

DOCUMENT 00530

**AGREEMENT**

THIS AGREEMENT IS MADE AND ENTERED INTO THIS 15<sup>th</sup> Day of \_\_\_\_\_, 2017 by and between the Milpitas Unified School District ("District" or "Owner") and - Delgado Electric ("Contractor") ("Agreement").

**WITNESSETH:** That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. **The Work:** Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, and material necessary to perform and complete in a good and workmanlike manner, the work of

PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1- INCREMENT #1

PROJECT/CONTRACT NO.: 16-21-07-05 between the Milpitas Unified School District and Contractor ("Contract").

It is understood and agreed that the Work shall be performed and completed as required in the Contract Documents including, without limitation, the Drawings and Specifications, under the direction and supervision of, and subject to, the approval of the District or its authorized representative.

2. **The Contract Documents:** The complete Contract consists of all Contract Documents as defined in the General Conditions and incorporated herein by this reference. Any and all obligations of the District and Contractor are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.
3. **Interpretation of Contract Documents:** Should any question arise concerning the intent or meaning of Contract Documents, including the Drawings or Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, this Agreement shall control over the Special Conditions, which shall control over any Supplemental Conditions, which shall control over the General Conditions, which shall control over the remaining Division 0 documents, which shall control over Division 1 Documents which shall control over Division 2 through Division 18 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

4. **Time For Completion:** It is hereby understood and agreed that the work under this contract shall be completed as per the schedules attached in Section 01010. See the schedules for durations, milestones, and completion dates associated with each Bid Package.
5. **Completion-Extension Of Time:** Should the Contractor fail to complete this Contract, and the Work provided herein, within the time fixed for completion, due allowance being made for the contingencies provided for herein, the Contractor shall become liable to the District for all loss and damage that the District may suffer on account thereof. The Contractor shall coordinate its work with the Work of all other contractors. The District shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that will allow timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.
6. **Liquidated Damages:** Time is of the essence for all work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of One Thousand (\$1,000) per day as liquidated damages for each and every day's delay beyond the time herein prescribed in finishing the Work. Liquidated damages of \$500 per day will be assessed if the punch list is not completed within 14 days after issuance. It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages are not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement. The District's right to assess liquidated damages is as indicated herein and in the General Conditions.

The time during which the Contract is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

7. **Loss Or Damage:** The District and its authorized representatives shall not in any way or manner be answerable or suffer loss, damage, expense, or liability for any loss or damage that may happen to the Work, or any part thereof, or in or about the same during its construction and before acceptance, and the Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold the District and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever.
8. **Insurance and Bonds:** Contractor shall provide all required certificates of insurance, and payment and performance bonds as evidence thereof.

9. **Prosecution Of Work:** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this contract, the District, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
10. **Authority of Architect, Project Inspector, and DSA:** Contractor hereby acknowledges that the Architect(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. The Contractor shall be liable for any delay caused by its non-compliant Work.
11. **Assignment Of Contract:** Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by the Contractor without the written approval of the District, nor without the written consent of the Surety on the Contractor's Performance Bond (the "Surety"), unless the Surety has waived in writing its right to notice of assignment.
12. **Classification Of Contractor's License:** Contractor hereby acknowledges that it currently holds valid required Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
13. **Payment of Prevailing Wages:** The Contractor and all Subcontractors under the Contractor shall pay all workers on all Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code.
14. **Labor Compliance Program:** If the District has adopted a labor compliance program which is applicable to the Project, Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the District's labor compliance program, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate certified payroll records with each application for payment, or the District cannot issue payment. This provision is only applicable if the Project is subject to a Labor Compliance Program funded in whole or in part with State bond funds.
15. **Project Stabilization Agreement:** The Project documents include the Project Stabilization Agreement, the contents of which are incorporated herein by reference.

16. **Contract Price:** In consideration of the foregoing covenants, promises, and agreements on the part of the Contractor, and the strict and literal fulfillment of each and every covenant, promise, and agreement, and as compensation agreed upon for the Work and construction, erection, and completion as aforesaid, the District covenants, promises, and agrees that it will well and truly pay and cause to be paid to the Contractor in full, and as the full Contract Price and compensation for construction, erection, and completion of the Work hereinabove agreed to be performed by the Contractor, the following price:  
**\$ \_\_\_\_\_ for a total contract sum of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_ .00).**

in lawful money of the United States, which sum is to be paid according to the schedule provided by the Contractor and accepted by the District and subject to additions and deductions as provided in the Contract. This amount supersedes any previously stated and/or agreed to amount(s).

17. **Severability:** If any term, covenant, condition, or provision in any of the Contract Documents is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

IN WITNESS WHEREOF, accepted and agreed on the date indicated above:

**CONTRACTOR**

**DISTRICT**

\_\_\_\_\_ Delgado Electric \_\_\_\_\_

\_\_\_\_\_

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

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

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

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

NOTE: If the party executing this Contract is a corporation, a certified copy of the by-laws, or of the resolution of the Board of Directors, authorizing the officers of said corporation to execute the Contract and the bonds required thereby must be attached hereto.

END OF DOCUMENT

00557.00001/425967.1

**ESCROW OF BID DOCUMENTATION**

**For Contracts with a Contract Price Over  
Seven Hundred and Fifty Thousand Dollars (\$750,000)**

**1. Requirement to Escrow Bid Documentation**

- a. Contractor shall submit, within **SEVEN (7)** calendar days after the date of the Letter of Intent, one copy of all documentary information received or generated by Contractor in preparation of bid prices for this Contract, as specified herein. This material is referred to herein as "Escrow Bid Documentation." The Escrow Bid Documentation of the Contractor will be held in escrow for the duration of the Contract.
- b. Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documentation constitutes all written information used in the preparation of its bid, and that no other written bid preparation information shall be considered in resolving disputes or claims. Contractor also agrees that nothing in the Escrow Bid Documentation shall change or modify the terms or conditions of the Contract Documents.
- c. The Escrow Bid Documentation will not be opened by District except as indicated herein. The Escrow Bid Documentation will be used only for the resolution of change orders and claims disputes.
- d. Contractor's submission of the Escrow Bid Documentation, as with the bonds and insurance documents required, is considered an essential part of the Contract award. Should the Contractor fail to make the submission within the allowed time specified above, District may deem the Contractor to have failed to enter into the Contract, and the Contractor shall forfeit the amount of its bid security, accompanying the Contractor's bid, and District may award the Contract to the next lowest responsive responsible bidder.
- e. NO PAYMENTS WILL BE MADE, NOR WILL DISTRICT ACCEPT PROPOSED CHANGE ORDERS UNTIL THE ABOVE REQUIRED INFORMATION IS SUBMITTED AND APPROVED.
- f. The Escrow Bid Documentation shall be submitted in person by an authorized representative of the Contractor to the District.

**2. Ownership of Escrow Bid Documentation**

- a. The Escrow Bid Documentation is, and shall always remain, the property of Contractor, subject to review by District, as provided herein.

- b. Escrow Bid Documentation constitute trade secrets, not known outside Contractor's business, known only to a limited extent and only by a limited number of employees of Contractor, safeguarded while in Contractor's possession, extremely valuable to Contractor, and could be extremely valuable to Contractor's competitors by virtue of it reflecting Contractor's contemplated techniques of construction. Subject to the provisions herein, District agrees to safeguard the Escrow Bid Documentation, and all information contained therein, against disclosure to the fullest extent permitted by law.

### **3. Format and Contents of Escrow Bid Documentation**

- a. Contractor may submit Escrow Bid Documentation in its usual cost-estimating format; a standard format is not required. The Escrow Bid Documentation shall be submitted in the language (e.g., English) of the specification.
- b. Escrow Bid Documentation must clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule, separating bid items into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documentation shall include all subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the bid proposal. Estimated costs should be broken down into Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's allocation of indirect costs, contingencies, markup, and other items to each bid item shall be identified.
- c. All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- d. Bid Documentation provided by District should not be included in the Escrow Bid Documentation unless needed to comply with the following requirements.

### **4. Submittal of Escrow Bid Documentation**

- a. The Escrow Bid Documentation shall be submitted by the Contractor in a sealed container within SEVEN (7) calendar days after the date of the Letter of Intent. The container shall be clearly marked on the outside with the Contractor's name, date of submittal, project name and the words "Escrow Bid Documentation - Intended to be opened in the presence of Authorized Representatives of Both District and Contractor".

- b. By submitting Escrow Bid Documentation, Contractor represents that the material in the Escrow Bid Documentation constitutes all the documentary information used in preparation of the bid and that the Contractor has personally examined the contents of the Escrow Bid Documentation container and has found that the documents in the container are complete.
- c. If Contractor's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds 5 percent of the total contract price proposed by Contractor, shall provide separate Escrow Documents to be included with those of Contractor. Those documents shall be opened and examined in the same manner and at the same time as the examination described above for Contractor.
- d. If Contractor wishes to subcontract any portion of the Work after award, District retains the right to require Contractor to submit Escrow Documents for the Subcontractor before the subcontract is approved.

## **5. Storage, Examination and Final Disposition of Escrow Bid Documentation**

- a. The Escrow Bid Documentation will be placed in escrow, for the life of the Contract, in a mutually agreeable institution. The cost of storage will be paid by Contractor for the duration of the project until final Contract payment. The storage facilities shall be the appropriate size for all the Escrow Bid Documentation and located conveniently to both District's and Contractor's offices.
- b. The Escrow Bid Documentation shall be examined by both District and Contractor, at any time deemed necessary by either District or Contractor, to assist in the negotiation of price adjustments and change orders or the settlement of disputes and claims. In the case of legal proceedings, Escrow Bid Documentation shall be used subject to the terms of an appropriate protective order if requested by Contractor and ordered by a court of competent jurisdiction. Examination of the Escrow Bid Documentation is subject to the following conditions:
  - (1) As trade secrets, the Escrow Bid Documentation is proprietary and confidential to the extent allowed by law.
  - (2) District and Contractor shall each designate, in writing to the other party **SEVEN (7)** calendar days prior to any examination, the names of representatives who are authorized to examine the Escrow Bid Documentation. No other person shall have access to the Escrow Bid Documentation.
  - (3) Access to the documents may take place only in the presence of duly designated representatives of the District and Contractor. If Contractor fails to designate a representative or appear for joint examination on

SEVEN (7) calendar days notice, then the District representative may examine the Escrow Bid Documents alone upon an additional THREE (3) calendar days notice if a representative of the Contractor does not appear at the time set.

- (4) If a subcontractor has submitted sealed information to be included in the Escrow Bid Documents, access to those documents may take place only in the presence of a duly designated representative of the District, Contractor and that subcontractor. If that subcontractor fails to designate a representative or appear for joint examination on SEVEN (7) calendar days notice, then the District representative and/or the Contractor may examine the Escrow Bid Documentation without that subcontractor present upon an additional THREE (3) calendar days notice if a representative of that subcontractor does not appear at the time set.
- c. The Escrow Bid Documentation will be returned to Contractor at such time as the Contract has been completed and final settlement has been achieved.

END OF DOCUMENT

00557.00001/426077.1

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

This Escrow Agreement ("Escrow Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

Milpitas Unified School District, whose address is 1331 East Calaveras Boulevard, Milpitas, California ("District" or "Owner"); and

\_\_\_\_\_ whose place of business is located at \_\_\_\_\_ ("Contractor"); and

\_\_\_\_\_ a state or federally chartered bank in the state of California, whose place of business is located at \_\_\_\_\_ ("Escrow Agent").

For the consideration hereinafter set forth, District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. \_\_\_\_\_ entered into between District and Contractor for the McCandless Elementary School Project #16-21-07-00 in the amount of \$ \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ (the "Contract"). Alternatively, on written request of Contractor, District shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Contractor.

Securities shall be held in name of Milpitas Unified School District, and shall designate Contractor as beneficial owner.

2. District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the

payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Contractor \$ \_\_\_\_\_ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Contractor.
7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in event of default by Contractor as determined solely by District. Upon seven (7) days written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Address

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

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

END OF DOCUMENT

00557.00001/426104.1

**PERFORMANCE BOND**  
**(100% of Contract Price)**

**(Note: Bidders must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the Milpitas Unified School District, ("District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1 – INCREMENT #1**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Milpitas Unified School District and Contractor ("Contract");

Which Contract dated \_\_\_\_\_, 20\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of \$ \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to perform all the work required to complete the Project and to pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the intent and meaning, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond,

and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and

Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(Affix Corporate Seal)

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Bidder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

**PAYMENT BOND**  
**Contractor's Labor & Material Bond**  
**(100% of Contract Price)**

**(Note: Bidders must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the Milpitas Unified School District, (or "District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to:

**PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1 – INCREMENT #1**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Milpitas Unified School District and Contractor ("Contract").

Which Contract dated \_\_\_\_\_, 2013, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, WE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded

and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and

Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(Affix Corporate Seal)

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**Bidder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

**TABLE OF CONTENTS**

1. CONTRACT TERMS AND DEFINITIONS .....7

    1.1 Definitions.....1

    1.2 Laws Concerning the Contract.....11

    1.3 No Oral Agreements .....11

    1.4 No Assignment.....11

    1.5 Notice And Service Thereof .....12

    1.6 No Waiver.....12

    1.7 Substitutions For Specified Items .....12

    1.8 Materials and Work.....13

2. DISTRICT.....14

    2.1 Occupancy.....14

    2.2 District's Right to Perform Work .....14

3. ARCHITECT .....15

4. CONSTRUCTION MANAGER .....15

5. INSPECTOR, INSPECTIONS, AND TESTS.....16

    5.1 Project Inspector .....16

    5.2 Tests and Inspections .....16

    5.3 Costs for After Hours and/or Off Site Inspections.....17

6. CONTRACTOR .....17

    6.1 Status of Contractor .....17

    6.2 Contractor's Supervision.....18

    6.3 Duty to Provide Fit Workers.....18

6.4	Purchase of Materials and Equipment .....	19
6.5	Documents On Work .....	19
6.6	Preservation of Records .....	20
6.7	Integration of Work.....	20
6.8	Obtaining of Permits and Licenses .....	20
6.9	Work to Comply With Applicable Laws and Regulations .....	21
6.10	Safety/Protection of Persons and Property .....	22
6.11	Working Evenings and Weekends .....	24
6.12	Cleaning Up .....	24
7.	SUBCONTRACTORS .....	25
8.	OTHER CONTRACTS/CONTRACTORS .....	26
9.	DRAWINGS AND SPECIFICATIONS .....	27
10.	CONTRACTOR'S SUBMITTALS AND SCHEDULES.....	28
10.1	Schedule of Work, Schedule of Submittals, and Schedule of Values .....	28
10.2	Monthly Progress Schedule(s) .....	45
10.3	Material Safety Data Sheets (MSDS) .....	46
11.	SITE ACCESS, CONDITIONS, AND REQUIREMENTS .....	46
11.1	Site Investigation .....	46
11.2	Soils Investigation Report.....	46
11.3	Access to Work.....	47
11.4	Layout and Field Engineering.....	47
11.5	Utilities.....	47
11.6	Sanitary Facilities.....	47
11.7	Surveys.....	47
11.8	Regional Notification Center .....	48

