY OF THE CONTRACTOR

3.2.1 In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Article 10 of the Contract, the Contractor shall exercise reasonable care in studying and comparing each of the Contract Documents provided by the District with the others and with information furnished by the District, and shall promptly report in writing to the District's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by the District or inconsistencies with Applicable Code Requirements observed by the Contractor. The Contractor shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Contractor fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to the District in writing due to a failure to exercise reasonable care.

3.2.2 The Contractor is responsible for the construction of the Project and shall use the highest standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. The Contractor shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Contractor before commencing work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to the District's Representative.

3.2.3 If the Contractor performs any construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Subsections 3.2.1 and 3.2.2, without notifying and obtaining the written consent of the District's Representative, the Contractor shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

3.2.4 The District does not assume any obligation to employ the Contractor's services or pay the Contractor royalties of any type as to future programs that may result from work performed under this Contract.

3.2.5 The Contractor shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.

3.2.6 The Contractor agrees that it has single point responsibility for the construction of this Project, and agrees to utilize the highest standard of excellent construction

practices. The Contractor agrees that, in light of the high degree of confidence and trust that the District has reposed in the Contractor, the Contractor shall act in the District's best interests at all times throughout the course and performance of this Contract.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise, coordinate, and direct all work on the Project using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, the entire construction means, methods, techniques, sequences, procedures, and the coordination of all portions of work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

3.3.2 The Contractor shall be responsible to the District for acts and omissions of the Contractor, its agents, employees, and Subcontractors, and their respective agents and employees.

3.3.3 The Contractor shall not be relieved of its obligation to perform all work on the Project in accordance with the Contract Documents either by acts or omissions of the District or the District's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent work.

3.3.5 Intentionally Omitted.

3.3.6 Intentionally Omitted.

3.3.7 Intentionally Omitted.

3.3.8 The Contractor shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project and provided to the Contractor.

3.3.9 Intentionally Omitted.

3.3.10 The Contractor is responsible for construction of the entire Project as required by the Contract Documents.

3.3.11 The Contractor shall at all times maintain good discipline and order among its employees and subcontractors. The Contractor shall provide competent, fully qualified personnel to perform all work on the Project.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Scope of Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project. Notwithstanding anything to the contrary above, the GMP shall incorporate, as applicable, a cost escalation of 6.5% for labor and materials; provided, however, such cost escalation shall be subject to the Contractor's compliance with the Change Order Request provisions herein.

3.5 TAXES

3.5.1 The Contractor shall pay all sales, consumer, use, income, payroll and similar taxes for the work or portions thereof provided by the Contractor.

3.6 PERMITS, FEES, AND NOTICES

3.6.1 Except for the permits and approvals which are the responsibility of the District as set forth in Section 2.2, the Contractor shall identify, prepare, submit and pay for, on behalf of the District, all applications, permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of work on the Project. The Contractor shall deliver to the District all original licenses, permits, and approvals obtained by the Contractor in connection with work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 The Contractor shall perform all work on the Project in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

3.7.1.1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the District, the Contractor, any Subcontractor, the Project, the Project site, the work on the Project, or the prosecution of the work on the Project.

3.7.1.2 All requirements of any insurance company issuing insurance required hereunder.

3.7.1.3 Applicable sections in the State of California Labor Code.

3.7.1.4 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.7.2 Intentionally Omitted.

3.7.3 The Contractor shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements. The Contractor shall promptly notify the District's Representative in writing if the Contractor becomes aware during the performance of work on the Project that the Contract Documents are at variance with Applicable Code Requirements.

3.7.4 If the Contractor performs work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to the District and the District's Representative, the Contractor shall be responsible for such work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.8 SUPERINTENDENT

3.8.1 The Contractor shall employ a competent Superintendent satisfactory to the District who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Contractor and communications given to, and received from, Superintendent shall be binding on the Contractor. Failure to maintain a Superintendent on the Project site at all times work on the Project is in progress shall be considered a material breach of this Contract, entitling the District to terminate the Contract or, alternatively, issue a stop work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop work order, the Contractor fails to complete the Contract on time, the Contractor will be assessed Liquidated Damages in accordance with the Contract.

3.8.2 Any changes to the assignment of the Superintendent shall receive prior written approval from the District. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Contractor will provide all key personnel identified in the Contract for the time periods stipulated.

3.9 PROJECT STAFFING

3.9.1 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 on the Project; 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 and fit workers on the job to complete all work on the Project in accordance with all requirements of the Contract.

3.9.2 The District shall have the right, but not the obligation, to require the removal from the Project of the Contractor's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by the District, including but not limited to, failure or refusal to perform work on the Project in a manner acceptable to the

District, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

3.10 TOXIC MATERIALS

3.10.1 The Contractor is responsible for unforeseen site conditions and toxic materials, but only to the extent described in the Contract Documents and/or that could be reasonably inferred by the Contractor based on the exercise of reasonable care. The Contractor shall not be required to perform any remediation work for unforeseen site conditions and toxic materials for which the Contractor is not responsible under this Section 3.10.1 except as authorized in a change order.

3.11 HAZARDOUS MATERIALS

3.11.1 The Contractor shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Project Site by the Contractor, its employees, subcontractors, agents, or other parties acting on behalf of the Contractor. In the event that the Contractor becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Project Site, the Contractor shall inform District by notice as soon as practicable. Notwithstanding anything to the contrary herein, the Contractor shall not be responsible for, and the District shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by the Contractor on the Project Site resulting from the Contractor's performance of the work hereunder, except Hazardous Materials introduced onto the Project Site by the Contractor, its employees, subcontractors, agents, or other parties acting on behalf of the Contractor. The District shall not be responsible for, and the Contractor shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced onto the Project Site by the Contractor, its employees, subcontractors, agents, or other parties acting on behalf of the Contractor.

3.11.2 The Contractor hereby specifically agrees to indemnify, defend and hold the District, its present and future directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by the District or Contractor of, a Hazardous Material introduced onto the Project Site by the Contractor, its employees, subcontractors, agents, or other parties acting on behalf of the Contractor; (b) any enforcement or compliance proceeding commenced by or in the name of any governmental authority because of the presence on the Project Site of Hazardous Materials introduced onto the Project Site by the Contractor, its employees, subcontractors, agents, or other parties acting on behalf of the Contractor; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Hazardous Material laws by the Contractor.

3.12 COMPLIANCE WITH STATE STORMWATER PERMIT FOR CONSTRUCTION

3.12.1 The Contractor shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP to address Stormwater impacts. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the Guaranteed Maximum Price.

3.12.2 The Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The Contractor shall provide copies of all reports and monitoring information to the District's Representative.

3.12.3 The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of Stormwater to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal Stormwater management programs.

3.13 INTENTIONALLY OMITTED

3.14 MONTHLY REPORT

3.14.1 The Contractor shall prepare and submit to the District during Construction Phase, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the District. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Contractor's projected progress for the forthcoming month.

3.15 OTHER REPORTS

3.15.1 The Contractor will cooperate with the District in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

3.16 GUARANTEE

3.16.1 The Contractor unconditionally guarantees all work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion. The Contractor shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the District; ordinary wear and tear and abuse excepted.

3.16.2 The Contractor further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the District, of any work not in accordance with the requirements of the Contract Documents or any defects in the work on the Project, that the Contractor shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the District finds that the Contractor fails to perform any of the work under the guarantee, the District may elect to have the work completed at the Contractor's expense and the Contractor will pay costs of the work upon demand. The District will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Contractor's refusal to pay the above costs.

3.16.3 Notwithstanding the foregoing subsection, in the event of an emergency constituting an immediate hazard to health or safety of the District employees, property, or licensees, the District may undertake, at the Contractor's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by work of the Contractor not being in accordance with the requirements of the Contract Documents.

3.17 WARRANTY

3.17.1 The Contractor warrants to the District that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of Liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Contract Documents. If required by the District's Representative, the Contractor shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the District's Representative.

3.17.1.1 Within 30 days of GMP approval, the Contractor shall provide the sample warranties for all major pieces of Project equipment to the District for review. Upon completion of the Project, Contractor shall provide District with all warranty documentation and shall assist the District in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all may otherwise be available to the District.

Notwithstanding anything to the contrary above, The Contractor shall provide equipment warranties within 30 days of GMP approval.

3.17.1.2 All work performed by Contractor must not render void, violate, or otherwise jeopardize any preexisting District facility or building warranties.

3.17.2 Intentionally Omitted.

3.18 SCHEDULES REQUIRED OF THE CONTRACTOR

3.18.1 The Contractor shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities achieve completion by the GCD. The Contractor shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the work on the Project and the delivery of equipment. The Contractor shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. The Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. The Contractor shall cooperate with the District's Representative in the development of all contract schedules and updated contract schedules. Nothing in this Section 3.18.2 shall change, alter or modify the provisions in Article 8 herein.