<b>11.9</b>	Existing Utility Lines .....	48
<b>11.10</b>	Notification .....	49
<b>11.11</b>	Hazardous Materials .....	49
<b>11.12</b>	No Signs.....	49
<b>12.</b>	<b>TRENCHES</b> .....	49
<b>12.1</b>	Trenches Greater Than Five Feet.....	49
<b>12.2</b>	Excavation Safety .....	49
<b>12.3</b>	No Tort Liability of District.....	49
<b>12.4</b>	No Excavation Without Permits .....	49
<b>12.5</b>	Discovery of Hazardous Waste and/or Unusual Conditions.....	50
<b>13.</b>	<b>INSURANCE AND BONDS</b> .....	50
<b>13.1</b>	Insurance .....	50
<b>13.2</b>	Contract Security - Bonds.....	53
<b>14.</b>	<b>WARRANTY/GUARANTEE/INDEMNITY</b> .....	54
<b>14.1</b>	Warranty/Guarantee .....	54
<b>14.2</b>	Indemnity .....	55
<b>15.</b>	<b>TIME</b> .....	56
<b>15.1</b>	Notice to Proceed.....	56
<b>15.2</b>	Computation of Time / Adverse Weather .....	56
<b>15.3</b>	Hours of Work .....	57
<b>15.4</b>	Progress and Completion .....	57
<b>15.5</b>	Progress Schedule .....	58
<b>15.6</b>	Expeditious Completion.....	58
<b>16.</b>	<b>EXTENSIONS OF TIME — LIQUIDATED DAMAGES</b> .....	58
<b>16.1</b>	Liquidated Damages .....	58

16.2	Excusable Delay.....	58
16.3	No Additional Compensation for Delays Within Contractor's Control.....	59
16.4	Float or Slack in the Schedule .....	60
17.	CHANGES IN THE WORK .....	60
17.1	No Changes Without Authorization.....	60
17.2	Architect Authority .....	60
17.3	Change Orders .....	61
17.4	Construction Change Directives .....	61
17.5	Force Account Directives .....	61
17.6	Price Request .....	62
17.7	Proposed Change Order .....	63
17.8	Format for Proposed Change .....	63
17.9	Change Order Certification.....	64
17.10	Determination of Change Order Cost .....	65
17.11	Deductive Change Orders .....	65
17.12	Discounts, Rebates, and Refunds.....	65
17.13	Accounting Records.....	65
17.14	Notice Required .....	66
17.15	Applicability to Subcontractors .....	66
17.16	Alteration to Change Order Language.....	66
17.17	Failure of Contractor to Execute Change Order .....	66
18.	REQUEST FOR INFORMATION.....	66
19.	PAYMENTS .....	67
19.1	Contract Price.....	67
19.2	Applications for Progress Payments .....	67

	<b>19.3</b> Progress Payments .....	70
	<b>19.4</b> Decisions to Withhold Payment.....	71
	<b>19.5</b> Subcontractor Payments.....	73
20.	COMPLETION OF THE WORK.....	74
	<b>20.1</b> Completion.....	74
	<b>20.2</b> Close-Out Procedures .....	74
	<b>20.3</b> Final Inspection.....	75
	<b>20.4</b> Costs of Multiple Inspections .....	76
	<b>20.5</b> Partial Occupancy or Use Prior to Completion.....	76
21.	FINAL PAYMENT AND RETENTION .....	77
	<b>21.1</b> Final Payment .....	77
	<b>21.2</b> Prerequisites for Final Payment .....	77
	<b>21.3</b> Retention.....	78
	<b>21.4</b> Substitution of Securities .....	78
22.	UNCOVERING OF WORK • .....	78
23.	NONCONFORMING WORK AND CORRECTION OF WORK .....	79
	<b>23.1</b> Nonconforming Work.....	79
	<b>23.2</b> Correction of Work.....	79
24.	TERMINATION AND SUSPENSION .....	80
	<b>24.1</b> District's Right to Terminate Contractor for Cause .....	80
	<b>24.2</b> Termination of Contractor for Convenience.....	83
25.	CLAIMS AND DISPUTES .....	83
	<b>25.1</b> Performance During Claim Process.....	83
	<b>25.2</b> Definition of Claim.....	83
	<b>25.3</b> Claim Presentations .....	84

	<b>25.4 Claim Resolution .....</b>	<b>84</b>
26.	<b>LABOR, WAGE &amp; HOUR, APPRENTICE, AND RELATED PROVISIONS .....</b>	<b>87</b>
	<b>26.1 Labor Compliance Program .....</b>	<b>87</b>
	<b>26.2 Wage Rates, Travel, and Subsistence .....</b>	<b>87</b>
	<b>26.3 Hours of Work .....</b>	<b>88</b>
	<b>26.4 Payroll Records .....</b>	<b>89</b>
	<b>26.5 Apprentices .....</b>	<b>91</b>
	<b>26.6 Non-Discrimination .....</b>	<b>92</b>
	<b>26.7 Labor First Aid .....</b>	<b>92</b>
27.	<b>MISCELLANEOUS .....</b>	<b>93</b>
	<b>27.1 Assignment of Antitrust Actions .....</b>	<b>93</b>
	<b>27.2 Excise Taxes .....</b>	<b>94</b>
	<b>27.3 Taxes .....</b>	<b>94</b>
	<b>27.4 Shipments .....</b>	<b>94</b>

**DOCUMENT 00700**

**GENERAL CONDITIONS**

**1. CONTRACT TERMS AND DEFINITIONS**

**1.1 Definitions** Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

**1.1.1 . Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm, (2) unanticipated, and (3) at the Project.

**1.1.2 . Approval, Approved, and/or Accepted:** Refer to written authorization, unless stated otherwise.

**1.1.3 Architect:** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

**1.1.4 Bidder:** A contractor who intends to provide a proposal to the District to perform the Work of this Contract.

**1.1.5 Change Order:** A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Contract Price or Contract Time.

**1.1.6 Construction Change Directive:** A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work.

**1.1.7 Construction Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

**1.1.8 Construction Schedule:** The progress schedule of construction of the Project as provided by Contractor and approved by District.

**1.1.9 Contract, Contract Documents:** The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

**1.1.9.1 Notice to Bidders**

**1.1.9.2 Instructions to Bidders**

- 1.1.9.3 Bid Form and Proposal**
- 1.1.9.4 Bid Bond**
- 1.1.9.5 Designated Subcontractors List**
- 1.1.9.6 Site-Visit Certification, if a site visit was required.**
- 1.1.9.7 Noncollusion Affidavit**
- 1.1.9.8 Letter of Intent**
- 1.1.9.9 Notice to Proceed**
- 1.1.9.10 Agreement**
- 1.1.9.11 Escrow of Bid Documentation**
- 1.1.9.12 Escrow Agreement for Security Deposits in Lieu of Retention**
- 1.1.9.13 Performance Bond**
- 1.1.9.14 Payment Bond (Contractor's Labor & Material Bond)**
- 1.1.9.15 General Conditions**
- 1.1.9.16 Special Conditions**
- 1.1.9.17 Labor Compliance Program Information and Forms (if applicable)**
- 1.1.9.18 Hazardous Materials Procedures and Requirements**
- 1.1.9.19 Workers' Compensation Certification**
- 1.1.9.20 Prevailing Wage Certification**
- 1.1.9.21 Disabled Veterans Business Enterprise Participation Certification**
- 1.1.9.22 Drug-Free Workplace Certification**
- 1.1.9.23 Criminal Background Investigation/Fingerprinting Certification**
- 1.1.9.24 Hazardous Materials Certification**
- 1.1.9.25 Lead-Based Paint Certification**
- 1.1.9.26 Imported Materials Certification**
- 1.1.9.27 All Plans, Technical Specifications, and Drawings**

**1.1.9.28** Any and all addenda to any of the above documents

**1.1.9.29** Any and all change orders or written modifications to the above documents if approved in writing by the District

**1.1.10** Contract Price: The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

**1.1.11** Contract Time: The time period stated in the Agreement for the completion of the Work.

**1.1.12** Contractor: The person or persons identified in the Agreement as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.

**1.1.13** Daily Job Report(s): Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.

**1.1.14** Day(s): Unless otherwise designated, day(s) means calendar day(s).

**1.1.15** District: The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,

**1.1.15.1** Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or

**1.1.15.2** 1.1.15.2. Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.

**1.1.16** Drawings: (or "Plans") The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

**1.1.17** DSA: Division of the State Architect.

**1.1.18** Force Account Directive: A process that may be used when the District and the Contractor cannot agree on a price for a specific portion of work or before the Contractor prepares a prices for a specific portion of work and whereby the Contractor performs the work as indicated herein on a time and materials basis.

**1.1.19** Labor Compliance Program: (or "LCP") If this Project is funded at least in part with State bond funds, then the LCP is the program and related documents and

practices necessary for the program by which the District and/or its designee will ensure that the Contractor and all Subcontractors pay prevailing wages to all workers on the Project.

**1.1.20 Premises:** The real property owned by the District on which the Site is located.

**1.1.21 Product(s):** New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

**1.1.22 Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

**1.1.23 Project:** The planned undertaking as provided for in the Contract Documents.

**1.1.24 Project Inspector:** (or "Inspector") The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

**1.1.25 Program Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District.

**1.1.26 Provide:** Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

**1.1.27 Request for Information:** A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

**1.1.28 Request for Substitution:** A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

**1.1.29 Safety Orders:** Written and/or verbal orders for construction issued by the California Division of Industrial Safety ("CalOSHA") or by the United States Occupational Safety and Health Administration ("OSHA").

**1.1.30 Safety Plan:** Contractor's safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Conditions.

**1.1.31** Samples: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

**1.1.32** Shop Drawings: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

**1.1.33** Site: The Project site as shown on the Drawings.

**1.1.34** Specifications: That portion of the Contract Documents, Division 1 through Division 17, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

**1.1.35** Subcontractor: A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

**1.1.36** Submittal Schedule: The schedule of submittals as provided by Contractor and approved by District.

**1.1.37** Surety: The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

**1.1.38** Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

## **1.2** Laws Concerning the Contract

Contract is subject to all provisions of the Constitution and laws of California governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

## **1.3** No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

## **1.4** No Assignment

Contractor shall not assign this Contract or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to be come due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with this Contract. Contractor shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

## **1.5 Notice And Service Thereof**

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

**1.5.1.1** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**1.5.1.2** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

**1.5.1.3** If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

**1.5.1.4** If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

## **1.6 No Waiver**

The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **1.7 Substitutions For Specified Items**

See Special Conditions.

## **1.8 Materials and Work**

**1.8.1** Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, superintendence, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.

**1.8.2** Unless otherwise specified, all materials shall be new and the best of their

**1.8.3** respective kinds and grades as noted or specified, and workmanship shall be of good quality.

**1.8.4** Materials shall be furnished in ample quantities and at such times as to insure

**1.8.5** uninterrupted progress of Work and shall be stored properly and protected as required.

**1.8.6** For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

**1.8.7** Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed.

**1.8.8** District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.

**1.8.9** Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political

subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

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

**1.8.11** Title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety shall remain with Contractor until incorporated in the Work of this Contract and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

## **2. DISTRICT**

### **2.1 Occupancy**

District reserves the right to occupy portions of the Project at any time before completion. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

### **2.2 District's Right to Perform Work**

**2.2.1** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this contract, the District, after FORTY-EIGHT (48) hours written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**2.2.2** If it is found at any time, before or after completion of the Work, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

**2.2.2.1** That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

**2.2.2.2** That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

**2.2.2.3** That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

### **3. ARCHITECT**

**3.1** The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

**3.2** Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

**3.3** Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

**3.4** Contractor shall provide District and the Construction Manager with a copy of all written communication between Contractor and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

### **4. CONSTRUCTION MANAGER**

**4.1** If a construction manager is used on this Project ("Construction Manager" or "CM"), the Construction Manager will provide administration of the Contract on the District's behalf. After execution of the Contract and Notice to Proceed, all correspondence and/or instructions from Contractor and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Contractor's responsibility.

**4.2** The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has

been fabricated, installed, or fully completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Contractor, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

**4.3** If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

## **5. INSPECTOR, INSPECTIONS, AND TESTS**

### **5.1 Project Inspector**

**5.1.1** One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

**5.1.2** No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.

**5.1.3** If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA, if the Project Inspector(s) agree to do so, and at the expense of the Contractor.

### **5.2 Tests and Inspections**

**5.2.1** Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

**5.2.2** The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

**5.2.3** The Contractor shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested.

**5.2.4** Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

**5.2.5** The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Contractor or deducted from the Contract Price.

### **5.3 Costs for After Hours and/or Off Site Inspections**

If the Contractor causes delay(s) on the Project and performs Work outside the Inspector's regular working hours or requests the Inspector to perform inspections off Site, costs of any of those inspection(s) shall be borne by the Contractor and may be at the Contractor's expense and the District may deduct those expenses from the next Progress Payment.

## **6. CONTRACTOR**

Contractor shall construct the Work for the Contract price including any adjustment(s) to the Contract Price pursuant to provisions herein regarding changes to the Contract Price. Except as otherwise noted, Contractor shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and completion of the Work, except as indicated herein.

### **6.1 Status of Contractor**

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

**6.1.2** As required by law, Contractor and all Subcontractors shall be properly licensed and regulated by the Contractor's State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 98826, <http://www.cslb.ca.gov>.

## **6.2 Contractor's Supervision**

**6.2.1** During progress of the Work, Contractor shall keep on the Premises, and at all other locations where any Work related to the Contract is being performed, a competent project manager and construction superintendent who are employees of the Contractor, to whom the District does not object and at least one of which shall be fluent in English, written and verbal.

**6.2.2** The project manager and construction superintendent shall both speak fluently the predominant language of the Contractor's employees fluently.

**6.2.3** Before commencing the Work herein, Contractor shall give written notice to District of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Contractor shall notify District in writing. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

**6.2.4** Contractor shall give efficient supervision to Work, using its best skill and attention. Contractor shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s). The Contractor shall have responsibility for discovery of errors, inconsistencies, or omissions.

## **6.3 Duty to Provide Fit Workers**

**6.3.1** Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. District may require Contractor to permanently remove unfit persons from Project Site.

**6.3.2** Any person in the employ of Contractor or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

**6.3.3** The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

**6.3.4** If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the District. The District shall determine if Contractor's intended change is permissible while performing this Contract.

#### **6.4 Purchase of Materials and Equipment**

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

#### **6.5 Documents On Work**

**6.5.1** Contractor shall keep on the Work Site at all times one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, title 24, part 1, California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply With all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

#### **6.5.2 Daily Job Reports.**

**6.5.2.1** Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

6.5.2.1.1. A brief description of all Contract Work performed on that day.

6.5.2.1.2. A brief description of all Change Order Work performed that day with a list of each employee working on Change Order Work and the total hours worked on Change Oder Work for each employee.

6.5.2.1.3. A summary of all other pertinent events and/or occurrences on that day.

6.5.2.1.4. The weather conditions on that day.

6.5.2.1.5. A list of all Subcontractor(s) working on that day,

6.5.2.1.6. A list of each Contractor employee working on that day and the total hours worked for each employee.

6.5.2.1.7. A complete list of all equipment on Site that day, whether in use or not.

- 6.5.2.1.8. All complete list of all materials, supplies, and equipment delivered on that day.
- 6.5.2.1.9. A complete list of all inspections and tests performed on that day.
- 6.5.2.2. Each day Contractor shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager by no later than 12:00 pm, PST.

## **6.6 Preservation of Records**

The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any Bid Documents held in escrow by the District. The Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

## **6.7 Integration of Work**

**6.7.1** Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

**6.7.2** All cost caused by defective or ill-timed Work shall be borne by Contractor, inclusive of repair work.

**6.7.3** Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

## **6.8 Obtaining of Permits and Licenses**

Contractor shall secure and pay for all permits, licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the

permits, licenses, and certificates are legally required to continue the Work without interruption. The Contractor shall obtain and pay, only when legally required, for all licenses, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits, licenses, and certificates shall be delivered to District before demand is made for final payment.