3.18.2 Failure of the District's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Contractor that the Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the Contractor from its sole responsibility to perform and complete all work on the Project within the Guaranteed Completion Date and shall not be a cause for an adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

3.18.3 The Construction Schedule shall consist of a critical path format. The time-scale shall indicate all required Milestone and Completion Dates for each activity up to and including the date of Substantial Completion. Each work line shall indicate the start and finish dates of each activity, well as the total time period of performance for each activity. All work activities, including those within a single activity, shall be broken down into distinctly described activities of no greater than two weeks. Within fifteen (15) calendar days after the Notice of Award, the Contractor shall prepare and submit to District Representative a Project completion schedule showing in detail how the Contractor plans to prosecute and perform the Work within the GCD (the "Detailed Project Schedule"). The Detailed Project Schedule shall include the work of all trades necessary for construction of the Project, and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-by-day basis. The information for each activity shall include as a minimum the activity description, duration, start date and completion date. The initial Detailed Project Schedule shall be approved by the District and attached to the Notice to Proceed. The Contractor shall take care in the preparation of the Detailed Project Schedule to ensure that it represents an accurate and efficient plan for accomplishing the Work. If the Project is more than one week ahead of or behind schedule, the

Detailed Project Schedule must be revised showing how the Contractor plans to complete the work, but in no case shall it show a completion date later than that required by the Contract, unless a time extension has been granted. The current schedule shall be kept posted in the Contractor's project office on site. The Contractor shall be responsible for the coordination of all Work necessary and pertaining to the construction whether actually a part of this Contract or attendant thereto. The Contractor shall notify the District and various utility companies, as far as possible in advance of their required Work, in order that work schedules may be developed for all concerned, which will permit the most effective accomplishment of the Project. The Contractor shall perform all work on the Project in accordance with the current accepted Contract Schedule.

3.19 AS BUILT DOCUMENTS

3.19.1 The Contractor shall maintain one (1) set of As-Built drawings and specifications in BIM model format, which shall be kept up to date during the work of the Contract. All changes which are incorporated into the work on the Project which differ from the Documents as drawn and written and approved shall be noted on the BIM model set. Notations shall reflect the actual materials, equipment and installation methods used for the work on the Project and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each drawing and the specification cover shall be signed by the Contractor and dated, attesting to the completeness of the information noted therein, As-Built in BIM model format Documents shall be turned over to the District's Representative and shall become part of the Record Documents as required by the Scope of Work.

3.20 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.20.1 The Contractor shall maintain the following at the Project site:

3.20.1.1 One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.

3.20.1.2 One copy of the prevailing wage rates applicable to the Project.

3.20.1.3 The current accepted Contract Schedule.

3.20.1.4 Intentionally Omitted.

3.20.1.5 One current copy of all documents required by 3.24.1 (As built documents.)

3.20.1.6 All other required submittals.

3.20.2 These shall be available to the District's Representative and shall be delivered to the District's Representative for submittal to the District upon the earlier of Final Completion or termination of the Contract.

3.21 INTENTIONALLY OMITTED

3.22 USE OF SITE AND CLEAN UP

3.22.1 The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. The Contractor shall not unreasonably encumber the Project site with materials or equipment.

3.22.2 The Contractor shall, during performance of work on the Project, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by the Contractor. The Contractor shall remove all excess dirt, waste material, and rubbish caused by the Contractor; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Project.

3.22.3 Personnel of the Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.23 CUTTING, FITTING, AND PATCHING

3.23.1 The Contractor shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.23.2 The Contractor shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Contractor shall not cut or alter the work of any Separate Contractor without the prior consent of the District's Representative.

3.24 ACCESS TO WORK

3.24.1 The District, the District's Representative, their consultants, and other persons authorized by the District will at all times have access to the work on the Project wherever it is in preparation or progress as provided in Section 18 of the Contract. The Contractor shall provide safe and proper facilities for such access and for inspection.

3.25 INTENTIONALLY OMITTED

3.26 CONCEALED OR UNKNOWN CONDITIONS

3.26.1 Except and only to the extent provided otherwise in Article 7 and 8 of the General Conditions, by signing the Contract, the Contractor agrees:

3.26.2 To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in these Contract Documents, and/or can reasonably be inferred by the Contractor based on its experience and expertise; and

3.26.3 That the Contractor's Guaranteed Maximum Price for the Contract was made with full knowledge of this risk.

3.26.4 In agreeing to bear the risk of concealed or unknown conditions as provided in Section 3.10.1, the Contractor understands that, except and only to the extent provided otherwise in Articles 7 and 8, concealed and/or unknown conditions for which the Contractor is responsible under Section 3.10.1, shall not excuse the Contractor from its obligation to achieve full completion of the Project within the Guaranteed Completion Date, and shall not entitle the Contractor to an adjustment of the Guaranteed Maximum Price.

3.26.5 If concealed or unknown conditions are encountered which require, in the opinion of the District's Representative, design details which differ from those details shown in the Construction Documents and the District's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if the District agrees with the District's Representative's determinations, the District may terminate this Contract without any liability to the Contractor, except for work completed at the time of termination or issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Guaranteed Completion Date pursuant to Articles 7 and 8.

3.26.6 If the Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Contractor shall notify the District's Representative within 24 hours in writing of such conditions so that the District's Representative can determine if such conditions require design details which differ from those design details shown in the Construction Documents. The Contractor shall be liable to the District for any extra costs incurred as the result of the Contractor's failure to give such notice.

3.27 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.27.1 Except as otherwise provided in the Contract Documents, the Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to the District's acceptance of the Project as fully completed.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY THE DISTRICT'S REPRESENTATIVE

4.1.1 The District's Representative will have authority to act on behalf of the District only to the extent provided in the Contract Documents.

4.1.2 The District shall designate in the Contract one or more representatives authorized to act on the District's behalf with respect to the Project, together with the scope of his/her respective authority. If the District's Representative(s) changes, the District shall notify the Contractor

in writing as provided in the Contract. Functions for which this Contract Documents provide will be performed by the District may be delegated by the District only by written notice to the Contractor from the District. The Contractor shall not be entitled to rely on directions (nor shall it be required to follow the Directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Contract. Directions and decisions made by the District Representatives of the District shall be binding on the District.

4.1.3 Intentionally Omitted.

4.1.4 The District's Representative will not have control over, will not be in charge of, and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work on the Project, since these are solely the Contractor's responsibility.

4.1.5 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the District and the Contractor shall communicate through the District's Representative. Communications by the Contractor with the District's consultants and the District's Representative's consultants shall be through the District's Representative. Communications by the District and the District's Representative with Subcontractors will be through the Contractor. Communications by the Contractor and Subcontractors with Separate Contractors shall be through the District's Representative. The Contractor shall not rely on oral or other non-written communications.

4.1.6 Based on the District's Representative's Project site visits, review of Design Work, and evaluations of the Contractor's Applications For Payment, the District's Representative will recommend amounts, if any, due the Contractor and will issue Certificates For Payment in such amounts.

4.1.7 The District's Representative will have the authority to reject work on the Project, or any portion thereof, which does not conform to the Contract Documents. The District's Representative will have the authority to stop work on the Project, or any portion thereof. Whenever the District's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the District's Representative will have the authority to require additional inspection or testing of the work on the Project in accordance with the Contract Documents, whether or not such work is fabricated, installed, or completed. However, no authority of the District's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of the District or the District's Representative to the Contractor, or any person or entity claiming under, or through, the Contractor.

4.1.8 The District's Representative will have the authority to conduct inspections and to determine the Dates of Substantial Completion and Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract

Documents and assembled by the Contractor; and will issue a final Certificate For Payment upon the Contractor's compliance with the requirements of the Contract Documents.

4.1.9 The District's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Contractor. Should the Contractor discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether work is within the scope of the Contract Documents; then, before proceeding with the work affected, the Contractor shall notify the District's Representative in writing and request interpretation, or clarification. The District's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Contractor proceed with the work affected before receipt of a response from the District's Representative, any portion of the work on the Project which is not done in accordance with the District's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Contractor shall be responsible for all resultant losses.

4.2 THE CONTRACTOR CHANGE ORDER REQUESTS

4.2.1 The Contractor may request changes to the Guaranteed Maximum Price and/or Guaranteed Completion Date for Extra Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the District, the District's Representative, their agents or employees, or caused by unforeseen conditions if, and only if, the Contractor follows the procedures specified in this Section. As used in this Section, such acts, errors, or omissions shall include, but not be limited to, the provision of instructions, or interpretations that involve an increase or decrease in Project Scope, Extra Work or delay completion of the Project.

4.2.2 If the Contractor asserts that the Contractor is entitled to an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date as the result of an act, error, or omission of the District, the District's Representative, their agents or employees, or as the result of unforeseen conditions, then the Contractor may submit a Change Order Request in a form acceptable to the District, to the District's Representative.

4.2.3 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Guaranteed Completion Date. Upon request of the District's Representative, the Contractor shall submit such additional information as may be requested by the District's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a Cost Proposal meeting the requirements of Article 7 and written documentation demonstrating the Contractor's entitlement to a time extension under Section 8.4. If the Change Order Request seeks an adjustment of the Guaranteed Maximum Price for an Excusable delay, upon request of the District's Representative, the Contractor shall submit written documentation demonstrating the Contractor's entitlement to such an adjustment under Subsection 7.3.9.

4.2.4 A condition precedent to obtaining an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date as the result of an act, error, or omission of the District, the District's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in Subsections 4.2.2 and 4.2.3. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the date the Contractor discovers, or reasonably should discover, that an act, error, or omission of the District, the District's Representative, their agents or employees, has occurred that may entitle the Contractor to an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date (even if the Contractor has not been damaged, delayed, or incurred extra cost when the Contractor discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the Date the Contractor discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Contractor to an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date (even if the Contractor has not been damaged, delayed, or incurred extra cost when the Contractor discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request).

4.2.5 If the District's Representative issues a final decision on all or part of a Change Order Request, the Contractor may contest the decision by filing a timely Claim under the procedures specified in Section 4.3. A final decision is any decision on a Change Order Request which states that it is final.

4.3 CLAIMS

4.3.1 The term "Claim" means a written demand or assertion by the Contractor seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the District and the Contractor arising out of or related to the Contract Documents or the performance of work on the Project, and claims alleging an unforeseen condition or an act, error or omission by the District, the District's Representative, their agents or employees. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4 shall not apply to the following:

4.3.1.1 Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.

4.3.1.2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.

4.3.1.3 Claims respecting a latent defect, breach of warranty, or guarantee to repair.

4.3.1.4 Claims respecting Stop Payment Notices.

4.3.2 If a Claim is subject to the procedures specified in Section 4.2, the Claim arises upon the issuance of a written final decision denying in whole or in part the Contractor's Change Order Request. If a Claim is not subject to the procedures specified in Section 4.2, the Claim arises when the Contractor discovers, or reasonably should discover, the condition or event giving rise to the Claim (even if the Contractor has not been damaged, delayed, or incurred extra cost when the Contractor discovers, or reasonably should discover, the condition or event giving rise to the Claim).

4.3.3 A Claim not subject to the procedures specified in Section 4.2 may be asserted if, and only if, the Contractor gives a valid written notice of intent to file the Claim within ten (10) calendar days of the Date the Claim arises under Subsection 4.3.2. A written notice of intent to file a claim will be deemed valid, if and only, if it identifies the event or condition giving rise to the Claim and states its probable effect, if any, with respect to the Contractor's entitlement to an adjustment of the Guaranteed Maximum Price and/or the Guaranteed Completion Date.

4.3.4 A Claim must include the following:

4.3.4.1 A statement that it is a Claim and a request for a decision pursuant to Section 4.5.

4.3.4.2 A detailed description of the act, error, omission, unforeseen condition, event or other condition giving rise to the Claim.

4.3.4.3 If the Claim is subject to the procedures specified in Section 4.2, a statement demonstrating that a Change Order Request was timely submitted as required by Subsection 4.2.4. If the Claim is not subject to the procedures specified in Section 4.2, a statement demonstrating that a valid notice of intent to file the Claim was timely submitted as required by Subsection 4.3.3.

4.3.4.4 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:

4.3.4.4.1 If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Subsection 7.3.2. The breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within 7 days of the Date the cost reflected in the record is incurred. At the request of the District's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

4.3.4.4.2 If the Claim involves an extension of the Guaranteed Completion Date, written documentation demonstrating the Contractor's entitlement to a time extension under Section 8.4.

4.3.4.4.3 If the Claim involves an adjustment of the Guaranteed Maximum Price for an Excusable delay, written documentation demonstrating the Contractor's entitlement to such an adjustment under Subsection 7.3.9.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by the Contractor shall be first submitted to the District's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by the District's Representative, the Contractor shall not cause any delay, cessation, or termination in or of the Contractor's performance of work on the Project, but shall diligently proceed with performance of the work in accordance with the Contract Documents. The District will continue to make payments in accordance with the Contract Documents.

4.4.3 The Contractor shall submit a Claim in writing, together with the supporting data specified in Subsection 4.3.4, to the District's Representative as soon as possible but not later than thirty (30) days after the Date the claim arises under Subsection 4.3.2.

4.4.4 The Contractor agrees that strict compliance with the requirements of Subsections 4.2.4, 4.3.3, and 4.4.3 is an express condition precedent to the Contractor's right to arbitrate or litigate a Claim. The Contractor specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Subsections 4.2.4, 4.3.3, and 4.4.3.

4.5 DECISION OF THE DISTRICT'S REPRESENTATIVE ON CLAIMS

4.5.1 The District's Representative will timely review Claims submitted by the Contractor. If the District's Representative determines that additional supporting data are necessary to fully evaluate a Claim, the District's Representative will request such additional supporting data in writing.

4.6 ALTERNATE DISPUTE RESOLUTION OF CLAIMS

4.6.1 Claims of \$375,000 or less which arise between the Contractor and the District shall be resolved under the following the statutory procedure unless the District has elected to resolve the dispute pursuant to Public Contract Code Section 10240 *et seq.*

4.6.2 All Claims: All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of

the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the District.

4.6.3 Claims Under \$50,000: The District shall respond in writing to the claim within forty-five (45) days of receipt of the claim, or, the District may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the District and the claimant. The District's written response shall be submitted fifteen (15) days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

4.6.4 Claims over \$50,000 but less than or equal to \$375,000: The District shall respond in writing within sixty (60) days of receipt, or, may request in writing within thirty (30) days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the District and the claimant. The District's response shall be submitted within thirty (30) days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.

4.6.5 The Contractor will submit the claim justification in the following format:

4.6.5.1 Summary of claim merit and price, and Contract clause pursuant to which the claim is made.

4.6.5.2 List of documents relating to claim including, but not limited to:

4.6.5.3 Specifications

4.6.5.4 Drawings

4.6.5.5 Clarifications (Requests for Information)

4.6.5.6 Schedules

4.6.5.7 Chronology of events and correspondence

4.6.5.8 Analysis of claim merit

4.6.5.9 Analysis of claim cost

4.6.5.10 Analysis of time impact analysis in CPM format

4.6.5.11 Cover letter and certification of validity of the claim

4.6.6 If the claimant disputes the District's response, or if the District fails to respond within the statutory time period(s), the claimant may so notify the District within fifteen (15) days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the District shall schedule a meet and confer conference within thirty (30) Days.

4.6.7 If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant shall file a claim pursuant to Government Code 900 *et seq.* and Government Code 910 *et seq.* For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

4.6.8 Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by District, is an express condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

4.7 WAIVER

4.7.1 A waiver of, or failure by, the District or the District's Representative to enforce any requirement in this Article 4, including, without limitation, the requirements in Subsections 4.2.4, 4.3.3, 4.4.3, 4.4.4 and 4.5.4 in connection with any Claim shall not constitute a waiver of, and shall not preclude the District or the District's Representative from enforcing such requirements in connection with any other Claims.

4.7.2 The Contractor agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon the District unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5. SUBCONTRACTORS

5.1 SUBCONTRACTUAL RELATIONS

5.1.1 Any part of the work on the Project performed for the Contractor by a first tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, to assume toward the Contractor all the obligations and responsibilities which the Contractor assumes towards the District by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the District under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights.

ARTICLE 6. CONSTRUCTION BY THE DISTRICT OR BY SEPARATE CONTRACTORS

6.1 THE DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The District reserve the right to award separate contracts for, or to perform with its own forces, construction or operations related to the work or other construction or operations at or affecting the Project site, including portions of work on the Project which have been deleted by Change Order. The Contractor shall cooperate with the District's forces and Separate Contractors.

6.1.2 The District will provide coordination of the activities of the District's forces and of each Separate Contractor with the work of the Contractor. The Contractor shall participate with the District and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Contractor shall make necessary revisions to the Contract Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the District and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The Contractor shall connect, schedule, and coordinate its construction and operations with the construction and operations of the District and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the work on the Project is dependent upon the proper execution or results of other construction or operations by the District or Separate Contractors, the Contractor shall inspect such other construction or operations before proceeding with that portion of the work on the Project. The Contractor shall promptly report to the District's Representative apparent discrepancies or defects which render the other construction or operations unsuitable to receive the work on the Project. Unless otherwise directed by the District's Representative, the Contractor shall not proceed with the portion of the work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by the District or Separate Contractors is suitable to receive the work on the Project, except as to defects not then reasonably discoverable.