## **6.9 Work to Comply With Applicable Laws and Regulations**

**6.9.1** Contractor shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

**6.9.1.1** National Electrical Safety Code, U. S. Department of Commerce 6.9.1.2. National Board of Fire Underwriters' Regulations

**6.9.1.2** Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments

**6.9.1.3** Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America

**6.9.1.4** Industrial Accident Commission's Safety Orders, State of California

**6.9.1.5** Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes

**6.9.1.6** American with Disabilities Act

**6.9.1.7** Education Code of the State of California

**6.9.1.8** Government Code of the State of California

**6.9.1.9** Labor Code of the State of California, division 2, part 7,

**6.9.1.10** Public Works and Public Agencies

**6.9.1.11** Public Contract Code of the State of California

**6.9.1.12** California Art Preservation Act

**6.9.1.13** U. S. Copyright Act

**6.9.1.14 U. S. Visual Artists Rights Act**

**6.9.2** Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et. Seq.)

**6.9.3** If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom.

**6.9.4** Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

**6.10 Safety/Protection of Persons and Property**

**6.10.1** The Contractor will be solely and completely responsible for Conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

**6.10.2** The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

**6.10.3** Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

**6.10.4** Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.

**6.10.5** The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

**6.10.6** Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Contractor's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

**6.10.7** Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of

employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

**6.10.8 Hazards Control** — Contractor shall store volatile wastes in covered metal containers and remove them from the Site daily. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

**6.10.9** Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.

**6.10.10** Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

**6.10.11** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

**6.10.12** All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

**6.10.13** All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

**6.10.14** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

**6.10.15** The Contractor shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxings, or other construction as required by the Architect. The Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefor. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace same at his expense with same kind, quality, and size of

Work or item damaged. This shall include any adjoining property of the District and others.

**6.10.16** Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

**6.10.17** Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

**6.10.18** Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Contractor to permanently remove noncomplying persons from Project Site.

**6.10.19** Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

**6.10.20** In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Contractor shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

## **6.11 Working Evenings and Weekends**

Contractor may be required to work evenings and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any Inspector charges necessitated by the Contractor's evening and/or weekend work.

## **6.12 Cleaning Up**

**6.12.1** The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until its completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. At completion of the Work and portions thereof, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

**6.12.2** Contractor at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

**6.12.3** If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Contractor a 24-hour written notice to mitigate the condition.

**6.12.4** Should the Contractor fail to perform the required clean-up, or should the cleanup be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Contract Price, or District may withhold those amounts from payment(s) to Contractor.

## **7. SUBCONTRACTORS**

**7.1** Contractor shall provide the District with information for all Subcontracts as indicated in the Contractor's Submittals and Schedules Section herein.

**7.2** No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

**7.3** Contractor agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work including, without limitation, all provisions and requirements of the District's Labor Compliance Program ("LCP"), if an LCP is in force on this Project. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of

persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

**7.4** District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

**7.5** Contractor is directed to familiarize itself with sections 4100 through 4114 of the Public Contract Code of the State of California, as regards subletting and subcontracting, and to comply with all applicable requirements therein. In addition, Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

**7.6** No Contractor whose Bid is accepted shall, without consent of the awarding authority and in full compliance with section 4100, et seq, of the Public Contract Code, including, without limitation, sections 4107, 4107.5, and 4109 of the Public Contract Code, either:

**7.6.1** Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or

**7.6.2** Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the original Subcontractor listed in the Bid; or

**7.6.3** Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of the Contractor's total bid as to which his original bid did not designate a Subcontractor.

**7.7** The Contractor shall be responsible for the coordination of the trades, Subcontractors; sub-subcontractors, and material or equipment suppliers working on the Project.

**7.8** Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

**7.9** Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Conditions.

## **8. OTHER CONTRACTS/CONTRACTORS**

**8.1** District reserves the right to let other contracts in connection with the Project. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.

**8.2** In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Project.

**8.3** If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to the District in writing before proceeding with its Work any defects in any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to District for any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in other contractor's work after execution of Contractor's Work.

**8.4** To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

**8.5** Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.

**8.6** Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

## **9. DRAWINGS AND SPECIFICATIONS**

**9.1** A complete list of all Drawings that form a part of the Contract is to be found as an index on the Drawings themselves.

**9.2** Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

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

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

**9.5** Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

**9.6** Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations.

### **9.7 Ownership of Drawings**

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

### **9.8 Detail Drawings and Instructions**

**9.8.1** In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

**9.8.2** Should any clarification, in the opinion of Contractor, cause an increase in the Contract Price, Contractor may request a change in the Contract Price and/or Contract. Any request for a change shall be according to the applicable procedures indicated herein.

## **10. CONTRACTOR'S SUBMITTALS AND SCHEDULES**

Contractor's submittals shall comply with the provisions and requirements of the Specifications including, without limitation Submittals.

### **10.1 Schedule of Work, Schedule of Submittals, and Schedule of Values**

**NOTE: This Project has specialized equipment, including HVAC Equipment. The Contractor should be aware of ordering and delivery dates and order such equipment on date early enough to insure timely deliver and timely completion of the Project.**

**10.1.1** Within TEN (10) days after the date of the Notice to Proceed (unless otherwise specified in the Specifications), the Contractor shall prepare and submit to the District for review, in a form supported by sufficient data to substantiate its accuracy as the District may require:

**10.1.1.1 CONSTRUCTION SCHEDULE - NETWORK ANALYSIS**

**10.1.1.1.1. GENERAL**

**10.1.1.1.1.1 RELATED DOCUMENTS AND PROVISION**

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

10.1.1.1.1.1.1 General Conditions;

10.1.1.1.1.1.2 Special Conditions;

10.1.1.1.1.1.3 Coordination and Meetings; and

10.1.1.1.1.1.4 Submittals.

**10.1.1.1.1.2 REFERENCES**

10.1.1.1.1.2.1 Construction Planning and Scheduling Manual - A Manual for General Contractors and the Construction Industry, The Associated General Contractors of America (AGC).

10.1.1.1.1.2.2 CSI - Construction Specifications Institute MP-2-1 Master Format.

10.1.1.1.1.2.3 U.S. National Weather Service - Local Climatological Data.

**10.1.1.1.1.3 PERFORMANCE REQUIREMENTS**

10.1.1.1.1.3.1 Ensure adequate scheduling during construction activities so Work may be prosecuted in an orderly and expeditious manner within stipulated Contract Time.

10.1.1.1.1.3.2 Ensure coordination of Contractor and subcontractors at all levels.

10.1.1.1.1.3.3 Ensure coordination of submittals, fabrication, delivery, erection, installation, and testing of Products, materials and equipment.

10.1.1.1.1.3.4 Ensure on-time delivery of District furnished Products, materials and equipment.

10.1.1.1.1.3.5 Ensure coordination of jurisdictional reviews.

10.1.1.1.1.3.6 Prepare applications for payment.

10.1.1.1.1.3.7 Monitor progress of Work.

10.1.1.1.1.3.8 Prepare proper requests for changes to Contract Time.

10.1.1.1.1.3.9 Prepare proper requests for changes to Construction Schedule.

10.1.1.1.1.3.10 Assist in detection of schedule delays and identification of corrective actions.

#### **10.1.1.1.1.4 QUALITY ASSURANCE**

10.1.1.1.1.4.1 Perform scheduling work in accordance with Construction Planning and Scheduling Manual published by the AGC.

10.1.1.1.1.4.2 Maintain one copy of Construction Planning and Scheduling Manual on Site.

10.1.1.1.1.4.3 In the event of discrepancy between the AGC publication and the Contract Documents, provisions of the Contract Documents shall govern.

#### **10.1.1.1.1.5 QUALIFICATIONS**

##### **10.1.1.1.1.5.1 Scheduler:**

**10.1.1.1.1.5.1.1** Contractor shall retain a construction scheduler to work in enough capacity to perform all of the Contractor's requirements to prepare the Construction Schedule. The Scheduler shall plan, coordinate, execute, and monitor a cost/resource loaded CPM schedule as required for Project and have a

minimum of five (5) years direct experience using Primavera Project Management.

**10.1.1.1.5.1.2** Scheduler will cooperate with District and shall be available on site for monitoring, maintaining and updating schedules in a timely manner.

**10.1.1.1.5.1.3** District has the right to reject the Scheduler based upon a lack of experience as required by this Document or based on lack of performance and timeliness of schedule submittals/fragnets on past projects. Contractor shall within seven (7) calendar days of District's rejection, propose another scheduler who meets the experience requirements stated above.

**10.1.1.1.5.1.4** Administrative Personnel: Five (5) years minimum experience in using and monitoring schedules on comparable projects.

#### **10.1.1.1.6 SUBMITTALS**

**10.1.1.1.6.1** Submission of submittals pursuant to Document 01300. Adobe "PDF" files are not acceptable.

**10.1.1.1.6.2** Submit Short Interval Schedule at each Construction Progress Meeting.

**10.1.1.1.6.3** Submit Time Adjustment Schedule within five (5) days of commencement of a claimed delay.

**10.1.1.1.6.4** Submit Recovery Schedules as required for timely completion of Work or when demanded by the District.

**10.1.1.1.6.5** Submit job cost reports when demanded by the District.

**10.1.1.1.6.6** Submit one (1) reproducible and two (2) copies of each schedule and cost report.

#### **10.1.1.1.7 REVIEW AND EVALUATION**

**10.1.1.1.7.1** Contractor shall participate in joint review of Construction Schedule and Reports with District and Architect.

**10.1.1.1.7.2** Within seven (7) days of receipt of District and Architect's comments provide satisfactory revision to Construction Schedule or adequate justification for activities in question.

**10.1.1.1.7.3** In the event that an activity or element of Work is not detected by District or Architect review, such omission or error shall be corrected by next scheduled update and shall not affect Contract Time.

**10.1.1.1.7.4** Acceptance by District of corrected Construction Schedule shall be a condition precedent to making any progress payments.

**10.1.1.1.7.5** Cost-loaded values of Construction Schedule shall be basis for determining progress payments.

**10.1.1.1.7.6** Review and acceptance by District and Architect of Preliminary Work Schedule or Construction Schedule does not constitute responsibility whatsoever for accuracy or feasibility of schedules nor does such acceptance expressly or impliedly warrant, acknowledge or admit reasonableness of activities, logic, duration, manpower, cost or equipment loading stated or implied on schedules.

#### **10.1.1.1.8** FORMAT

**10.1.1.1.8.1** Prepare diagrams and supporting mathematical analyses using Precedence Diagramming Method, under concepts and methods outlined in AGC Construction Planning and Scheduling Manual.

**10.1.1.1.8.2** Listings: Reading from left to right, in ascending order for each activity.

**10.1.1.1.8.3** Diagram Size: 42 inches maximum height x width required.

**10.1.1.1.8.4** Scale and Spacing: To allow for legible notations and revisions.

**10.1.1.1.8.5** Illustrate order and interdependence of activities and sequence of Work.

**10.1.1.1.8.6** Illustrate complete sequence of construction by activity.

**10.1.1.1.8.7** Provide legend of symbols and abbreviations used.

#### **10.1.1.1.9 COST AND SCHEDULE REPORTS**

**10.1.1.1.9.1** Activity Analysis: Tabulate each activity of network diagram and identify for each activity:

**10.1.1.1.9.1.1** Description.

**10.1.1.1.9.1.2** Interface with outside contractors or agencies.

**10.1.1.1.9.1.3** Number.

**10.1.1.1.9.1.4** Preceding and following number.

**10.1.1.1.9.1.5** Duration.

**10.1.1.1.9.1.6** Earliest start date.

**10.1.1.1.9.1.7** Earliest finish date.

**10.1.1.1.9.1.8** Actual start date.

**10.1.1.1.9.1.9** Actual finish date.

**10.1.1.1.9.1.10** Latest start date.

**10.1.1.1.9.1.11** Latest finish date.

**10.1.1.1.9.1.12** Total and free float.

**10.1.1.1.9.1.13** Identification of critical path activity.

**10.1.1.1.9.1.14** Monetary value keyed to Schedule of Values.

**10.1.1.1.9.1.15** Manpower requirements.

**10.1.1.1.9.1.16** Responsibility.

**10.1.1.1.9.1.17** Percentage complete.

**10.1.1.1.9.1.18** Variance positive or negative.

**10.1.1.1.9.2** Cost Report: Tabulate each activity of network diagram and identify for each activity:

**10.1.1.1.9.2.1** Description.

**10.1.1.1.9.2.2** Number.

**10.1.1.1.9.2.3** Total cost.

**10.1.1.1.9.2.4** Percentage complete.

**10.1.1.1.9.2.5** Value prior to current period.

**10.1.1.1.9.2.6** Value this period.

**10.1.1.1.9.2.7** Value to date.

**10.1.1.1.9.3** Required Sorts: List activities in sorts or groups:

- 10.1.1.1.9.3.1** By activity number.
- 10.1.1.1.9.3.2** By amount of float time in order of early start.
- 10.1.1.1.9.3.3** By responsibility in order of earliest start date.
- 10.1.1.1.9.3.4** In order of latest start dates.
- 10.1.1.1.9.3.5** In order of latest finish dates.
- 10.1.1.1.9.3.6** Application for payment sorted by Schedule of Values.
- 10.1.1.1.9.3.7** Listing of activities on critical path.
  
- 10.1.1.1.9.4** Listing of basic input data which generates schedule.

#### **10.1.1.1.10 CONSTRUCTION SCHEDULE**

**10.1.1.1.10.1** Contractor shall develop and submit a cost loaded preliminary schedule of construction (or Preliminary Construction Schedule) as required by this Document and the Contract Documents. It shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

**10.1.1.1.10.2** Upon District's acceptance of the Preliminary Construction Schedule, Contractor shall update the accepted Preliminary Construction Schedule until Contractor's Construction Schedule is fully developed and accepted. Since updates to the Construction Schedule are the basis for payment to Contractor, submittal and acceptance of the Construction Schedule and updates shall be a condition precedent to making of monthly payments, as indicated in the General Conditions.

**10.1.1.1.10.3** Failure to submit an adequate or accurate Preliminary Construction Schedule, Construction Schedule, updates thereto or failure to submit on established dates, will be considered a breach of Contract.

**10.1.1.1.10.4** Failure to include any activity shall not be an excuse for completing all Work by required Completion Date.

**10.1.1.1.10.5** Activities of long intervals shall be broken into increments no longer than fourteen (14) days or a value over \$20,000.00 unless approved by the District or it is non-construction activity for procurement and delivery.

**10.1.1.1.10.6** The Construction Schedule shall comply with the following and include the following:

**10.1.1.1.10.6.1** Provide a written narrative describing Contractor's approach to mobilization, procurement, and construction during the first thirty (30) calendar days including crew sizes, equipment and material delivery, Site access, submittals, and permits.

**10.1.1.1.10.6.2** Shall designate critical path or paths.

**10.1.1.1.10.6.3** Procurement activities to include mobilization, shop drawings and sample submittals.

**10.1.1.1.10.6.4** Identification of key and long-lead elements and realistic delivery dates.

**10.1.1.1.10.6.5** Construction activities in units of whole days limited to fourteen (14) days for each activity except non-construction activities for procurement and delivery.

**10.1.1.1.10.6.6** Approximate cost and duration of each activity.

**10.1.1.1.10.6.7** Shall contain seasonal weather considerations.

**10.1.1.1.10.6.8** Indicate a date for Project Completion that is no later than Completion Date subject to any time extensions processed as part of a Change Order.

**10.1.1.1.10.6.9** Conform to mandatory dates specified in the Contract Documents.

**10.1.1.1.10.6.10** Contractor shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact

Allowance” as the last activity prior to the Completion Milestone. No other activities may be concurrent with it. The duration of the Rain Day Impact Allowance activity will in accordance with the Special Conditions, and will be calculated from the Notice to Proceed until the Completion.

**10.1.1.1.10.6.11** Level of detail shall correspond to complexity of work involved.

**10.1.1.1.10.6.12** Indicate procurement activities, delivery, and installation of District furnished material and equipment.

**10.1.1.1.10.6.13** Designate critical path or paths.

**10.1.1.1.10.6.14** Subcontractor work at all levels shall be included in schedule.

**10.1.1.1.10.6.15** As developed shall show sequence and interdependence of activities required for complete performance of Work.

**10.1.1.1.10.6.16** Shall be logical and show a coordinated plan of Work.

**10.1.1.1.10.6.17** Show order of activities and major points of interface, including specific dates of completion.

**10.1.1.1.10.6.18** Duration of activities shall be coordinated with subcontractors and suppliers and shall be best estimate of time required.

**10.1.1.1.10.6.19** Shall show description, duration and float for each activity.

**10.1.1.1.10.7** Activity. An activity shall meet the following criteria:

**10.1.1.1.10.7.1** Any portion or element of Work, action, or reaction that is precisely described, readily identifiable, and is a function of a logical sequential process.

**10.1.1.1.10.7.2** Descriptions shall be clear and concise. Beginning and end shall be readily verifiable. Starts and finishes shall be scheduled by logical restraints.

**10.1.1.1.10.7.3** Responsibility shall be identified with a single performing entity.

**10.1.1.1.10.7.4** Additional codes shall identify building, floor, bid item and CSI classification.

**10.1.1.1.10.7.5** Assigned dollar value (cost-loading) of each activity shall cumulatively equal total contract amount. Mobilization, bond and insurance costs shall be separate. General requirement costs, overhead, profit, shall be prorated throughout all activities. Activity costs shall correlate with Schedule of Values.

**10.1.1.1.10.7.6** Each activity shall have manpower-loading assigned.

**10.1.1.1.10.7.7** Major construction equipment shall be assigned to each activity.

**10.1.1.1.10.7.8** Activities labeled start, continue or completion are not allowed.

**10.1.1.1.10.8** Equipment and Materials. For major equipment and materials show a sequence of activities including:

**10.1.1.1.10.8.1** Preparation of shop drawings and sample submissions.

**10.1.1.1.10.8.2** Review of shop drawings and samples.

**10.1.1.1.10.8.3** Finish and color selection.

**10.1.1.1.10.8.4** Fabrication and delivery.

**10.1.1.1.10.8.5** Erection or installation.

**10.1.1.1.10.8.6** Testing.

**10.1.1.1.10.8.7** Include a minimum of fifteen (15) days prior to Completion Date for punch lists and clean up. No other activities shall be scheduled during this period.

#### **10.1.1.1.11 SHORT INTERVAL SCHEDULE**

**10.1.1.1.11.1** The Four-Week Rolling Schedule shall be based on the most recent District Accepted Construction Schedule or Update. It shall include weekly updates to all construction, submittal, fabrication/procurement, and separate Work Contract activities. Contractor shall ensure that it accurately reflects the current progress of the Work.

**10.1.1.1.11.2** Shall be fully developed horizontal bar-chart-type schedule directly derived from Construction Schedule.

**10.1.1.1.11.3** Prepare schedule on sheet of sufficient width to clearly show data.

**10.1.1.1.11.4** Provide continuous heavy vertical line identifying first day of week.

**10.1.1.1.11.5** Provide continuous subordinate vertical line identifying each day of week.

**10.1.1.1.11.6** Identify activities by same activity number and description as Construction Schedule.

**10.1.1.1.11.7** Show each activity in proper sequence.

**10.1.1.1.11.8** Indicate graphically sequences necessary for related activities.

**10.1.1.1.11.9** Indicate activities completed or in progress for previous two (2) week period.

**10.1.1.1.11.10** Indicate activities scheduled for succeeding two (2) week period.

**10.1.1.1.11.11** Further detail may be added if necessary to monitor schedule.

**10.1.1.1.12 REQUESTED TIME ADJUSTMENT SCHEDULE**

**10.1.1.1.12.1** Updated Construction Schedule shall not show a Completion Date later than the Contract Time, subject to any time extensions processed as part of a Change Order.

**10.1.1.1.12.2** If an extension of time is requested, a separate schedule entitled "Requested Time Adjustment Schedule" shall be submitted to District and Architect.

**10.1.1.1.12.3** Indicate requested adjustments in Contract Time which are due to changes or delays in completion of Work.

**10.1.1.1.12.4** Extension request shall include forecast of Project Completion date and actual achievement of any dates listed in Contract Documents.

**10.1.1.1.12.5** To the extent that any requests are pending at time of any Construction Schedule update, Time Adjustment Schedule shall also be updated.

**10.1.1.1.12.6** Schedule shall be a time-scaled network analysis.

**10.1.1.1.12.7** Accompany schedule with formal written time extension request and detailed impact analysis justifying extension.

**10.1.1.1.12.8** Time impact analysis shall demonstrate time impact based upon date of delay, and status of construction at that time and event time computation of all affected activities. Event times shall be those as shown in latest Construction Schedule.

**10.1.1.1.12.9** Activity delays shall not automatically constitute an extension of Contract Time.

**10.1.1.1.12.10** Failure of subcontractors shall not be justification for an extension of time.

**10.1.1.1.12.11** Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of project, as determined by the District.

**10.1.1.1.12.12** Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned according to benefit of Project.

**10.1.1.1.12.13** Extensions will be granted only to extent that time adjustments to activities exceed total positive float of the critical path and extends Completion date.

**10.1.1.1.12.14** District shall not have an obligation to consider any time extension request unless requirements of Contract Documents, and specifically, but not limited to these requirements are complied with.

**10.1.1.1.12.15** District shall not be responsible or liable for any construction acceleration due to failure of District to grant time extensions under Contract Documents should requested adjustments in Contract Time not substantially comply with submission and justification requirements of Contract for time extension requests.

**10.1.1.1.12.16** In the event a Requested Time Adjustment Schedule and Time Impact Analysis are not submitted within ten (10) days after commencement of a delay it is mutually agreed that delay does not require a Contract Time extension.

#### **10.1.1.1.13 RECOVERY SCHEDULE**

**10.1.1.1.13.1** When activities are behind Construction Schedule a supplementary Recovery Schedule shall be submitted.

**10.1.1.1.13.2** Contractor shall prepare and submit to the District a Recovery Schedule at any time requested by the District, at no cost to the District.

**10.1.1.1.13.3** Form and detail shall be sufficient to explain and display how activities will be rescheduled to regain compliance with Construction Schedule and to complete the Work by the Completion Date.

**10.1.1.1.13.4** Maximum duration shall be one (1) month and shall coincide with payment period.

**10.1.1.1.13.5** Ten (10) days prior to expiration of Recovery Schedule, Contractor shall have to show verification to determine if activities have regained compliance with Construction Schedule. Based upon this verification the following will occur:

**10.1.1.1.13.5.1** Supplemental Recovery Schedule will be submitted to address subsequent payment period

**10.1.1.1.13.5.2** Construction Schedule will be resumed.

#### **10.1.1.1.14 UPDATING SCHEDULES**

**10.1.1.1.14.1** Review and update schedule at least ten (10) days prior to submitting an Application for Payment.

**10.1.1.1.14.2** Maintain schedule to record actual prosecution and progress.

**10.1.1.1.14.3** Approved Change Orders which affect schedule shall be identified as separate new activities.

**10.1.1.1.14.4** Change Orders of less than \$5,000.00 value or less than three (3) days duration need not be shown unless critical path is affected.

**10.1.1.1.14.5** No other revisions shall be made to schedule unless authorized by District.

**10.1.1.1.14.6** Written Narrative Report: Contractor shall include a written report to explain the Monthly Schedule Update. The narrative shall, at a minimum include the following headings with appropriate discussions of each topic:

**10.1.1.1.14.6.1** Activities or portions of activities completed during previous reporting period.

**10.1.1.1.14.6.2** Actual start dates for activities currently in progress.

**10.1.1.1.14.6.3** Deviations from critical path in days ahead or behind.

**10.1.1.1.14.6.4** List of major construction equipment used during reporting period and any equipment idle.

**10.1.1.1.14.6.5** Number of personnel by craft engaged on Work during reporting period.

**10.1.1.1.14.6.6** Progress analysis describing problem areas.

**10.1.1.1.14.6.7** Current and anticipated delay factors and their impact.

**10.1.1.1.14.6.8** Proposed corrective actions and logic revisions for Recovery Schedule.

**10.1.1.1.14.6.9** Proposed modifications, additions, deletions and changes in logic of Construction Schedule.

**10.1.1.1.14.6.10** In updating the Schedule, Contractor shall not modify Activity ID numbers, schedule calculation rules/criteria, or the Activity Coding Structure required.

**10.1.1.1.14.7** Schedule update will form basis upon which progress payments will be made.

**10.1.1.1.14.8** District will not be obligated to review or process Application for Payment until schedule and Progress Report have been submitted.

#### **10.1.1.1.15 DISTRIBUTION**

**10.1.1.1.15.1** Following joint review and acceptance of updated schedules distribute copies to District, Architect, and all other concerned parties.

**10.1.1.1.15.2** Instruct recipients to promptly report in writing any problem anticipated by projections shown in schedule.

#### **10.1.1.1.2. PRODUCTS**

##### **10.1.1.1.2.1 SCHEDULING SOFTWARE**

Contractor shall utilize Primavera P6 Project Management® software (latest version) by Oracle, or District-approved equivalent scheduling software to employ the Critical Path Method (CPM) in the development and maintenance of the Construction Schedule . The scheduling software shall be capable of being resource loaded with manpower, costs and materials. It shall also be capable of generating time-scaled logic diagrams, resource histograms and profiles, bar charts, layouts and reports with any and/or all activity detail.

##### **10.1.1.1.2.2 ELECTRONIC DATA**

Provide compact disk(s) that contain a back-up of the Proposed Baseline Schedule data on it. The electronic P6 files shall be saved in “.XER” type format.

**10.1.1.2 Preliminary Schedule.** A preliminary schedule of construction indicating the starting and completion dates of the various stages of the Work, including any information and following any form as may be specified in the Specifications. Once approved by District, this shall become the Construction Schedule. This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task as well as all contract milestones and each milestone's completion date(s) as may be required by the District.

**10.1.1.3 Preliminary Schedule of Values.** A preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This preliminary schedule of values shall include, at a minimum, the following information and the following structure:

10.1.1.2.1. Divided into at least the following categories:

- 10.1.1.2.1.1. Overhead and profit;
- 10.1.1.2.1.2. Supervision;
- 10.1.1.2.1.3. General conditions;
- 10.1.1.2.1.4. Layout;
- 10.1.1.2.1.5. Mobilization;
- 10.1.1.2.1.6. Required Pre-testing;
- 10.1.1.2.1.7. Submittals;
- 10.1.1.2.1.8. Bonds and insurance;
- 10.1.1.2.1.9. Close-out documentation;
- 10.1.1.2.1.10. Division 2 Work
- 10.1.1.2.1.11. Division 3 Work
- 10.1.1.2.1.12. Division 4 Work
- 10.1.1.2.1.13. Division 5 Work
- 10.1.1.2.1.14. Division 6 Work
- 10.1.1.2.1.15. Division 7 Work
- 10.1.1.2.1.16. Division 8 Work
- 10.1.1.2.1.17. Division 9 Work
- 10.1.1.2.1.18. Division 10 Work
- 10.1.1.2.1.19. Division 11 Work
- 10.1.1.2.1.20. Division 12 Work
- 10.1.1.2.1.21. Division 13 Work
- 10.1.1.2.1.22. Division 14 Work
- 10.1.1.2.1.23. Division 15 Work
- 10.1.1.2.1.24. Division 16 Work

- 10.1.1.2.1.25. Division 17 Work
- 10.1.1.2.1.26. Testing;
- 10.1.1.2.1.27. Punchlist and acceptance.

10.1.1.2.2. Divided by each of the following areas:

- 10.1.1.2.2.1. Site work;
- 10.1.1.2.2.2. By each building;
- 10.1.1.2.2.3. By each floor.

10.1.1.2.3. The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:

- 10.1.1.2.3.1. Mobilization and layout combined to equal not more than 1%;
- 10.1.1.2.3.2. Submittals, samples and shop drawings combined to equal not more than 3%,
- 10.1.1.2.3.3. bonds and insurance combined to equal not more than 2%.

10.1.1.2.4. Closeout documentation shall have a value in the preliminary schedule of value of not less than 5%.

10.1.1.2.5. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as reflected in the Cost Breakdown, shall be paid by the District in equal installments, based on percentage complete, with the disbursement of Progress Payments and the Final Payment.

10.1.1.2.6. Contractor shall certify that the preliminary schedule of values as submitted to the District is accurate and reflects the costs as developed in preparing Contractor's bid. The preliminary schedule of values shall be subject to the District's review and approval of the form and content thereof. In the event that the District objects to any portion of the preliminary schedule of values, the District shall notify the Contractor, in writing of the District's objection(s) to the preliminary schedule of values. Within five (5) days of the date of the District's written objection(s), Contractor shall submit a revised preliminary schedule of values to the District for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the District has approved the entirety of the preliminary schedule of values.

10.1.1.2.7. Once the preliminary schedule of values is approved by the District, this shall become the Schedule of Values. The Schedule Of Values shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.

**10.1.1.4** Preliminary Schedule of Submittals. A preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once approved by District, this shall become the Submittal Schedule. All submittals shall be forwarded to the District by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals shall be forwarded to the District so as not to delay the Construction Schedule.

**10.1.1.5** Safety Plan. Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements:

10.1.1.4.1. All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or by the United States Occupational Safety and Health Administration ("OSHA").

10.1.1.4.2. All provisions regarding Project safety, including all applicable provisions in these General Conditions.

10.1.1.4.3. Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

**10.1.1.6** Complete Subcontractor List. The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

**10.1.2** Contractor must provide all construction schedules both in hard copy and electronically, in either Primavera or Suretrak format approved in advance by the District.

**10.1.3** The District will review the construction schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

**10.1.4** The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

**10.1.5** All submittals and schedules must be approved by the District before Contractor can rely on them as a basis for payment.

## **10.2** Monthly Progress Schedule(s)

(a) Approval of Schedule: Within 30 Thirty days after receipt of the Contractor of the Notice of Intent to award, the contractor shall prepare and submit a schedule for the construction of the Work, both in hard copy and electronically for the District's information and Construction Manager's Approval. The schedule shall in all respects conform to and be consistent with the time requirements for the Project set forth in the Agreement.

(b) Form: The schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a plan for performance of the work within the Contract Time. It shall be prepared using Primavera 3 as a time-scaled bar chart showing: (1) continuous flow from left to right and activities and milestones that are critical to completion of the Work(2) Identification of float; and (3) a clearly highlighted critical path.

(c) Updates: Throughout the Project, monthly project schedule updates will be prepared by the contractor as well as short duration "look ahead schedules. Compliance by Contractor with the requirements of this section and other sections of the Contract documents pertaining to the schedule, shall be a condition to District's obligation to make payment to contractor Monthly Progress Schedule shall update the approved Construction Schedule, showing all work completed and to be completed.