6.3 THE DISTRICT'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish, the District may clean up and allocate the cost between those firms the District deem to be responsible.

ARTICLE 7. CHANGES IN THE SCOPE OF WORK

7.1 CHANGES

7.1.1 The District may, from time to time, order or authorize additions, deletions, and other changes in the Scope of Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to the District.

7.1.2 The Contractor may request a Change Order under the procedures specified in Section 4.2.

7.1.3 A Field Order, as defined below, may be issued by the District; and shall be valid with or without the signature of the Contractor.

7.1.4 The Contractor shall proceed promptly with any changes in the Scope of Work, unless otherwise provided in the relevant Change Order, District Directed Change Order or Field Order.

7.2 DEFINITIONS

7.2.1 A Change Order becomes a Contract Document when, (i) it is an District Directed Change Order as described in Section 7.2.2; or (ii) after it has been signed by both the District and the Contractor, and states their agreement upon all of the following:

7.2.1.1 A change in the Scope of Work, if any.

7.2.1.2 The amount of an adjustment of the Guaranteed Maximum Price, billed as Extra Work pursuant to Attachment 2 to the Contract, if any.

7.2.1.3 The amount of an adjustment of the Guaranteed Completion Date, if any.

7.2.2 An District Directed Change Order is a type of Change Order which may be issued by the District and incorporated into the Contract Documents without the Contractor's signature, where the District determine that it is in the District's best interest to adjust the Guaranteed Maximum Price and/or Guaranteed Completion Date as the District believe necessary, even though no agreement has been reached between the District and the Contractor.

7.2.3 A Field Order is a preliminary to a Change Order that describes a change in the Scope of the Work, the estimated adjustments of the Guaranteed Maximum Price and/or the Guaranteed Completion Date, if any, and orders a change in the Scope of Work before all of the terms of the change are fully agreed upon by the District and the Contractor. A Field Order must eventually be memorialized as a Change Order or an District Directed Change Order and incorporated into the Contract Documents; provided, however, any Change Order in excess of five percent (5%) of the

Guaranteed Maximum Price (as amended) shall require the prior approval of the District's Board of Trustees. **There are no exceptions to this requirement.**

7.3 CHANGE ORDER PROCEDURES

7.3.1 When requested by the District's Representative, the Contractor shall provide promptly, but in no event longer than seven (7) days from the date of the request, a Cost Proposal setting forth the Contractor's proposed adjustments of the Guaranteed Maximum Price and/or the Guaranteed Completion Date, if any, for performing the proposed change in the Scope of Work. Adjustments of the Guaranteed Maximum Price resulting from Extra Work and/or deductive work shall be determined using one of the methods described in Article 7. Adjustments of the Guaranteed Completion Date shall be subject to the provisions in Article 8.

7.3.2 The term "Cost of Extra Work" as used in this Article shall mean actual costs incurred by the Contractor and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Contractor demonstrates that they were actually incurred):

7.3.2.1 Overhead and Profit not to exceed 15% of the Cost of the Extra Work (not more than 10% Overhead and 5% Profit) and straight time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.3 Overtime wages or salaries, specifically authorized in writing by the District's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by the District's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by the District's Representative. Such costs shall be charged at the lowest price available to the Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the District and the Contractor shall make provisions so that they may be obtained.

7.3.2.6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Subsection 7.3.2.5 above.

7.3.2.7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by the District's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current U.S. Army Corp. of Engineers scheduled charges for the area in which the work is performed. The Contractor shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

7.3.2.8 Intentionally Omitted.

7.3.2.9 Intentionally Omitted.

7.3.2.10 With regard to items 7.3.2.1. through 7.3.2.9. above, the cost for Insurance and Bonds shall not exceed 1.05% on Contractor self-performed work and 2% for subcontractor work.

7.3.3 Cost of Extra Work shall not include any of the following:

7.3.3.1 Small tools (Replacement value does not exceed \$300).

7.3.3.2 Office expenses including staff, materials and supplies.

7.3.3.3 Off site trailer and storage rental and expenses.

7.3.3.4 Federal, state, or local business income and franchise taxes.

7.3.3.5 Markup on overhead and profit is limited to 15% of the Cost of the Extra Work. Of the 15%, 10% markup for Overhead on the direct cost (without Subcontractor markup) of a subcontractor's extra work plus 5% markup for Profit on the direct cost for each self-performing subcontracting tier. Example: a first tier mechanical subcontractor may markup its controls contractor's direct cost of the extra work 10%. On their scope of work, the direct costs at 10% and 5% and the general contractor 15% of the total direct cost of the change, excluding subcontractor markups.

7.3.3.6 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2.

7.3.4 Compensation for Extra Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified herein.

7.3.5 As a condition to the Contractor's right to an adjustment of the Guaranteed Maximum Price, pursuant to Subsection 7.3.4, the Contractor must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by the District's Representative on a daily basis.

7.3.6 For work to be deleted by Change Order, the reduction of the Guaranteed Maximum Price shall be computed on the basis of one or more of the following:

7.3.6.1 Unit prices stated in the Contract or an Attachment thereto.

7.3.6.2 Unit prices agreed upon by the District and the Contractor.

7.3.6.3 A lump sum agreed upon by the District and the Contractor, based upon the actual costs which would have been incurred in performing the Deleted portions of the work on the Project as calculated in accordance with Subsections 7.3.2 and 7.3.3.

7.3.7 If any one Change Order involves both Extra Work and deleted work in the same portion of the work on the Project, the Guaranteed Maximum Price shall not be increased if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the Guaranteed Maximum Price will be allowed only on the difference between the two amounts.

7.3.8 The Guaranteed Maximum Price will be adjusted for a delay if, and only if, the Contractor demonstrates that all of the following four conditions are met:

7.3.8.1 Condition Number One: The delay results in an extension of the Guaranteed Completion Date pursuant to Subsection 8.4.1.

7.3.8.2 Condition Number Two: The delay is caused by one, or more of the following:

7.3.8.2.1 An error or omission in the Contract Documents caused by the District and not as a result of the Contractor's failure to conform to Construction Documents, performance standards, Construction Documents, or Contract Documents provided the District provides all of said documents in a timely manner; or

7.3.8.2.2 The District's decision to change the Scope of the Work, where such decision is not the result of any default or misconduct of the Contractor; or

7.3.8.2.3 The District's decision to suspend work on the Project, where such decision is not the result of any default or misconduct of the Contractor; or

7.3.8.2.4 The failure of the District or the District's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Contractor.

7.3.8.2.5 The failure of the DSA or other entity with jurisdiction over the Project to review and approve the design or construction in a reasonably timely manner.

7.3.8.2.6 Any of the delay causes listed in 8.4.1.6.

7.3.8.3 Condition Number Three: The delay is not concurrent with a delay that is critical under Subsection 8.4.1.2.

7.3.8.4 Intentionally Omitted.

7.3.9 For each day of delay that meets all three conditions prescribed in Subsection 7.3.8 the Guaranteed Maximum Price will be adjusted as set forth herein.

7.3.10 Except as provided in Articles 7 and 8, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.11 If for any reason one or more of the conditions prescribed in Subsection 7.3.4 is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Guaranteed Completion Date under Subsection 7.3.8.

7.4 FIELD ORDERS

7.4.1 A Field Order as described in Subsection 7.2.3 above, may be issued by the District. If requested in writing, the Contractor shall promptly provide the District's Representative with a Cost Proposal, setting forth the proposed adjustments of the Guaranteed Maximum Price and/or the Guaranteed Completion Date, if any, for performing the change in the Scope of Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Guaranteed Maximum Price and the Guaranteed Completion Date, as well as the change in the Scope of Work.

7.4.2 A Field Order signed by the Contractor indicates the agreement of the Contractor therewith, including the Contractor's agreement to the proposed adjustments to the Guaranteed Maximum Price and/or the Guaranteed Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

7.4.3 Upon receipt of a Field Order, the Contractor shall promptly proceed with the change in the Scope of Work.

7.4.4 If the Contractor does not agree to the adjustment of the Guaranteed Maximum Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Subsection 7.3.4 above; and the Contractor shall comply with the provisions of Subsection 7.3.6 regarding records and documentation of actual costs.

7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK

7.5.1 The District shall have the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Contract Documents.

7.6 WAIVER

7.6.1 A waiver of, or failure by, the District or the District's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Subsections 7.3.6, 7.3.8, 7.3.9, 7.3.10, or 7.3.11 in connection with any adjustment of the Guaranteed Maximum Price, will not constitute a waiver of; and will not preclude the District, or the District's Representative, from enforcing, such requirements in connection with any other adjustments of the Guaranteed Maximum Price.

7.6.2 The Contractor agrees and understands that no oral approval, either express or implied, of any adjustment of the Guaranteed Maximum Price by the District or its agents shall be binding upon the District unless and until such approval is ratified by execution of a written change order.

ARTICLE 8. GUARANTEED COMPLETION DATE

8.1 COMMENCEMENT OF WORK ON THE PROJECT

8.1.1 The date of commencement of the Scope of Work shall be set forth in the Notice To Proceed. The date of commencement for the Scope of Work shall not be postponed by the failure of the Contractor, Subcontractors, or of persons or firms for whom the Contractor is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Contract:

8.2.1.1 The Contractor represents to the District that the Guaranteed Completion Date is reasonable for performing the Scope of Work and that the Contractor is able to perform and complete the Scope Work within the Guaranteed Completion Date.

8.2.1.2 The Contractor agrees that the District is purchasing the right to have the Contractor present on the Project for the full duration of the time period necessary to complete the Scope of Work described in the RFP.

8.2.2 The Contractor shall not, except by agreement or instruction of the District in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement and the Guaranteed Completion Date shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve full completion of the work by the Guaranteed Completion Date. If the District's Representative determines and notifies the Contractor that the Contractor's progress is such that the Contractor will not achieve full completion of the work by the Guaranteed Completion Date, the Contractor shall immediately and at no additional cost to the District, take all measures necessary,

including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Guaranteed Completion Date. Upon receipt of such notice from the District's representative, the Contractor shall immediately notify the District's Representative of all measures to be taken to ensure full completion of the work within the Guaranteed Completion Date. The Contractor shall reimburse the District for any extra costs or expenses (including the reasonable value of any services provided by the District's employees) incurred by the District as the result of such measures.

8.3 DELAY

8.3.1 There are only two kinds of delay, Excusable Delay and Inexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Guaranteed Completion Date, and/or the Guaranteed Maximum Price and may be compensated as Extra Work as described below. All other delay(s) are Inexcusable, and except and only to the extent provided otherwise in Articles 7 and 8, by signing the Contract, the Contractor agrees:

8.3.1.1 To bear the risk of Inexcusable Delays to completion of the work on the Project; and

8.3.1.2 That the Contract was made with full knowledge of this risk.

8.3.2 In agreeing to bear the risk of Inexcusable Delays to completion of the work on the Project, the Contractor understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that result in any delay in completion of the work on the Project shall not excuse the Contractor from its obligation to achieve full completion of the work on the Project within the Guaranteed Completion Date, and shall not entitle the Contractor to an adjustment of the Guaranteed Maximum Price.

8.4 ADJUSTMENT OF THE GUARANTEED COMPLETION DATE FOR EXCUSABLE DELAY

8.4.1 The Guaranteed Completion Date will be extended for an Excusable Delay, if and only if, the Contractor demonstrates that all of the following six conditions are met:

8.4.1.1 Condition Number One: When the event causing the delay commences, the Contractor has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules; provided, however, the Contractor shall be allowed a cure period of up to ten (10) business day to correct any non-compliance with Contract requirements.

8.4.1.2 Condition Number Two: Intentionally Omitted.

8.4.1.3 Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract Schedule (or, if appropriate, the

Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Subsection 8.4.1.2. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Contract Schedule, provided that the absence of an approved Contract Schedule is not due to the Contractor's failure to timely submit an acceptable Proposed Contract Schedule.

8.4.1.4 Condition Number Four: Within fifteen (15) days of the date the Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, the Contractor submits a timely Change Order Request that meets the requirements of Section 4.2. In the event the magnitude or complexity of the delay issues is such that it will take longer than 15 days for the Contractor to submit a Change Order Request, the Contractor may submit a written request for more time to submit a Change Order Request, which the District will not unreasonably withhold.

8.4.1.5 Condition Number Five: The delay is not caused by:

8.4.1.5.1 The financial inability, misconduct or default of the Contractor, a Subcontractor or supplier; or

8.4.1.5.2 The unavailability of materials or parts, as long as such materials or parts were timely ordered by Contractor issuance of the Notice to Proceed and the District has not directly delayed their order; or

8.4.1.5.3 An error or omission in the Contract Documents caused by the Contractor.

8.4.1.6 Condition Number Six: The delay is caused by:

8.4.1.6.1 Fire; or

8.4.1.6.2 Strikes, boycotts, or like obstructive actions by employees or labor organizations; or

8.4.1.6.3 Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or

8.4.1.6.4 A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or

8.4.1.6.5 An error or omission in the Contract Documents caused by the District; or

8.4.1.6.6 The District's decision to change the Scope of Work, where such decision is not the result of any default or misconduct of the Contractor; or

8.4.1.6.7 The District's decision to suspend the work on the Project, where such decision is not the result of any default or misconduct of the Contractor; or

8.4.1.6.8 The failure of the District or the District's representative to timely perform any Contract obligation unless such failure is due to the Contractor's default or misconduct.

8.4.1.6.9 Unreasonable approval or response times by DSA or any other agency that has jurisdiction over the design and/or construction of the Project.

8.4.2 If and only if a delay meets all six conditions prescribed in Subsection 8.4.1, then the Guaranteed Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Guaranteed Completion Date for full completion of the work on the Project.

8.4.3 If for any reason one or more of the six conditions prescribed in Subsection 8.4.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Guaranteed Completion Date under Subsection 8.4.2.

8.5 COMPENSATION FOR EXTRA WORK DUE TO EXCUSABLE DELAY

8.5.1 To the maximum extent allowed by law, any adjustment of the Guaranteed Maximum Price as the result of Excusable Delays shall be limited to the amounts specified in Article 7.

8.5.2 By signing the Contract, the parties agree that the District has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

8.5.2.1 To order changes in the Scope of Work, regardless of the extent and number of changes, including without limitation:

8.5.2.1.1 Changes to correct errors or omissions caused by the District, if any, in the Contract Documents.

8.5.2.1.2 Changes resulting from the District's decision to change the Scope of the Work subsequent to execution of the Contract.

8.5.2.1.3 Changes due to unforeseen conditions.

8.5.2.2 To suspend work on the Project or any part thereof.

8.5.2.3 To delay work on the Project, including without limitation, delays resulting from the failure of the District or the District's Representative to timely perform any Contract obligation and delays for the District's convenience.

8.6 WAIVER

8.6.1 A waiver of or failure by, the District or the District's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Section 8.4, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the District or the District's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2 The Contractor agrees and understands that no oral approval, either express or implied, of any time extension by the District or its agents shall be binding upon the District unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9. PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN/SCHEDULE OF VALUES

9.1.1 Within ten (10) days after DSA plan approval, the Contractor shall submit to the District's Representative a detailed Cost Breakdown/Schedule of Values ("Cost Breakdown") of the portion of the Guaranteed Maximum Price applicable to that phase of the work in a form reasonably approvable to the District. The Cost Breakdown shall include all Allowances. Each such Cost Breakdown shall itemize as separate line items the cost of each work activity for the applicable phase and all associated costs, including but not limited to warranties, as built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall at all times be consistent with the Guaranteed Maximum Price. The Cost Breakdown, when approved by the District's Representative, shall become part of the Contract Documents and shall be the basis for determining the cost of the work performed for the Contractor's Applications for Payment.

9.2 TENANT IMPROVEMENT PAYMENT

9.2.1 The District agrees to pay monthly to the Contractor, subject to Subsection 9.4.2, an amount equal to 95% of the sum of the following:

9.2.1.1 Cost of the Construction Work in permanent place as of the end of the preceding month.

9.2.1.2 Cost of materials not yet incorporated in the Construction Work, subject to Subsection 9.3.5.

9.2.1.3 Less amounts previously paid.

9.2.1.4 Intentionally Omitted.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, the Contractor shall submit to the District's Representative an itemized Application For Payment, for the cost of the work in permanent place, as approved by the District's Representative, which has been completed in accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The Application For Payment shall be prepared as follows:

9.3.1.1 In a form approved by the District.

9.3.1.2 Itemized in accordance with the Cost Breakdown, including Allowances, as applicable.

9.3.1.3 Include such data substantiating the Contractor's right to payment as the District's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 9.5, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment as applicable.

9.3.1.4 Itemized retention.

9.3.2 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts the Contractor does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by the District, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and (2) unconditional waivers and releases of claims and Stop Payment Notices, in the form contained in the Exhibits, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.3.4 The Contractor warrants that, upon submittal of an Application For Payment, all work on the Project, for which Certificates For Payment have been previously issued and payment has been received from the District, shall be free and clear of all claims, Stop Payment Notices, security interests, and encumbrances in favor of the Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work on the Project.