### **10.3 Material Safety Data Sheets (MSDS)**

Contractor is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures.

## **11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS**

### **11.1 Site Investigation**

Before bidding on this Work, Contractor shall make a careful investigation of the Site and thoroughly familiarize itself with the requirements of the Contract. By the act of submitting a bid for the Work included in this Contract, Contractor shall be deemed to have made a complete study and investigation, and to be familiar with and accepted the existing conditions of the Site.

### **11.2 Soils Investigation Report**

**11.2.1** When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract, and Contractor may not rely solely thereon. By submitting its bid, Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil.

**11.2.2** Contractor agrees that no claim against District will be made by Contractor for damages and hereby waives any rights to damages if, during progress of Work, Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the work of the character provided for in Plans and Specifications, except as indicated in the provisions of these General Conditions regarding trenches, trenching, and/or existing utility lines.

### **11.3 Access to Work**

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

### **11.4 Layout and Field Engineering**

**11.4.1** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer approved in writing by District and Architect. Any required "Record" drawings of Site development shall be prepared by the approved civil engineer.

**11.4.2** The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

**11.4.3** Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

### **11.5 Utilities**

Utilities shall be provided as indicated in the Specifications.

### **11.6 Sanitary Facilities**

Sanitary facilities shall be provided as indicated in the Specifications.

### **11.7 Surveys**

Contractor shall provide surveys done by a California Licensed civil surveyor to determine locations of construction, grading, and site work as required to perform the Work.

## **11.8 Regional Notification Center**

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

## **11.9 Existing Utility Lines**

**11.9.1** Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

**11.9.2** Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

**11.9.3** No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the Work. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

**11.9.4** If Contractor, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Contractor shall immediately notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

### **11.10 Notification**

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

### **11.11 Hazardous Materials**

Contractor shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

### **11.12 No Signs**

Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

## **12. TRENCHES**

### **12.1 Trenches Greater Than Five Feet**

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

### **12.2 Excavation Safety**

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

### **12.3 No Tort Liability of District**

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

### **12.4 No Excavation Without Permits**

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

## **12.5 Discovery of Hazardous Waste and/or Unusual Conditions**

**12.5.1** Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

**12.5.1.2** Subsurface or latent physical conditions at the Site differing from those indicated.

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

**12.5.2** The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

**12.5.3** In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law that pertain to the resolution of disputes and protests.

## **13. INSURANCE AND BONDS**

### **13.1 Insurance**

Unless different provisions and/or limits are indicated in the Special Conditions, all insurance required of Contractor and/or its Subcontractor(s) shall be in amounts and including the provisions as set forth herein.

#### **13.1.1 Commercial General Liability and Automobile Liability Insurance**

**13.1.1.1** Contractor shall procure and maintain, during the life of this Contract, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, State, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under this Contract. Contractor shall ensure that Products Liability and Completed Operations coverage and Fire Damage Liability is included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

**13.1.1.2** Subcontractor: Contractor shall require its Subcontractors, if any, to procure and maintain similar Commercial General Liability Insurance and Automobile Liability Insurance with minimum limits equal to the amount required of the Contractor.

### **13.1.2 Excess Liability Insurance**

**13.1.2.1** Contractor shall procure and maintain, during the life of this Contract, Excess Liability Insurance that shall protect Contractor, District, State, Construction Manager(s), Project Manager(s), and Architect(s) and in amounts and including the provisions as set forth in the Supplementary Conditions and/or Special Conditions.

**13.1.2.2** Subcontractor: Contractor shall require its Subcontractor(s), if any, to procure and maintain similar Excess Liability Insurance with minimum limits equal to the amount required of the Contractor.

### **13.1.3 Workers' Compensation and Employers' Liability Insurance**

**13.1.3.1** In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

**13.1.3.2** Contractor shall procure and maintain, during the life of this Contract, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under this Contract, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under this Contract, on or at the Site of the Project, are not protected under the Workers' Compensation Statute, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

**13.1.4 Builder's Risk Insurance: Builder's Risk "All Risk" Insurance.**

**13.1.4.1** The District, during the progress of the work and until Final Acceptance of the Work upon completion of the entire Contract, shall maintain Builder's Risk "All-Risk" Completed Value Insurance Coverage on all insurable Work included under the Contract Documents which coverage is to provide extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the entire Work which is the subject of the Contract Documents, and including completed Work and Work in progress to the full insurable value thereof.

**13.1.4.2** The Contractor shall at its expense provide "All-Risk" insurance coverage for all materials and equipment not yet installed whether on site or in a "bonded" warehouse. The insurance required of the Contractor hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. District's Builder's Risk Insurance shall include coverage and insurance against the perils of earthquake, if so indicated in the Special Conditions. Such insurance shall include the District as a named insured, and any other person with an insurable interest designated by the District as an additional named insured.

**13.1.4.3** The risk of damage to the Work due to the perils is covered by the District's Builder's Risk "All Risk" Insurance, as well as any other hazard which might result in damage to the Work. No such loss or damage shall excuse the complete and satisfactory performance of the Contract by the Contractor.

**13.1.4.4** Contractor shall provide insurance to cover the first \$100,000 of damage plus the total of all materials and equipment stored on or off the site or in transport.

**13.1.5 Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates**

**13.1.5.1** Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained , and the District has approved these documents.

**13.1.5.2** Endorsements, certificates and insurance policies shall include the following:

13.1.5.2.1. A clause stating: "This policy shall not be amended or modified and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of amendment or modification. Date of amendment or modification may not be less than thirty (30) days after date of mailing notice."

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

**13.1.5.3** All endorsements, certificates and insurance policies shall state that District, the State of California, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. Contractor's and Subcontractors' insurance policy(s) shall be primary to any insurance or self-insurance maintained by District, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

**13.1.5.4** All policies shall be written on an occurrence form.

**13.1.5.5** All of Contractor's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI.

**13.1.6 Insurance Policy Limits**

Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

Commercial General Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
	Product Liability and Completed Operations	\$1,000,000
Automobile Liability — Any Auto	Combined Single Limit	\$1,000,000
Excess Liability		\$4,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		\$1,000,000
Builders Risk (Course of Construction)		Issued for the value and scope indicated herein.

**13.2 Contract Security - Bonds**

**13.2.1** Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

**13.2.1.1** Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

**13.2.1.2** Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

**13.2.2** Cost of bonds shall be included in the Bid and Contract Price.

**13.2.3** All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

## **14. WARRANTY/GUARANTEE/INDEMNITY**

### **14.1 Warranty/Guarantee**

**14.1.1** The Contractor shall obtain and preserve for the benefit of the District,

**14.1.2** manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

**14.1.3** 14.1.2. In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of **ONE (1)** year after the later of the following dates:

**14.1.3.1** The date of completion as defined in Public Contract Code section 7107, subdivision (c),

**14.1.3.2** The commissioning date for the Project, if any.

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a ONE (1) year period from date of completion as defined above without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

**14.1.4** If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District,

District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.

**14.1.5** The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

**14.1.6** Nothing herein shall limit any other rights or remedies available to District.

## **14.2 Indemnity**

**14.2.1** The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District and its consultants, the Architect and its consultants, the Construction Manager and its consultants, separate contractors, and their respective board members, officers, representatives, contractors, agents, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused wholly by the sole negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, or liens by the California Department of Labor Standards Enforcement.

**14.2.2** The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein,

and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

**14.2.3** In any and all claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **15. TIME**

### **15.1 Notice to Proceed**

**15.1.1** District may issue a Notice to Proceed within three (3) months from the date of the Letter of Intent. Once Contractor has received the Notice to Proceed, Contractor shall complete the Work within the period of time indicated in the Contract Documents.

**15.1.2** In the event that the District desires to postpone issuing the Notice to Proceed beyond this 3-month period, it is expressly understood that with reasonable notice to the Contractor, the District may postpone issuing the Notice to Proceed. It is further expressly understood by Contractor that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the issuance of the Notice to Proceed.

**15.1.3** If the Contractor believes that a postponement of issuance of the Notice to Proceed will cause a hardship to Contractor, Contractor may terminate the Contract. Contractor's termination due to a postponement shall be by written notice to District within ten (10) days after receipt by Contractor of District's notice of postponement. It is further understood by Contractor that in the event that Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement. Should Contractor terminate the Contract as a result of a notice of postponement, District shall have the authority to award the Contract to the next lowest responsive responsible bidder.

### **15.2 Computation of Time / Adverse Weather**

**15.2.1** The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor and only if all of the following conditions are met:

**15.2.1.1** The weather conditions constitute Adverse Weather, as defined herein;

**15.2.1.2** Contractor can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

**15.2.1.3** The Contractor's crew is dismissed as a result of the Adverse Weather; and

**15.2.1.4** The number of days of delay for the month exceed those indicated in the Special Conditions.

**15.2.2** A day-for-day extension will only be allowed for those days in excess of those indicated in the Special Conditions.

**15.2.3** The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

**15.2.4** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

### **15.3 Hours of Work**

#### **15.3.1 Sufficient Forces**

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

#### **15.3.2 Performance During Working Hours**

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

### **15.4 Progress and Completion**

#### **15.4.1 Time of the Essence**

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

#### **15.4.2 No Commencement Without Insurance**

The Contractor shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

### **15.5 Progress Schedule**

Contractor shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in the Notice to Proceed and the Contractor's Submittals and Schedules section of these General Conditions.

### **15.6 Expeditious Completion**

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

## **16. EXTENSIONS OF TIME — LIQUIDATED DAMAGES**

### **16.1 Liquidated Damages**

Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Agreement for each calendar day of delay in completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

### **16.2 Excusable Delay**

**16.2.1** Contractor shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Contractor shall, within five (5) calendar days of beginning of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Contractor has timely submitted the Construction Schedule as required herein.

**16.2.2** Contractor shall notify the District pursuant to the claims provisions in these General Conditions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

**16.2.3** In the event the Contractor requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Contractor fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

**16.2.3.1** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

**16.2.3.2** Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

**16.2.3.3** A recovery schedule must be submitted.

### **16.3** No Additional Compensation for Delays Within Contractor's Control

**16.3.1** Contractor is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Accordingly, Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Contractor is not entitled to make a claim for damages or delays arising from the review of Contractor's drawings.

**16.3.2** Contractor shall only be entitled to compensation for delay when all of the following conditions are met:

**16.3.2.1** The District is responsible for the delay;

**16.3.2.2** The delay is unreasonable under the circumstances involved;

**16.3.2.3** The delay was not within the contemplation of District and Contractor;  
and

**16.3.2.4** Contractor complies with the claims procedure of the Contract Documents.

#### **16.4** Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, but its use shall be determined solely by the District.

### **17. CHANGES IN THE WORK**

#### **17.1** No Changes Without Authorization

**17.1.1** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order or a written Construction Change Directive authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**17.1.2** Contractor shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work.

**17.1.3** Should any Change Order result in an increase in the Contract Price, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District or Construction Change Directive, Contractor waives any claim of additional compensation or time for that additional work.

**17.1.4** Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

#### **17.2** Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Construction Change Directive, or by Architect's response(s) to RFI(s).

### **17.3 Change Orders**

**17.3.1** A Change Order is a written instrument prepared and issued by the District and/or the Architect and signed by the District (as authorized by the District's Board of Trustees), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

**17.3.1.1** A description of a change in the Work;

**17.3.1.2** The amount of the adjustment in the Contract Price, if any; and

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

### **17.4 Construction Change Directives**

**17.4.1** A Construction Change Directive is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by proceeds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by OPSC. Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

**17.4.2** The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

### **17.5 Force Account Directives**

**17.5.1** When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

**17.5.2** The District will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the District.

**17.5.3** All requirements regarding direct cost for labor, labor burden, material,

**17.5.4** equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, the District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

**17.5.5** The Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive.

**17.5.6** The Contractor shall notify the District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. The Contractor will not be compensated for force account work in the event that the Contractor fails to timely notify the District regarding the commencement of force account work, or exceeding the force account budget.

**17.5.7** The Contractor shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Contractor for their records. The District will not sign, nor will the Contractor receive compensation for work the District cannot verify. The Contractor will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work

**17.5.8** In the event the Contractor and the District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

## **17.6 Price Request**

### **17.6.1 Definition of Price Request**

A Price Request ("PR") is a written request prepared by the Architect requesting the Contractor to submit to the District and the Architect an estimate of the effect of a proposed change in the Work on the Contract Price and the Contract Time.

## **17.6.2 Scope of Price Request**

A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. The Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

## **17.7 Proposed Change Order**

### **17.7.1 Definition of Proposed Change Order**

A Proposed Change Order ("PCO") is a written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

### **17.7.2 Changes in Contract Price**

A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.

### **17.7.3 Changes in Time**

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay.

### **17.7.4 Unknown and/or Unforeseen Conditions**

If Contractor submits a PCO requesting an increase in Contract Price and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project, then Contractor shall base the PCO on provable information that, beyond a reasonable doubt and to the District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Contractor shall complete the Project without any increase in Contract Price and/or Contract Time based on that PCO.

## **17.8 Format for Proposed Change**

**17.8.1** The following format shall be used as applicable by the District and the Contractor (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation.

	SUBCONTRACTOR PERFORMED WORK	ADD	DEDUCT
	Material (attach itemized quantity and unit cost plus sales tax)		
	Add Labor (attach itemized hours and rates, fully encumbered)		
	Add Equipment (attach suppliers' invoice)		
	Subtotal		
	Add Subcontractor's overhead and profit, not to exceed ten percent (10%) of item (d)		
	Subtotal		
	Add Contractor's overhead and profit, not to exceed five percent (5%) of Item (f)		
	Subtotal		
	Add Bond and Insurance, not to exceed one percent (1%) of Item (h)		
	TOTAL		
	Time	Days	

	CONTRACTOR PERFORMED WORK	ADD	DEDUCT
	Material (attach itemized quantity and unit cost plus Sales tax)		
	Add Labor (attach itemized hours and rates, fully encumbered)		
	Add Equipment (attach suppliers' invoice)		
	Subtotal		
	Add Contractor's overhead and profit, not to exceed fifteen percent (15%) of item (d).		
	Subtotal		
	Add Bond and Insurances not to exceed one percent (1%) of Item (f)		
	TOTAL		
	Time	Days	

## 17.9 Change Order Certification

**17.9.1** All Change Orders and PCOs must include the following certification by the Contractor:

**17.9.1.1** The undersigned Contractor approves the foregoing as to the changes, if any, and the Contract Price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to

furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District.

**17.9.1.2** It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

#### **17.10 Determination of Change Order Cost**

**17.10.1** The amount of the increase or decrease in the Contract Price from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

**17.10.1.1** District acceptance of a PCO;

**17.10.1.2** By unit prices contained in Contractor's original bid;

**17.10.1.3** By agreement between District and Contractor.

#### **17.11 Deductive Change Orders**

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total profit and overhead to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from this provision shall not be allowed.

#### **17.12 Discounts, Rebates, and Refunds**

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

#### **17.13 Accounting Records**

With respect to portions of the Work performed by Change Orders and Construction Change Directives, the Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

#### **17.14 Notice Required**

If the Contractor desires to make a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

#### **17.15 Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders or Construction Change Directives issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

#### **17.16 Alteration to Change Order Language**

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

#### **17.17 Failure of Contractor to Execute Change Order**

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

### **18. REQUEST FOR INFORMATION**

**18.1** Any Request for Information shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Contract Price, Contract Time, or the Contract Documents.