9.3.5 At the sole discretion of the District, the District's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other

appropriate location acceptable to the District's Representative. In such case, the Contractor shall furnish evidence satisfactory to the District's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of the Contractor. Only materials to be incorporated in the work on the Project will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve the Contractor from sole responsibility for the care and protection of such materials; nor relieve the Contractor from risk of loss to such materials from any cause whatsoever; nor relieve the Contractor from its obligation to complete the work on the Project in accordance with the Contract; nor act as a waiver of the right of the District to require fulfillment of all terms of the Contract.

9.4 APPROVAL OF APPLICATION FOR PAYMENT BY DISTRICT

9.4.1 [RESERVED]

9.4.2 The District may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required of the Contractor pursuant to the Contract Documents cannot be made. Failure by the District to deduct any sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the District, incurred by the District for which the Contractor is liable under the contract. For instance, the District may withhold payment, in whole or in part, to such extent as may be necessary to protect the District from loss because of:

9.4.2.1 Failure to provide requested supporting documents, including those noted in Section;

9.4.2.2 Defective work not timely remedied;

9.4.2.3 Stop Payment Notices. If any Stop Payment Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the District shall retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Payment Notice; provided, however, that the District may release such funds upon receipt of evidence satisfactory to the District to the effect that the Contractor has resolved such claim, by settlement, Stop Payment Notice Bond or otherwise. All other provisions of state law with respect to Stop Payment Notices shall also apply;

9.4.2.4 Liquidated damages assessed against the Contractor;

9.4.2.5 Reasonable doubt that the work on the Project can be completed for the unpaid balance of any Guaranteed Maximum Price or within the Guaranteed Completion Date;

9.4.2.6 Damage to the District, another the Contractor, or subcontractor, including any sums expended by or on behalf of the District in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform or has performed inadequately;

9.4.2.7 Unsatisfactory prosecution of the work by the Contractor;

9.4.2.8 Failure to store and properly secure materials;

9.4.2.9 Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract, 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;

9.4.2.10 Failure of the Contractor to maintain record drawings;

9.4.2.11 Erroneous estimates by the Contractor of the value of the work on the Project performed, or other false statements in an Application for Payment;

9.4.2.12 Unauthorized deviations from the Contract Documents;

9.4.2.13 Failure of the Contractor to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

9.4.2.14 Forfeiture of funds pursuant to California Labor Code Section 1727. The District shall retain and transfer those funds pursuant to California Labor Code Section 1730.

9.4.3 Subject to the withholding provisions of Subsection 9.4.2, the District will pay the Contractor the amount set forth in the Certificate For Payment no later than 15 days after the issuance of the Certificate For Payment.

9.4.4 Neither the District nor the District's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.5 Neither a Certificate For Payment nor a progress payment made by the District will constitute acceptance of Defective Work.

9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW

9.5.1 At the request and expense of the Contractor, a substitution of securities may be made for any monies retained by the District under Section 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract

Documents for each Certificate For Payment shall be deposited by the Contractor with a state or federally chartered bank in the State of California (“Escrow Agent”), which shall hold such securities pursuant to the escrow Contract referred to in Subsection 9.5.3 until final payment is due in accordance with Section 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. The Contractor shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Subsection 9.5.1, and at the request and expense of the Contractor, the District will deposit retention directly with Escrow Agent. The Contractor may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by the Contractor.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the Deposit of retention into escrow shall be the execution by the Contractor, the District, and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form set forth in the Public Contract Code. The terms of such escrow Contract are incorporated into the requirements of this Section 9.5.

9.6 SUBSTANTIAL COMPLETION

9.6.1 When the Contractor gives notice to the District’s Representative that the Construction Work is substantially complete, unless the District’s Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, the District’s Representative will inspect the Construction Work, and prepare and give to the Contractor a comprehensive list of items to be completed or corrected before establishing Substantial Completion. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Construction Work in accordance with the Contract Documents. The District’s Representative will make an inspection to determine whether the Construction Work is substantially complete. If the District’s Representative’s inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for another inspection by the District’s Representative to determine Substantial Completion. Costs for additional inspection by the District’s Representative shall be deducted from any monies due and payable to the Contractor.

9.6.2 When the District’s Representative determines that the Construction Work is substantially complete, the Contractor will prepare and submit a Certificate of Substantial Completion to the District, which, when signed by the District, shall establish the Date of Substantial Completion and the responsibilities of the District and the Contractor for security, maintenance, utilities, insurance, and damage to the Construction Work. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the work on the Project covered by the Certificate of

Substantial Completion, shall commence on the Date of Substantial Completion of the Construction Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

9.6.2.1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the District has neither Beneficially Occupied nor accepted as Substantially Complete); or

9.6.2.2 Are not accepted by the District.

9.6.3 The Guarantee To Repair Period for systems which become fully operational and accepted subsequent to Substantial Completion will begin on the Date of their acceptance by the District. The Certificate of Substantial Completion shall be submitted to the District and the Contractor for their written acceptance.

9.7 FINAL COMPLETION AND FINAL PAYMENT

9.7.1 Upon receipt of notice from the Contractor that the work on the Project is ready for final inspection, the District's Representative will make such inspection. Final Completion shall be when the District's Representative determines that the work on the Project is fully completed and in accordance with the Contract Documents. The District will file a Notice of Completion within 10 days after Final Completion. After receipt of the final Application For Payment, if the District's Representative determines that Final Completion has occurred, the District's Representative will issue the final Certificate For Payment.

9.7.2 Neither final payment nor any retention shall become due until the Contractor submits the following items to the District's Representative:

9.7.2.1 The final Application For Payment and all submittals required in accordance with Section 9.3.

9.7.2.2 All guarantees and warranties procured by the Contractor from Subcontractors, all operating manuals for equipment installed in the Project, As built documents, and all other submittals required by the Contract Documents.

9.7.2.3 The final payment shall be made, subject to the satisfaction of all other legal conditions to final payment, 35 days after the filing of the Notice of Completion.

9.7.3 Acceptance of final payment by the Contractor shall constitute a waiver of all claims, except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application For Payment, and Contractor shall submit a waiver of all such claims (except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application For Payment), in a form reasonably acceptable to the District, at the time of final payment.

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

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

10.2.1.1 Employees involved in the Construction Work and other persons who may be affected thereby.

10.2.1.2 The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of the Contractor or Subcontractors.

10.2.1.3 Other property at the Project site and adjoining property.

10.2.2 The Contractor shall erect and maintain, as required by existing conditions and performance of the work on the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying District and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, the Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 The Contractor shall designate a responsible member of the Contractor's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by the Contractor in writing to the District and the District's Representative.

10.2.5 The Contractor shall not load or permit any part of the Construction Work or the Project site to be loaded so as to endanger the safety of persons or property.

10.3 EMERGENCIES

10.3.1 In an emergency affecting the safety of persons or property, the Contractor shall act to prevent or minimize damage, injury, or loss. The Contractor shall promptly notify the District's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and the Contractor's action.

ARTICLE 11. INSURANCE AND BONDS

11.1 THE CONTRACTOR'S INSURANCE

11.1.1 Minimum Scope of Insurance.

11.1.1.1 *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

11.1.1.2 *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

11.1.1.3 *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

11.1.1.4 *Professional Liability:* Professional Liability Insurance insuring the Contractor, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the Contractor may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to the District by the insurer, for a period of three (3) years after the termination of this Contract and the completion of all of the Contractor's services hereunder.

11.1.2 Minimum Limits of Insurance.

11.1.2.1 *General Liability:* General Liability will be provided in the following: \$1,000,000 per occurrence (\$2,000,000 aggregate) for bodily injury, personal injury and property damage, as well as an excess Umbrella Liability policy in the amount of \$4,000,000 covering the above named perils. In either case, if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

11.1.2.2 *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage.

11.1.2.3 *Workers' Compensation and Employers' Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

11.1.2.4 *Intentionally Omitted.*

11.1.2.5 *All Coverages:* Each insurance policy required by this RFP shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District or by email addressed to Yancy

Hawkins, Deputy Superintendent Business Services at Yhawkins@smuhdsd.org with copies to: Sean B. Absher, Legal Counsel, at Sabsher@stradlinglaw.com.

11.1.3 Verification of Coverage. The Contractor shall provide to District certificates of insurance and endorsements effecting coverage required by this Contract. All insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VIII, licensed to do business in California, and satisfactory to the District. All insurance required by this Section shall also contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers. All policies shall contain a provision stating that such policies are primary insurance and that the insurance of District or any named insured shall not be called upon to contribute to any loss. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on industry standard forms (such as an ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, and a certificate of insurance (Acord form 25-S or equivalent) with additional insured endorsements attached) , and acceptable to the District. All certificates and endorsements must be received and approved by the District within five (5) calendar days of the date of the Letter of Award. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.1.4 Duration of Coverage. Unless otherwise stated herein, insurance required under this Article shall be maintained in effect, unless otherwise provided in the contract documents, until the earliest of the following dates:

The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;

The date on which final payment for the Project has been made;

The date on which the insurable interests in the property of all insureds other than District have ceased.

11.1.5 Waiver of Subrogation. Contractor shall waive all rights against District and any of its assignees, agents and, each of the other, for damages caused by fire or other perils to the extent covered (i.e., insurance proceeds are actually received) by insurance obtained pursuant to this Article 11 or other insurance applicable to the Project. Contractor shall require of any assignees, Subcontractors, sub-Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a Person or entity even though that Person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the Person or entity had an insurable interest in the property damaged. If the insurance policies purchased hereunder do not allow the insured to waive rights of recovery against others prior to loss, Contractor shall cause them to be endorsed with a waiver of subrogation as required above. The waiver of subrogation provided herein shall be effective as against all corporations or entities provided insurance

coverage to or for the Project of any person or entity performing work on the Project, and this waiver includes but is not limited to, insurance coverage provided by private sector insurers and self-insured contractors or corporations. Notwithstanding anything to the contrary above, the Contractor shall not be required to provide waiver of subrogation for Professional Liability Insurance as described in Section 11.1.1.4.

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

11.2 PERFORMANCE AND PAYMENT BOND

11.2.1 The Contractor shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the exhibits to the Contract.

11.2.2 The Payment Bond and Performance Bond shall each be in the amount of the Guaranteed Maximum Price.

11.2.3 The Payment Bond and Performance Bond shall be in effect on the Date the Contract is signed by the District.

11.2.4 [*RESERVED*]

11.2.5 Surety companies used by the Contractor shall be, on the Date the Contract is signed by the District, listed in the latest published State of California, Department of Insurance list of “Insurers Admitted to Transact Surety Insurance in this State.”

11.2.6 The premiums for the Payment Bond and Performance Bond shall be paid by the Contractor.

11.2.7 The Contractor maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Bid Documents.

11.2.8 No payment will be made to the Contractor until the Contractor’s Payment Bond and Performance Bond have been approved by the District.

11.2.9 Should, in the District’s sole opinion, any bond become insufficient or Surety found to be unsatisfactory, the Contractor shall renew or replace the effected bond within 10 days of receiving notice from the District. “Unsatisfactory” for purposes of this Section 11.2.9 shall be the bonding company’s rating fail to maintain the District’s minimum of “A-;VIII” rating as required by Section 10.1.3.

11.2.10 In the event the Surety or the Contractor intends to reduce or cancel any required bonds, at least thirty (30) days prior written notice shall be given to the District, and the Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the

original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the District.

11.2.11 To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District.

11.2.12 To the extent available, the bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish any required bond, the District may terminate the Contract for cause

ARTICLE 12. UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

12.1 UNCOVERING OF WORK ON THE PROJECT

12.1.1 If a portion of the Construction Work is covered contrary to the District's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the District's Representative, be uncovered for the District's Representative's observation and be replaced at the Contractor's expense without adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

12.1.2 If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the District's Representative has not specifically requested to observe prior to its being covered, the District's Representative may request to see such Construction Work and it shall be uncovered and replaced by the Contractor. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Guaranteed Maximum Price by Change Order; and if the uncovering and replacing of the Construction Work extends the Guaranteed Completion Date, an appropriate adjustment of the Guaranteed Completion Date shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, the Contractor shall pay such costs and shall not be entitled to an adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Guarantee To Repair Period" means a period of one (1) year, unless a longer period of time is specified, commencing from the Date of Final Completion.

12.2.2 The Contractor shall (1) correct Defective Work that becomes apparent during the progress of the work on the Project or during the Guarantee To Repair Period and

(2) replace, repair, or restore to the District's satisfaction any other parts of the work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from the District's Representative or the District, but in no case later than ten (10) days after receipt of such notice; and the Contractor shall diligently and continuously prosecute such correction to completion. The Contractor shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for the District's Representative's services and expenses. The Contractor shall perform corrective work on the Project at such times that are acceptable to the District and in such a manner as to avoid, to the extent practicable, disruption to the District's activities.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by the District or Separate Contractors, the Contractor shall pay to the District all reasonable costs of correcting such Defective Work. The Contractor shall replace, repair, or restore to the District's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 The Contractor shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Contractor nor accepted by the District.

12.2.5 If the Contractor fails to commence correction of Defective Work within ten (10) days after notice from the District or the District's Representative or fails to diligently prosecute such correction to completion, the District may correct the Defective Work in accordance with Section 2.4; and, in addition, the District may remove the Defective Work and store salvageable materials and equipment at the Contractor's expense.

12.2.6 If the Contractor fails to pay the costs of such removal and storage as required by Subsections 12.2.4 and 12.2.5 within ten (10) days after written demand, the District may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the Contractor is liable to the District, including compensation for the District's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which the Contractor is liable to the District, the Guaranteed Maximum Price shall be reduced by such deficiency. If there are no remaining payments due the Contractor or the remaining payments are insufficient to cover such deficiency, the Contractor shall promptly pay the Difference to the District.

12.2.7 The Contractor's obligations under this Article 12 are in addition to and not in limitation of its warranty obligations hereunder or any other obligation of the Contractor under the Contract Documents. Enforcement of the Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or

remedies the District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of the Contractor under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of the Contractor to correct the work on the Project and in no way limits either the Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce the Contractor's obligations under the Contract Documents.

ARTICLE 13. TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY THE CONTRACTOR

13.1.1 Subject to Subsection 13.1.2, the Contractor shall have the right to terminate the Contract only upon the occurrence of one of the following:

13.1.1.1 The work on the Project is stopped for ninety (90) consecutive days, through no act or fault of the Contractor, any Subcontractor, or any employee or agent of the Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

13.1.1.2 The District fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) days after receipt of notice from the Contractor stating the nature of such default.

13.1.1.3 Repeated suspensions by the District, other than such suspensions as are agreed to by the Contractor under Section 13.3, which constitute in the aggregate more than 20% of the Guaranteed Completion Date or ninety (90) days, whichever is larger.

13.1.2 Upon the occurrence of one of the events listed in Subsection 13.1.1, the Contractor may, upon ten (10) days additional notice to the District and the District's Representative, and provided that the condition giving rise to the Contractor's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by the Contractor, the District will pay to the Contractor the sum determined by Subsection 13.4.4. Such payment will be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Contract by the Contractor pursuant to Section 13.1; and the Contractor will be entitled to no other compensation or damages and expressly waives the same.

13.2 TERMINATION BY THE DISTRICT FOR CAUSE

13.2.1 The District will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

13.2.1.1 The Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States,

13.2.1.2 The Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

13.2.1.3 A receiver is appointed to take charge of the Contractor's property.

13.2.1.4 The commencement or completion of any work activity is thirty (30) days or more behind the Date set forth in the Contract Schedule for such work activity, and which results in an Inexcusable Delay.

13.2.1.5 The Contractor abandons work on the Project.

13.2.2 Upon the occurrence of any of the following events, the District will have the right to terminate the Contract for cause if the Contractor fails to promptly commence to cure such default and diligently prosecute such cure within ten (10) days after notice from the District, or within such longer period of time as is reasonably necessary to complete such cure:

13.2.2.1 The Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work on the Project in accordance with the Contract Documents.

13.2.2.2 The Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from the District.

13.2.2.3 The Contractor disregards Applicable Code Requirements.

13.2.2.4 The Contractor persistently or materially fails to execute the work on the Project in accordance with the Contract Documents.

13.2.2.5 The Contractor is in default of any other material obligation under the Contract Documents.

13.2.2.6 The Contractor persistently or materially fails to comply with applicable safety requirements.

13.2.3 Upon any of the occurrences referred to in Subsections 13.2.1 and 13.2.2, the District may, at its election and by notice to the Contractor, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and

machinery thereon owned by the Contractor; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the District may deem expedient. If requested by the District, the Contractor shall remove any part or all of the Contractor's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within seven (7) days of such request; and if the Contractor fails to do so, the District may remove or store, and after ninety (90) days sell, any of the same at the Contractor's expense.

13.2.4 If the Contract is terminated by the District as provided in this Section 13.2, the Contractor shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of all work on the Project by the District.

13.2.5 If the unpaid balance of the Guaranteed Maximum Price exceeds the cost of completing the Project, including all additional costs and expenses made necessary thereby, including costs for the District staff time, plus all Losses sustained, including any liquidated damages provided under the Contract Documents, and the lost CSI rebate, if applicable, such excess shall be paid to the Contractor. If such costs, expenses, Losses, lost CSI rebate, and liquidated damages exceed the unpaid balance of the Guaranteed Maximum Price, the Contractor shall pay such excess to the District.

13.2.6 No termination or action taken by the District after termination shall prejudice any other rights or remedies of the District provided by law or by the Contract Documents upon such termination; and the District may proceed against the Contractor to recover all Losses suffered by the District.