**18.2** The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if a Request for Information requests an interpretation or decision of a matter where the information sought is equally available to the party making the request. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional services arising herein.

**18.3** Contractor shall use the Request for Information form included with the Contract Documents.

## **19. PAYMENTS**

### **19.1 Contract Price**

The Contract Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents.

### **19.2 Applications for Progress Payments**

#### **19.2.1 Procedure for Applications for Progress Payments**

##### **19.2.1.1 Draft Application for Progress Payment**

19.2.1.1.1. Not before the twenty-fifth (25th) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect three (3) copies of an itemized draft Application for Payment for operations completed in accordance with the Schedule of Values for the current month. This draft application shall include the following or each portion thereof as the District and/or the Architect requires:

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

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

19.2.1.1.1.3. The balance that will be due to each of these entities after the currently requested payment is made;

19.2.1.1.1.4. An Itemized breakdown of work done for the purpose of requesting partial payment;

19.2.1.1.1.5. The additions to and subtractions from the Contract Price and Contract Time;

19.2.1.1.1.6. A total of the retentions held;

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

19.2.1.1.1.8. The percentage of completion of the Contractor's Work by line item;

19.2.1.1.1.9. Schedule of Values updated from the preceding Application for Payment;

19.2.1.1.1.10. Notwithstanding the fact that this document submitted by Contractor is a draft, the Contractor shall be subject to the False Claims

Act set forth under Government Code section 12650 et seq., for information provided with any draft Application for Progress Payment.

### 19.2.1.2 Certified Application for Progress Payment

19.2.1.2.1. Within five (5) days of the District's approval of a draft Application for Progress Payment, Contractor shall submit to the District and the Architect six (6) copies of an itemized Certified Application for Payment for operations completed in accordance with the Schedule of Values for the month that is part of the Certified Application for Payment. This Certified Application for Payment shall be notarized, if required, and shall include the following or each portion thereof as the District and/or the Architect requires:

19.2.1.2.1.1. A final and complete statement of all the information required in the draft Application for Progress Payment;

19.2.1.2.1.2. An updated and acceptable construction schedule in conformance with the provisions herein;

19.2.1.2.1.3. A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Contractor and each subcontractor of any tier and supplier to be paid from the current progress payment;

19.2.1.2.1.4. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payment;

19.2.1.2.1.5. If the District has an LCP in force on this Project and if not previously submitted as required herein, all remaining certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment. As indicated herein, if the District has an LCP in force on this Project, the District shall not make any payment to Contractor until:

19.2.1.2.1.5.1. Contractor and/or its Subcontractor(s) provide CPRs acceptable to the District, and

19.2.1.2.1.5.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Contractor's payment.

19.2.1.2.1.6. A certification that the Record Drawings and annotated Specifications are current;

19.2.1.2.1.7. A certification by the Contractor of the following:

"The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed."

19.2.1.2.1.8. The Contractor shall be subject to the False Claims Act set forth under Government Code section 12650 et seq., for information provided with any draft Application for Progress Payment.

## **19.2.2 Prerequisites for Progress Payments**

**19.2.2.1 First Payment Request:** The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

- 19.2.2.1.1. Installation of the Project sign; 19.2.2.1.2. Installation of field office;
- 19.2.2.1.3. Installation of temporary facilities and fencing;
- 19.2.2.1.4. Schedule of Values;
- 19.2.2.1.5. Contractor's Construction Schedule; 19.2.2.1.6. Schedule of unit prices, if applicable;
- 19.2.2.1.7. Submittal Schedule;
- 19.2.2.1.8. Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.2.1.9. Copies of necessary permits;
- 19.2.2.1.10. Copies of authorizations and licenses from governing authorities.
- 19.2.2.1.14. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.2.1.15. All bonds and insurance endorsements; and
- 19.2.2.1.16. Resumes of Contractor's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

**19.2.2.2 Second Payment Request.** The District will not process the second payment request until and unless all submittals and Shop Drawings have been accepted for review by the Architect.

**19.2.2.3 No Waiver of Criteria.** Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

### **19.3 Progress Payments**

#### **19.3.1 District's Approval of draft Application for Payment**

**19.3.1.1** Upon receipt of a draft Application for Payment, the District shall act in accordance with both of the following:

19.3.1.1.1. Each draft Application for Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the draft Application for Payment is a proper draft Application for Payment.

19.3.1.1.2. Any draft Application for Payment determined not to be a proper draft Application for Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A draft Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the draft Application for Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.1.1.3. A draft Application for Payment shall be considered properly executed if funds are available for payment of the draft Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the District.

**19.3.1.2** The District's review of the Contractor's draft Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the draft Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.1.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.1.2.2. Results of subsequent tests and inspections,

19.3.1.2.3. Minor deviations from the Contract Documents correctable prior to completion, and

19.3.1.2.4. Specific qualifications expressed by the Architect.

**19.3.2** District's approval of the certified Application for Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Payment.

#### **19.3.3 Payments to Contractor**

**19.3.3.1** Within thirty (30) days after approval of the certified Application for Payment, Contractor shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified

by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

**19.3.3.2** The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for Work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

**19.3.3.3** If the District fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment from the Contractor, the District shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

#### **19.3.4 No Waiver**

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

#### **19.3.5 Warranty of Title**

**19.3.6** If a lien or a claim based on a stop notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by District and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop notice to be released or discharged immediately therefrom.

**19.3.7** If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

### **19.4 Decisions to Withhold Payment**

#### **19.4.1 Reasons to Withhold Payment**

The District may 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 herein cannot be made. 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, but not limited to:

- 19.4.1.1** Defective Work not remedied within FORTY-EIGHT (48) hours of written notice to Contractor;
- 19.4.1.2** Stop Notices or other liens served upon the District as a result of the Contract;
- 19.4.1.3** Liquidated damages assessed against the Contractor;
- 19.4.1.4** The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the completion date;
- 19.4.1.5** Damage to the District or other contractor(s);
- 19.4.1.6** Unsatisfactory prosecution of the Work by the Contractor;
- 19.4.1.7** Failure to store and properly secure materials;
- 19.4.1.8** Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 19.4.1.9** Failure of the Contractor to maintain Record Drawings;
- 19.4.1.10** Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 19.4.1.11** Unauthorized deviations from the Contract Documents;
- 19.4.1.12** Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- 19.4.1.13** If the District has an LCP in force on this Project, the failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- 19.4.1.14** Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's LCP, if one is in force on this Project;

**19.4.1.15** Failure to properly maintain or clean up the Site;

**19.4.1.16** Payments to indemnify, defend, or hold harmless the District;

**19.4.1.17** Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

**19.4.1.18** Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

**19.4.1.19** Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

#### **19.4.2** Reallocation of Withheld Amounts

**19.4.2.1** District may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then that amount shall be considered a payment made under Contract by District to Contractor and District shall not be liable to Contractor for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

**19.4.2.2** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after FORTY-EIGHT (48) hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

#### **19.4.3** Payment After Cure

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

### **19.5** Subcontractor Payments

#### **19.5.1** Payments to Subcontractors

No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such

Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

#### **19.5.2 No Obligation of District for Subcontractor Payment**

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **19.5.3 Joint Checks**

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

## **20. COMPLETION OF THE WORK**

### **20.1 Completion**

**20.1.1** District will accept completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District.

**20.1.2** The Work may only be accepted as complete by action of the governing board of the District.

**20.1.3** District, at its sole option, may accept completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of completion, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

**20.1.4** At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Contract Price, and/or District's right to perform the Work of the Contractor.

### **20.2 Close-Out Procedures**

#### **20.2.1 Punch List**

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Failure to substantially complete the punchlist within 15 days of issuance of the Punchlist will result in the imposition of liquidated damages, as stated in the Agreement. If punchlist is not complete within thirty (30) days, District reserves the right to price the remaining items of work and to complete them, thereby subjecting the Contractor to a backcharge.

#### **20.2.2 Close-Out Requirements 20.2.2.1. Utility Connections**

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

##### **20.2.2.1 Record Drawings**

20.2.2.2.1. Contractor shall provide exact "as-built" Record Drawings of the Work upon completion of the Project as indicated in the Specifications.

20.2.2.2.2. Contractor is liable and responsible for any and all inaccuracies in as-built Record Drawings, even if inaccuracies become evident at a future date.

20.2.2.2.3. Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector's approval of the corrected prints and employ a competent draftsman to transfer the "as-built" information to the most current version of Autocad that is, at that time, currently utilized for plan check submission by either the District, the Architect, OPSC, and/or DSA, and print a complete set of transparent sepias. When completed, Contractor shall deliver corrected sepias and diskette/CD/other data storage device with Autocad file to the District.

**20.2.2.2 Maintenance Manuals:** Contractor shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

### **20.3 Final Inspection**

**20.3.1** Contractor shall comply with Punch List procedures as provided herein, and maintain the presence of a Project Superintendent and Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual

circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

**20.3.2** Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

### **20.3.3 Final Inspection Requirements**

**20.3.3.1** Before calling for final inspection, Contractor shall determine that the following have been performed:

- 20.3.3.1.1. The Work has been completed.
- 20.3.3.1.2. All life safety items are completed and in working order.
- 20.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 20.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.
- 20.3.3.1.5. Painting and special finishes complete.
- 20.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.7. Tops and bottoms of doors sealed.
- 20.3.3.1.8. Floors waxed and polished as specified.
- 20.3.3.1.9. Broken glass replaced and glass cleaned.
- 20.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- 20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- 20.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.
- 20.3.3.1.13. Final cleanup, as provided herein.

### **20.4 Costs of Multiple Inspections**

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

### **20.5 Partial Occupancy or Use Prior to Completion**

#### **20.5.1 District's Rights**

The District may occupy or use any completed or partially completed portion of the Work at any stage. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and

the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the District shall have the right to occupy or use any portion of the Work that it desires to.

#### **20.5.2 Inspection Prior to Occupancy or Use**

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

#### **20.5.3 No Waiver**

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

### **21. FINAL PAYMENT AND RETENTION**

#### **21.1 Final Payment**

Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment. The District shall thereupon jointly inspect the Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final payment from the District, pay the amount due Subcontractors.

**21.2 Prerequisites for Final Payment** The following conditions must be fulfilled prior to Final Payment:

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

**21.2.2** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 3262 from the Contractor and each subcontractor of any tier and supplier to be paid from the current progress payment;

**21.2.3** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payment; and

**21.2.4** The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

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

**21.2.6** Contractor must have completed all requirements set forth under "Close Out Procedures," Including, without limitation, an approved set of complete "as-built" Record Drawings.

**21.2.7** Architect shall have issued its written approval that final payment can be made.

**21.2.8** The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

**21.2.9** The Contractor shall have completed final clean up as provided herein.

### **21.3 Retention**

**21.3.1** The retention, less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid:

**21.3.1.1** After approval of the District by the Architect's Certificate of Payment,

**21.3.1.2** After the satisfaction of the conditions set forth herein, and

**21.3.1.3** After thirty-five (35) days after the recording of the Notice of Completion by District.

**21.3.2** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code section 22300.

**21.4** Substitution of Securities The District will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

## **22. UNCOVERING OF WORK •**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Price or Contract Time.

## **23. NONCONFORMING WORK AND CORRECTION OF WORK**

### **23.1 Nonconforming Work**

**23.1.1** Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other Contractors caused thereby.

**23.1.2** If Contractor does not remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed FORTY-EIGHT (48) hours, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

### **23.2 Correction of Work**

#### **23.2.1 Correction of Rejected Work**

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

#### **23.2.2 One-Year Warranty Corrections**

If, within one (1) year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

#### **23.2.3 District's Rights if Contractor Fails to Correct**

If the Contractor fails to correct nonconforming Work within a reasonable time, the District may correct it after FORTY-EIGHT (48) hours written notice, pursuant to the applicable provisions in these General Conditions regarding the District's right to perform work.

## **24. TERMINATION AND SUSPENSION**

### **24.1 District's Right to Terminate Contractor for Cause**

**24.1.1 Grounds for Termination** The District, in its sole discretion, may terminate the Contract and/or terminate the Contractor's right to perform the work of the Contract based upon the following:

**24.1.1.1** Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

**24.1.1.2** Contractor fails to complete said Work within the time specified or any extension thereof, or

**24.1.1.3** Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

**24.1.1.4** Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days; or

**24.1.1.5** Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

**24.1.1.6** Contractor persistently or repeatedly refuses fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

**24.1.1.7** Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or

**24.1.1.8** Contractor persistently disregards laws, or ordinances, or instructions of District; or

**24.1.1.9** Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

**24.1.1.10** Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

### **24.1.2 Notification of Termination**

**24.1.2.1** Upon the occurrence at District's sole determination of any of the above conditions, District may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of District's termination of this Contract and/or the Contractor's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Contract shall cease and terminate. Upon Determination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.

**24.1.2.2** Upon Termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:

24.1.2.2.1. Within three (3) days after service upon it of the notice of tender, gives

District written notice of Surety's intention to take over and perform this Contract; and

24.1.2.2.2. Commences performance of this Contract within (three (3) days from date of serving of its notice to District.

**24.1.2.3** If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in this Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.

### **24.1.3 Effect of Termination**

**24.1.3.1** Contractor shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Contractor and its Surety shall be liable upon the performance bond for all damages caused the District by reason of the Contractor's failure to complete the Contract.

**24.1.3.2** In the event that the District shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the District shall not be liable nor account to the Contractor in any way for the time within

which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.

**24.1.3.3** In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.

**24.1.3.4** If the expense to the District to finish the Work exceeds the unpaid Contract Price, Contractor and Surety shall pay difference to District within twenty-one (21) days of District's request.

**24.1.3.5** The District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Contractor shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Contractor. Contractor must include this assignment provision in all of its contracts with its Subcontractors.

**24.1.3.6** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

#### **24.1.4** Emergency Termination of Public Contracts Act of 1949

**24.1.4.1** This Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

24.1.4.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of

the work, then the public agency and the contractor may, by written agreement, terminate said contract.

24.1.4.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

**24.1.4.2** Compensation to the Contractor shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Contract Price as the reasonable value of the work done or any portion thereof.

## **24.2 Termination of Contractor for Convenience**

**24.2.1** District in its sole discretion may terminate the Contract upon three (3) days written notice to the Contractor. Under a termination for convenience, the District retains the right to all the options available to the District if there is a termination for cause. In case of a termination for convenience, the Contractor shall have no claims against the District except:

**24.2.1.1** The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

**24.2.1.2** Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all Contractor's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience.

## **25. CLAIMS AND DISPUTES**

### **25.1 Performance During Claim Process**

The Contractor shall continue to perform its Work under the Contract and shall not cause a delay of the Work during any dispute, claims definition, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

### **25.2 Definition of Claim**

**25.2.1** For purposes of this section, a claim means a separate demand by the Contractor for:

**25.2.1.1** A time extension,

**25.2.1.2** Payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or

**25.2.1.3** Payment of money that the District disputes is owing.

### **25.3** Claim Presentations

**25.3.1** If Contractor intends to claim an increase in the Contract Price or Contract Time for any reason including, without limitation, the acts of District or its agents, Contractor shall, within ten (10) days after the event giving rise to the claim, give notice of the claim in writing and submit to the District a written statement of the damage sustained or time requested. On or before twenty (20) days after Contractor's written notice of claim, Contractor shall file with the District an itemized statement of the details and amounts of its claim for any increase in the Contract Price or Contract Time. Contractor must timely submit the Notice of Claim and the substantiating documentation for any claim. Otherwise, Contractor shall have waived and relinquished its claim against the District and Contractor's claims for compensation or an extension of time shall be forfeited and invalidated, and Contractor shall not be entitled to consideration for payment or time on account of the instant matter.