13.3 SUSPENSION BY THE DISTRICT FOR CONVENIENCE

13.3.1 The District may, at any time and from time to time, without cause, order the Contractor, in writing, to suspend, delay, or interrupt the work on the Project in whole or in part for such period of time, up to ninety (90) days, as the District may determine, with such period of suspension to be computed from the Date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Section 13.3. The work on the Project may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, the Contractor shall, at the District's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Suspension Order during the period of work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the Contractor and the District, the District shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a Change Order.

13.3.2 If a Suspension Order is canceled or expires, the Contractor shall continue with the work on the Project. A Change Order will be issued to cover any adjustments of the Guaranteed Maximum Price or the Guaranteed Completion Date necessarily caused by such suspension. Any Claim by the Contractor for an adjustment of the Guaranteed Maximum Price or the Guaranteed Completion Date shall be made within twenty-one (21) days after the end of the work suspension. The Contractor agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.3.3 The provisions of this Section 13.3 shall not apply if a Suspension Order is not issued by the District. A Suspension Order shall not be required to stop the work on the Project as permitted or required under any other provision of the Contract Documents.

13.4 TERMINATION BY THE DISTRICT FOR CONVENIENCE

13.4.1 The District may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to the Contractor. Upon such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Contractor, the District shall pay the Contractor in accordance with Subsection 13.4.4.

13.4.2 Upon receipt of notice of termination under this Section 13.4, the Contractor shall, unless the notice directs otherwise, do the following:

13.4.2.1 Immediately discontinue the work on the Project to the extent specified in the notice.

13.4.2.2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work on the Project as is not discontinued.

13.4.2.3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the Discontinued portion of the work on the Project.

13.4.2.4 Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the work on the Project already performed and, subject to the Contractor's obligations under Subsection 13.4.2, as to bona fide obligations assumed by the Contractor prior to the Date of termination.

13.4.4 Upon such termination, the District shall pay to the Contractor the sum of the following:

13.4.4.1 The amount of the Guaranteed Maximum Price allocable to the portion of the work on the Project properly performed by the Contractor as of the Date of termination, less sums previously paid to the Contractor.

13.4.4.2 Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the work on the Project.

13.4.4.3 Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

13.4.4.4 Plus reasonable demobilization costs.

13.4.4.5 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

13.4.5 The above payment shall be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Contract by the District pursuant to Section 13.4; and the Contractor will be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14. STATUTORY REQUIREMENTS

14.1 HOURS OF WORK

14.1.1 The Contractor and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Guaranteed Completion Date.

14.1.2 Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the District. Regular working hours shall be per local ordinance and shall not be changed except with consent of the District.

14.1.3 As may be applicable by law, 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 Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation 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.

14.1.4 As may be applicable by law, the Contractor shall pay to the District 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.

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

14.1.6 If the District 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 shall be invoiced to the Contractor by the District and deducted from the next Progress Payment.

14.1.7 If the Contractor elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the District and deducted from the next Progress Payment.

14.1.8 No work on the Project or other activities by or on behalf of the Contractor which presents a hazard or unreasonable disruption to the staff or students of any school shall be allowed while school is in session. The determination as to whether work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to the staff or students of any school shall be made by and pursuant to the sole discretion of the District's Facilities Department. All work on the Project or other activities which could present a hazard or unreasonable disruption to the staff or students of a school shall be performed before or after school is in session, on weekends, or on a school holiday. Neither the Contractor nor its subcontractors or anyone working on behalf of the Contractor or subcontractors shall be entitled to additional compensation or GCD for having to arrange their work schedule so as not to violate the provisions of this Section. The Contractor, subcontractors and persons working on behalf of the Contractor and subcontractors shall be expected to arrange such work and other activities in advance so as to avoid creating monetary or time impacts.

14.2 WAGE RATES, TRAVEL, AND SUBSISTENCE

14.2.1 The Contractor is aware of the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of *per diem* wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of *per diem* wages at the District's Business Office. The Contractor shall make copies of the prevailing rates of *per diem* wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the

Project site. The Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The Contractor shall prepare and provide to the District and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the District an accurate and certified payroll record, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual *per diem* wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work. In the event of noncompliance with certified payroll record requirements specified herein, the DBE shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance herewith. Should noncompliance still be evident after such ten (10) day period, the DBE shall, as a penalty to the District, forfeit one hundred dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the California Department of Industrial Relations, such penalties shall be withheld from contract payments.

14.2.2 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 Contract applicable to each particular craft, classification, or type of worker employed.

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

14.2.4 The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining Contracts filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

14.2.5 Pursuant to Labor Code § 1775, the Contractor shall as a penalty to the District, forfeit Fifty Dollars (\$50.00) 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 Contract by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage, the previous record of the Contractor in meeting his or her prevailing rate of *per diem* wage obligations, or the Contractor's willful failure to pay the correct prevailing rate of *per diem* wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage is not excusable if the Contractor had knowledge of it or the obligations under this part. 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.

14.2.6 Any worker employed to perform work on the Project, 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 on the Project 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.

14.2.7 Pursuant to Labor Code § 1773.1, *per diem* wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

14.2.8 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.

14.2.9 The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

14.3 APPRENTICES

14.3.1 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 § 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship Contracts 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 Contracts under which he or she is training.

14.3.2 When the Contractor to whom the Contract is awarded by the District, or any Subcontractor under him or her, in performing any of the work on the Project 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 the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. The Contractor and every 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. The Contractor 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.

14.3.3 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.

14.3.4 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) 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.

14.3.4.1 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 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 the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

14.3.4.1.1 Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

14.3.4.1.2 The number of apprentices in training in such area exceeds a ratio of 1-to-5.

14.3.4.1.3 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.

14.3.4.1.4 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.

14.3.5 When exemptions are granted to an organization which represents the Contractor in a specific trade from the 1-to-5 ratio on a local or statewide basis, the Contractor 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.

14.4 THIRD-PARTY CLAIMS (Pub. Contract Code § 9201.)

14.4.1 The District will provide the Contractor with timely notice of any third party claim relating to the Contract for the Project. The District also retain full authority to compromise or otherwise settle any claim related to the Contract for the Project.

14.5 ANTI-TRUST CLAIM ASSIGNMENT (Pub. Contract Code §7103.5).)

14.5.1 The District shall provide the Contractor with timely notification of the receipt of any third-party claim, relating to the Contract and the District is entitled to recover its reasonable costs incurred in providing such notification.

14.5.2 At final payment, contractor or subcontractor must agree to assign awarding party all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with

Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

15.1.1 This Contract shall be governed by the laws of the State of California, venue shall be in the locale of the Project.

15.2 SUCCESSORS AND ASSIGNS

15.2.1 The District and the Contractor respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, Contracts, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

15.3 RIGHTS AND REMEDIES

15.3.1 All the District's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the District under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by the District or the District's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the District or the District's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the District, the District's Representative, or the Contractor.

15.4 SURVIVAL

15.4.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the District's right to audit the Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.5 COMPLETE CONTRACT

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7.

15.6 SEVERABILITY OF PROVISIONS

15.6.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.7 THE DISTRICT'S RIGHT TO AUDIT

15.7.1 The District and entities and agencies designated by the District will have access to and the right to audit and the right to copy at the District's cost all of the Contractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Contractor shall preserve all such records and other items for a period of at least three (3) years after Final Completion.

15.8 NOTICES

15.8.1 Except as otherwise provided, all notices, requests, demands, and other communications to be given under the Contract Documents shall be in writing and shall be transmitted by one of the following methods:

15.8.1.1 Personally delivered.

15.8.1.2 Intentionally omitted.

15.8.1.3 Sent by courier where receipt is confirmed.

15.8.1.4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.8.2 Such notices and other communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the Date shown on the return receipt or the Date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Contract. Such street addresses may be changed by notice given in accordance with this Section 15.8.

15.9 TIME OF THE ESSENCE

15.9.1 Time limits stated in the Contract Documents are of the essence of the Contract.

15.10 STATUTORY LIMITATION

15.10.1 Commencement of statutory limitation periods and statute of repose periods shall be as follows:

15.10.1.1 As to acts or failures to act occurring prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Final Completion.

15.10.1.2 As to acts or failures to act occurring after the Date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the Date of any act or failure to act by the Contractor pursuant to any applicable warranty, the Date of any correction of work on the Project or failure to correct work by the Contractor, or the Date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or the District, whichever occurs last.

15.10.1.3 The time period for the applicable Statute of Repose shall commence to run at Final Completion of the Project.

15.11 CORRECTION OF ERRORS AND OMISSIONS

15.11.1 The Contractor agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to the District.

15.12 INTERPRETATION

15.12.1 This Contract shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Contract.

EXHIBIT C

Tenant Improvement Schedule