**25.3.2** The attention of the Contractor is drawn to Government Code section 12650, et seq. regarding penalties for false claims.

**25.3.3** Contractor shall file with the District any written claim, including the documents

**25.3.4** necessary to substantiate it, on or before the day of final payment on the Contract.

**25.3.5** The Contractor shall bind all its Subcontractors, material persons, and suppliers to the provisions of this section on mediation and arbitration and will hold the District harmless against disputes and claims by Subcontractors, material persons, or suppliers.

### **25.4** Claim Resolution

**25.4.1** In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, if applicable. Pending resolution of the dispute, if the dispute is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California in the county in which the District office resides, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

## **25.4.2 Public Works Claims of \$375,000 or Less**

**25.4.2.1** For all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a Contractor and a local agency, the procedure set forth in Public Contract Code section 20104 et seq. shall apply:

25.4.2.1.1. For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing within forty-five (45) days of receipt of the claim or 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 against the claimant.

25.4.2.1.1.1. If additional information is required, it shall be requested and provided by mutual agreement of the parties.

25.4.2.1.1.2. The District's written response to the documented claim shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant to produce the additional information, whichever is greater.

25.4.2.1.2. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred Seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or 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 against the claimant.

25.4.2.1.2.1. If additional information is required, it shall be requested and provided upon mutual agreement of the District and the claimant.

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

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

**25.4.2.3** Following the meeting and conference, if the claim or any portion of it remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of

Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any period of time utilized by the meet and confer process.

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

**25.4.2.5** If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

**25.4.2.6** The District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

#### **25.4.3 Public Works Claims Over \$375,000**

**25.4.3.1** For all claims of over three hundred seventy-five thousand dollars (\$375,000) which arise between a Contractor and the District, the following procedure shall apply:

25.4.3.1.1. The parties agree to first endeavor to settle the dispute in an amicable manner by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse to arbitration or a judicial forum. The claim or dispute shall be identified in writing to the District within thirty (30) days of discovery and shall be mediated within one hundred and twenty (120) days of discovery.

**25.4.3.2** The parties further agree that all Contractors, Subcontractors, Sub-subcontractors, suppliers, and material persons whose portion of the Work amounts to five thousand dollars (\$5,000) or more, and their insurers and their

sureties, shall agree to mediation as the first method of dispute resolution on all claims in excess of three hundred seventy-five thousand dollars (\$375,000).

## **26. LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS**

### **26.1 Labor Compliance Program**

If the Project is at least partially funded with State bond money, then, pursuant to Labor Code section 1771.7, the District and/or its designee is operating a labor compliance program ("LCP") on this Project as indicated in the Labor Compliance Program Information and Forms. Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the District's LCP, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate certified payroll records with each application for payment, or the District cannot issue payment. The following provisions indicated herein are specifically understood to be part of the District's LCP. If there is no LCP on this Project, the Contractor and all of its subcontractor(s) are still required to comply with all applicable provisions of the Labor Code and the obligation to provide certified payroll records to the District as indicated herein.

### **26.2 Wage Rates, Travel, and Subsistence**

**26.2.1** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District's principal office and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of these wage rates at the job site.

**26.2.2** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

**26.2.3** 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 of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

**26.2.4** If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change

shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

**26.2.5** Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount (believed by the District to be currently fifty dollars (\$50)) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

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

**26.2.7** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

**26.2.8** Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

### **26.3 Hours of Work**

**26.3.1** As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by 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 shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions 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 upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**26.3.2** Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or . any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

**26.3.3** Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently twenty-five dollars (\$25)) for each worker employed in the execution of this Contract by 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 one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

**26.3.4** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

## **26.4 Payroll Records**

**26.4.1** If the District has an LCP in force on this Project then, pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that 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 ("CPR(s)"), 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.

**26.4.1.1** The CPRs enumerated hereunder shall be certified and shall be provided to the District on a weekly basis. The CPRs from the Contractor and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District shall not make any payment to Contractor until:

26.4.1.1.1. Contractor and/or its Subcontractor(s) provide CPRs acceptable to the District, and

26.4.1.1.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Contractor's payment.

**26.4.2** Whether or not the District has an LCP in force on this Project, all CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

**26.4.2.1** A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

**26.4.2.2** CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

**26.4.2.3** CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

**26.4.3** The form of certification for the CPRs shall be as follows:

I, (Name-Print), the undersigned, am the \_\_\_\_\_ (Position in business) with the authority to act for and on behalf of \_\_\_\_\_ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 for any work performed by our employees on the Project.  
Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Section 16401 of the California Code of Regulations)

**26.4.4** Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

**26.4.5** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing-Contract shall not be marked or obliterated.

**26.4.6** Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

**26.4.7** In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

**26.4.8** It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

## **26.5 Apprentices**

**26.5.1** Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

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

**26.5.3** Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

**26.5.4** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

**26.5.5** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

**26.5.6** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

**26.5.7** If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

**26.5.7.1** Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

**26.5.7.2** Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

**26.5.8** Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

**26.5.9** Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

## **26.6 Non-Discrimination**

**26.6.1** Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

**26.6.2** Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

## **26.7 Labor First Aid**

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29

U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq.).

## **27. MISCELLANEOUS**

### **27.1 Assignment of Antitrust Actions**

#### **27.1.1 Section 7103.5(b) of the Public Contract Code states:**

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body 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, made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

#### **27.1.2 Section 4552 of the Government Code states:**

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body 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, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

#### **27.1.3 Section 4553 of the Government Code states:**

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

#### **27.1.4 Section 4554 of the Government Code states:**

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**27.1.5** Under this Article, "public purchasing body" is District and "bidder" is Contractor.

**27.2** Excise Taxes

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Contract Price.

**27.3** Taxes

Contract Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

**27.4** Shipments

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Contract Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

END OF DOCUMENT

**SPECIAL CONDITIONS**

1. **Mitigation Measures**

Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.)

2. **Modernization Projects**

- a. Access. Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only the Construction Manager will be allowed to unlock and lock doors in existing building(s). If Construction Manager is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Contractor's Work, Construction Manager will be paid by the Contractor, unless, at the discretion of the District, other arrangements are made in advance.
- b. **Master Key.** Upon request, the District may, at is own discretion, provide a master key to the school site for the convenience of the Contractor. The Contractor agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the master key is lost or stolen or if any unauthorized party obtains a copy of the key or access to the school.
- c. **Maintaining Services.** The Contractor is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Contractor shall provide temporary services to all facilities interrupted by Contractor's Work.
- d. **Maintaining Utilities.** The Contractor shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
- e. **Confidentiality.** Contractor shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Contractor encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes,

without limitation, all student, parent, and employee disciplinary information and health information.

- f. **No Work During Student Testing.** Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State-required tests.

### 3. **Substitution for Specified Items**

- a. Requests for substitutions prior to award of the Contract shall be done within the time period indicated in the Instructions to Bidders.
- b. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (11)** days of the date of the Letter of Intent.
- c. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
  - (1) If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.
  - (2) This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- d. A request for a substitution shall be in writing and shall include:
  - (1) All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
  - (2) Available maintenance, repair or replacement services;
  - (3) Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

- (4) Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and
  - (5) The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- e. No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:
- (1) The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;
  - (2) The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
  - (3) The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
  - (4) The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
  - (5) The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- f. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.
- g. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

**4. Fingerprinting**

Not required for work performed behind fenced area.

Contractor shall comply with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District, that such employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

**5. Weather Days (To be filled in)**

Delays due to Adverse Weather conditions will only be permitted in compliance with the provisions in the General Conditions and only if the number of days of Adverse Weather exceeds the following parameters: **(FILL IN DATES BELOW)**

January	11	July	0
February	10	August	0
March	10	September	1
April	6	October	4
May	3	November	7
June	1	December	10

See contract schedule. Rain days will be included as realized.

**6. Insurance Policy Limits.** All of Contractor's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI. The limits of insurance shall not be less than:

<b>Commercial General Liability</b>	Each Occurrence	\$2,000,000
	General Aggregate	\$2,000,000
	Product Liability and Completed Operations	\$1,000,000
<b>Automobile Liability — Any Auto</b>	Combined Single Limit	\$2,000,000
<b>Excess Liability</b>		\$4,000,000

<b>Workers Compensation</b>		Statutory limits pursuant to state law
<b>Employers' Liability</b>		\$1,000,000
<b>Builders Risk (Course Of Construction)</b>		Provided by MUSD

7. **Permits, Certificates, Licenses, Fees, Approval**

- a. **Payment for Permits, Certificates, Licenses, and Fees.** As required in the General Conditions, the Contractor shall secure and pay for all permits, licenses and certificates necessary for the prosecution of the Work with the exception of the following:

(1) n/a

**With respect to the** above listed items, Contractor shall be responsible for securing such items, however, District will be responsible for payment of these charges or fees. Contractor shall notify the District of the amount due with respect to such items and to whom the amount is payable. Contractor shall provide the District with an invoice and receipt with respect to such charges or fees.

- b. **Storm Water Permits.** Contract will implement the following Storm Water Pollution Prevention Plan:

IN ORDER TO ENROLL IN THE CONSTRUCTION STORM WATER PERMIT AND BEFORE CONSTRUCTION ACTIVITIES BEGIN, THE DISTRICT WILL FILE CERTAIN SUBMITTALS REFERRED TO AS PERMIT REGISTRATION DOCUMENTS (PRDS) WITH THE REGIONAL WATER QUALITY CONTROL BOARD.

THE STATUS OF THE DISTRICT'S PRDS (THE RISK ASSESSMENT, SITE MAP(S), AND STORM WATER POLLUTION PREVENTION PLAN (SWPPP)) ARE AS FURTHER INDICATED IN THE SPECIAL CONDITIONS.

IF THE SPECIAL CONDITIONS INDICATE THAT CONTRACTOR SHALL BE RESPONSIBLE FOR PREPARING SOME OR ALL OF THE PRDS, CONTRACTOR SHALL FOLLOW THE REQUIREMENTS HEREIN.

1. GENERAL

1.1. RELATED DOCUMENTS AND PROVISION

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

- 1.1.1. General Conditions;
  - 1.1.2. Special Conditions;
  - 1.1.3. Site Standards; and
  - 1.1.4. Collaborative For High Performance Schools (CHPS) -- Special Environmental Requirements.
- 1.2. The Clean Water Act and Porter Cologne Water Quality Act prohibit the discharge of any water containing pollutants from certain construction sites unless a National Pollutant Discharge Elimination System permit is first obtained and followed. The National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ( Construction Storm Water Permit) Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ (NPDES No. CAS000002) issued by the California State Water Resources Control Board (State Water Board) authorizes the discharge of storm water and certain non-storm water from construction sites if certain conditions and measures are taken. The District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit.

## 2. SUBMITTALS

### 2.1. GENERAL

All submittals shall be made in a form conducive for the District to electronically upload the approved submittals to the Storm water Multi-Application Reporting and Tracking System (SMARTS).

### 2.2. RISK ASSESSMENT

- 2.2.1. Concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit a proposed “Risk Assessment” as set forth in the Construction Storm Water Permit.
- 2.2.2. The District’s Qualified SWPPP Developer (“QSD”) will review the Contractor’s proposed Risk Assessment for compliance with the Construction Storm Water Permit. If changes to the proposed Risk Assessment are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.

2.2.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised Risk Assessment to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the Risk Assessment and provide the Contract with a copy within seven (7) days of receipt of the revised Risk Assessment.

## 2.3. SITE MAPS

2.3.1. Concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit proposed "Site Maps" as described in Attachment B of the Construction Storm Water Permit.

2.3.2. The District's QSD will review the Contractor's proposed Site Maps for compliance with the Construction Storm Water Permit. If changes to the proposed Site Maps are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.

2.3.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised Site Maps to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the Site Maps and provide the Contract with a copy within seven (7) days of receipt of the revised SWPPP.

## 2.4. SWPPP

2.4.1. Concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit to the District a proposed SWPPP for the Work.

2.4.2. The District's Qualified SWPPP Developer ("QSD") will review the Contractor's proposed SWPPP for compliance with the Construction Storm Water Permit. If changes to the proposed SWPPP are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.

2.4.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised SWPPP to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the SWPPP and provide the Contract with a copy within seven (7) days of receipt of the revised SWPPP.

## 2.5. RAIN EVENT ACTION PLAN (REAP)

- 2.5.1. If Contractor determines that Site is a Risk Level 1, concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit to the District a proposed REAP for the Work.
- 2.5.2. The District's QSD will review the Contractor's proposed REAP for compliance with the Construction Storm Water Permit. If changes to the proposed REAP are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.
- 2.5.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised REAP to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the REAP and provide the Contract with a copy within seven (7) days of receipt of the revised REAP.

## 2.6. ACTIVE TREATMENT SYSTEM (ATS)

- 2.6.1. If Contractor determines that Site requires an ATS under the Construction Storm Water Permit, concurrent with the Schedule of Submittals as indicated in the General Conditions, Contractor shall prepare and submit to the District a proposed ATS for the Work.
- 2.6.2. The District's QSD will review the Contractor's proposed ATS for compliance with the Construction Storm Water Permit. If changes to the proposed ATS are required to comply with the Construction Storm Water Permit, the District QSD will identify such changes to the Contractor.
- 2.6.3. Contractor shall make the changes specified by the District's QSD and shall submit the revised ATS to the District within seven (7) days of receipt of the changes identified by the District's QSD. If the changes had been acceptably made, the District's QSD will approve the ATS and provide the Contract with a copy within seven (7) days of receipt of the revised ATS.

## 2.7. RECORDS

All electronic and hardcopy records required by the Construction Storm Water Permit shall be submitted to the District within seven (7) days of Completion of the Project.

## 3. PERMIT REGISTRATION DOCUMENTS

Prior to any activities on Site that disturb the Site's surface, the Permit Registration Documents (PRDs) required by the Construction Storm Water Permit must be filed with the Regional Water Quality Control Board. The District shall file the PRDs with the Regional Water Quality Control Board to activate coverage under the Construction Storm Water Permit.

#### 4. IMPLEMENTATION REQUIREMENTS

- 4.1. Contractor shall not conduct any activities that may affect the Site's construction runoff water quality until the District provides Contractor with the Waste Discharger Identification Number (WDID) assigned to this Project by the State Water Board.
- 4.2. Contractor shall keep a copy of the approved SWPPP at the job site. The SWPPP shall be made available when requested by a representative of the Regional Water Quality Control Board, State Water Resources Control Board, United States Environmental Protection Agency, or the local storm water management agency. Requests from the public shall be directed to the District for response.
- 4.3. Contractor shall designate in writing to the District a Qualified SWPPP Practitioner (QSP) who shall be responsible for implementing the SWPPP, REAP (if applicable), ATS (if applicable), conducting non-storm water and storm water visual observations, and for ensuring that all best management practices (BMPs) required by the SWPPP and General Permit are properly implemented and maintained.
- 4.4. All measures required by the SWPPP shall be implemented concurrent with the commencement of construction. Pollution practices and devices shall be followed or installed as early in the construction schedule as possible with frequent upgrading of devices as construction progresses.
- 4.5. Contractor shall ensure that all measures are properly maintained and repaired to protect the water quality of discharges.

#### 5. INSPECTION, SAMPLING, ANALYSIS, AND RECORD KEEPING REQUIREMENTS

The Contractor's QSP shall conduct all required visual observations, sampling, analysis, reporting, and record keeping required by the SWPPP and the Construction Storm Water Permit.

#### 6. REPORTING REQUIREMENTS

Contractor shall prepare and provide all the reports, which include, but are not limited to the Annual Report and any NEL Violation Reports or NAL Exceedance Reports, all of which are required by the SWPPP and the Construction Storm Water Permit.

## 7. ANNUAL REPORT

By August 1 of each year (defined as July 1 to June 30) that had at least one continuous three (3) month period coverage under the General Permit, Contractor shall complete and submit to the District an Annual Report, as required by the General Permit. If the Project is complete prior to August 1, Contractor shall submit the report prior to acceptance of the Project.

## 8. COMPLETION OF WORK

- 8.1. Clean-up shall be performed as each portion of the work progresses. All refuse, excess material, and possible pollutants shall be disposed of in a legal manner off-site and all temporary and permanent SWPPP devices shall be in place and maintained in good condition.
- 8.2. At Completion of Work, Contractor shall inspect installed SWPPP devices, and present the currently implemented SWPPP with all backup records to the District.

## 9. NOTICE OF TERMINATION (NOT)

A Notice of Termination (NOT) must be submitted by the Contractor to the District for electronic submittal by the Legally Responsible Person via SMARTS to terminate coverage under the General Permit. The NOT must include a final Site Map and representative photographs of the Project site that demonstrate final stabilization has been achieved. The NOT shall be submitted to the District on or before the Contractor submits its final application for payment. If the Regional Water Board rejects the NOT for any reason, the Contractor shall revise the NOT as many times as necessary to get the Regional Water Board's approval. The Regional Water Board will consider a construction site complete when the conditions of the General Permit, Section II.D have been met.

## 10. QUALITY ASSURANCE

- 10.1. Before performing any of the obligations indicated herein, the Contractor's QSP shall meet the training and certification requirements in the Construction Storm Water Permit.
- 10.2. Contractor shall perform the Work in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit.
- 10.3. Contractor shall conduct at least a one-hour training session on the requirements of the SWPPP for each employee before an employee conducts any construction on the Site. Contractor shall maintain documentation of this employee training at the site for review by the District or any regulatory agency.

## 11. PERFORMANCE REQUIREMENTS

- 11.1. The Storm Water Pollution Prevention Plan is a minimum requirement. Revisions and modifications to the SWPPP are acceptable only if they maintain levels of protection equal to or greater than originally specified.
- 11.2. Read and be thoroughly familiar with all of the requirements of the SWPPP.
- 11.3. Inspect and monitor all work and storage areas for compliance with the SWPPP prior to any anticipated rain.
- 11.4. Complete any and all corrective measures as may be directed by the regulatory agency.
- 11.5. Penalties: Contractor shall pay any fees and any penalties that may be imposed by the regulatory agency for non-compliance with SWPPP during the course of Work.
- 11.6. Costs: Contractor to pay all costs associated with the implementation of the requirements of the SWPPP in order to maintain compliance with the Permit. This includes installation of all Housekeeping BMPs, General Site and Material Management BMPs, Inspection requirements, maintenance requirements, and all other requirements specified in the SWPPP.

## 12. MATERIALS

All temporary and permanent storm water pollution prevention facilities, equipment, and materials as required by or as necessary to comply with the SWPPP as described in the BMP Handbook.

END OF DOCUMENT

00557.00001/426252.1

DOCUMENT 00805

**LABOR COMPLIANCE PROGRAM**  
**INFORMATION AND FORMS**

**Contractor is responsible for documenting its own certified payroll available only upon District request.**

END OF DOCUMENT

00557.00001/426282.1

**HAZARDOUS MATERIALS**  
**PROCEDURES & REQUIREMENTS**

**1. Summary**

This document includes information applicable to hazardous materials and hazard waste abatement.

**2. Notice of Hazardous Waste or Materials Conditions**

a. Contractor shall give notice in writing to the District, the Construction Manager, and the Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

- (1) Material that Contractor believes may be material that is hazardous waste or hazardous material, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
- (2) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.

b. Contractor's written notice shall indicate whether the hazardous waste or material as shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

c. In response to Contractor's written notice, the District shall investigate the identified conditions.

d. If the District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the District shall so notify Contractor in writing, stating reasons. If the District and Contractor cannot agree on whether conditions justify an adjustment in Contract Price or Contract Times, or on the extent of any adjustment, Contractor shall proceed with the Work as directed by the District.

e. If after receipt of notice from the District, Contractor does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part.

District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of Work, or performing the Work by others.

f. If Contractor stops Work in connection with any hazardous condition and in any area affected thereby, Contractor shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

### **3. Additional Warranties and Representations**

- a. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).
- b. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
- c. Contractor represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

### **4. Monitoring and Testing**

- a. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.
- b. Contractor acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-

abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event District elects to perform these activities and tests, Contractor shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

- c. Notwithstanding District's rights granted by this paragraph, Contractor may retain its own industrial hygiene consultant at Contractor's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work and Contractor shall immediately provide that documentation upon request.

## **5. Compliance with Laws**

- a. Contractor shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.
- b. Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:
  - (1) The protection of the public health, welfare and environment;
  - (2) Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;
  - (3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and
  - (4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

## **6. Disposal**

- a. Contractor has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.
- b. Contractor shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.
- c. Contractor shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which District has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

## **7. Permits**

a. Before performing any of the Work, and at such other times as may be required by applicable law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to District that it and any disposal facility

- (1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and
- (2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Contractor shall not conduct any Work involving asbestos-containing materials or PCBs unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of

the Work, shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Contractor performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

b. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Contractor in securing the permit or giving the notice, but the Contractor shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

## **8. Indemnification**

a. To the extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 9601 et seq.).

## **9. Termination**

a. District shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

00557.00001/426290.1

DOCUMENT 00850

**DISTRICT CONTRACT FORMS**

**MILPITAS UNIFIED HAS LISTED SPECIFIC FORMS THAT THE CONTRACT MUST USE IN DOCUMENT 01020 - (FORMS FOR CONTRACTOR).**

\*

END OF DOCUMENT

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS**

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ by and between the MILPITAS UNIFIED SCHOOL DISTRICT ("District") and ("Contractor"), whose place of business is \_\_\_\_\_.

RECITALS:

- 1. District and Contractor entered into PROJECT/CONTRACT NO.: \_\_\_\_\_ ("Contract" or "Project") in the County of \_\_\_\_\_, California.
- 2. The Work under the Contract has been completed.

NOW, THEREFORE, it is mutually agreed between District and Contractor as follows:

AGREEMENT

- 3. Contractor will only be assessed liquidated damages as detailed below:

Original Contract Sum

Modified Contract Sum

Payment to Date

Liquidated Damages

Payment Due Contractor \$ \_\_\_\_\_

- 4. Subject to the provisions hereof, District shall forthwith pay to Contractor the undisputed sum of \$ \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) under the Contract, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.
- 5. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 6 and continuing obligations described in Paragraph 8. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against District, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claim is set forth in Paragraph 6 and continuing obligations described in Paragraph 8 hereof.

6. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
------------------	-----------------------------	------------------------	-----------------------------

**[Insert information, including attachment if necessary]**

7. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 4 hereof, Contractor hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
8. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
9. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
10. Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the

remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

12. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

MILPITAS UNIFIED SCHOOL DISTRICT

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

CONTRACTOR

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

END OF DOCUMENT

DOCUMENT 00890

**GUARANTEE FORM**

\_\_\_\_\_ ("Contractor") hereby agrees that the \_\_\_ ("Work" of Contractor) which Contractor has installed for the Milpitas Unified School District ("District") for the following project:

PROJECT: (Identify Project)

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Milpitas Unified School District and Contractor ("Contract") has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of year(s) from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is \_\_\_\_\_, 20\_\_\_\_.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

Representatives to be contacted for service subject to terms of Contract:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

END OF DOCUMENT

**WORKERS COMPENSATION CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Milpitas Unified School District (the "District" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Milpitas Unified School District (the "District" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, the District's labor compliance program, if in use on this Project.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

**DISABLED VETERAN BUSINESS  
ENTERPRISE PARTICIPATION CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Milpitas Unified School District (the "District") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

**GENERAL INSTRUCTIONS**

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises (DVBE) of at least 3 percent, per year, of the overall dollar amount expended each year by the school district on projects that receive state funding. Therefore, low bidder must submit this document to the District with its executed agreement, identifying the steps contractor took to solicit DVBE participation in conjunction with this Contract. Bidders should not submit this form with their bids.

**NOTE:** *Architectural, engineering, environmental, land surveying, or construction management firms must indicate their method of compliance by completing this form after selection by the District and before the contract is signed.*

**Part I — Method Of Compliance With DVBE Participation Goals.** Check the appropriate box to indicate your method of committing the contract dollar amount.

<b>YOUR BUSINESS ENTERPRISE IS:</b>	<b>AND YOU WILL</b>	<b>AND YOU WILL</b>
<b>A.</b> <input type="checkbox"/> Disabled veteran owned and your forces will perform at least 3 percent of this contract	Include a copy of your DVBE letter from Office of Small Business and Disabled Veterans Business Enterprise Services ("OSB")*	Complete Part 1 of this form and the Certification
<b>B.</b> <input type="checkbox"/> Disabled veteran owned but is unable to perform 3 percent of this contract with your forces	USE DVBE subcontractors / suppliers to bring the contract participation to at least 3 percent	Include a copy of each DVBE's letter from OSB (including yours, if applicable), and complete Part 1 of this form and the certification
<b>C.</b> <input type="checkbox"/> <b>NOT</b> Disabled Veteran Owned	Use DVBE subcontractors / suppliers for at least 3 percent of this contract	
<b>D.</b> <input type="checkbox"/> Unable to meet the required participation goals	Complete all of this Certification form	

\* A DVBE letter from OSB is obtained from the participating DVBE.

**You must complete the following table to show the dollar amount of DVBE participation:**

	<b>TOTAL CONTRACT PRICE</b>
<b>A. Prime Bidder, if DVBE (own participation)</b>	<b>\$</b>
<b>B. DVBE Subcontractor or Supplier</b>	
<b>1.</b>	
<b>2.</b>	
<b>3.</b>	
<b>4.</b>	
<b>C. Subtotal (A &amp; B)</b>	
<b>D. Non-DVBE</b>	
<b>E. Total Bid</b>	

**Part II — Contacts.** To identify DVBE subcontractors/suppliers for participation in your contract, you must contact each of the following categories. You should contact several DVBE organizations.

<b>CATEGORY</b>	<b>TELEPHONE NUMBER</b>	<b>DATE CONTACTED</b>	<b>PERSON CONTACTED</b>
1. The District			*
2. OSB, which publishes a list of DVBE's; Internet Address: <a href="http://www.dgs.ca.gov/osbcr">Http://www.dgs.ca.gov/osbcr</a>	(916) 323-5478 (916) 322-5060		*
3. DVBE Organization (List)			*

\*Write "recorded message" in this column, if applicable.

**Part III — Advertisement.** You must advertise for DVBE participation in both a trade and focus paper. List the advertisement you place to solicit DVBE participation. Advertisements should be published at least 14 days prior to bid/proposal opening; if you cannot advertise 14 days prior, advertisements should be published as soon as possible. Advertisements must include that your firm is seeking DVBE participation, the project name and location, and you firm's name, your contact person, and telephone number. Attach copies of advertisements to this form.

<b>FOCUS/TRADE PAPER NAME</b>	<b>CHECK ONE</b>		<b>DATE OF ADVERTISEMENT</b>
	<b>TRADE</b>	<b>FOCUS</b>	

**Part IV. — DVBE Solicitations.** List DVBE subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.

<b>IF THE DVBE.....</b>	<b>THEN.....</b>	<b>AND.....</b>		
was selected to participate	Check "yes" in the Selected column, include the applicable dollar amount in Part III of the Form SAB 515PB	include a copy of their DVBE letter from OSB		
was <i>NOT</i> selected to participate	Check "NO" in the "SELECTED" column	state why in the "REASON NOT SELECTED" column		
did not respond to your solicitation	Check the "NO RESPONSE" column.			
<b>DISABLED VETERANS BUSINESS ENTERPRISES CONTACTED</b>	<b>SELECTED</b>		<b>REASON NOT SELECTED</b>	<b>NO RESPONSE</b>
	<b>YES</b>	<b>NO</b>		

A copy of this form must be retained by you and may be subject to a future audit.

### CERTIFICATION

I, \_\_\_\_\_ certify that I am the bidder's \_\_\_\_\_ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein. In making this certification, I am aware of section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT





**SMOKE-FREE ENVIRONMENT CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Milpitas Unified School District (the "District" or the "Owner") and \_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This Smoke-Free Environment Certification form is required from the successful Bidder.

Per District Board Policy and consistent with Education Code section 48901 and Health and Safety Code section 39002 the Milpitas Unified School District and all District sites, including the Project site are Tobacco Free Environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes; school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding smoke-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to smoke on the Project site.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

**HAZARDOUS MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Milpitas Unified School District ("District" or "Owner") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

**LEAD-BASED MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Milpitas Unified School District ("District" or "Owner") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

This certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

**1. Lead as a Health Hazard**

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

**2. Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 3224 1.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

**The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed**

**copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.**

**3. Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

THE CONTRACTOR HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;
2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT



and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

**CRIMINAL BACKGROUND  
INVESTIGATION/ FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Milpitas Unified School District ("District") and \_\_\_\_\_ ("Contractor" or "Bidder") ("Contract" or "Project").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

\_\_\_\_\_ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is

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

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

\_\_\_\_\_ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

00557.00001/426291.1

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS**

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ by and between the MILPITAS UNIFIED SCHOOL DISTRICT ("District") and ("Contractor"), whose place of business is \_\_\_\_\_.

RECITALS:

- 1. District and Contractor entered into PROJECT/CONTRACT NO.: \_\_\_\_\_ ("Contract" or "Project") in the County of \_\_\_\_\_, California.
- 2. The Work under the Contract has been completed.

NOW, THEREFORE, it is mutually agreed between District and Contractor as follows:

AGREEMENT

- 3. Contractor will only be assessed liquidated damages as detailed below:

Original Contract Sum

Modified Contract Sum

Payment to Date

Liquidated Damages

Payment Due Contractor     \$ \_\_\_\_\_

- 4. Subject to the provisions hereof, District shall forthwith pay to Contractor the undisputed sum of \$ \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) under the Contract, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.
- 5. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 6 and continuing obligations described in Paragraph 8. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against District, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claim is set forth in Paragraph 6 and continuing obligations described in Paragraph 8 hereof.

6. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
------------------	-----------------------------	------------------------	-----------------------------

**[Insert information, including attachment if necessary]**

7. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 4 hereof, Contractor hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
8. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
9. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
10. Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the

remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

12. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

MILPITAS UNIFIED SCHOOL DISTRICT

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

CONTRACTOR

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

END OF DOCUMENT

00557.00001/426298.1

DOCUMENT 00890

**GUARANTEE FORM**

\_\_\_\_\_ ("Contractor") hereby agrees that the \_\_\_ ("Work" of Contractor) which Contractor has installed for the Milpitas Unified School District ("District") for the following project:

PROJECT: NEW ELEMENTARY SCHOOL – MCCANDLESS SITE – PHASE 1– INCREMENT #1

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Milpitas Unified School District and Contractor ("Contract") has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of year(s) from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is \_\_\_\_\_, 20\_\_\_\_.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

Representatives to be contacted for service subject to terms of Contract:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

END OF DOCUMENT