

**San Bernardino City Unified School District
School Modernization Program**

Project Title: Hazardous Material Abatement and Demolition Services of 11 properties at the Lincoln II South Elementary School Site
SBCUSD Bid No: F08-28
Project Manager: Kurt Supinger

Addendum No. 1

Date: November 17, 2009

Notice to Bidders: The following changes, additions or clarifications have been made to the original project Bid Documents issued on October 22, 2008 and shall be incorporated in the Bidder's bid amount. The Bidder shall acknowledge receipt of this Addendum in the BID FORM. All other aspects of the work from the original Bid Documents shall remain unchanged. In case of conflict between the Drawings, Specifications and this Addendum, this Addendum shall govern. The bidders shall be responsible for transmitting this information to all affected subcontractors and suppliers prior to the closing of bids.

This addendum consists of these cover pages and One Hundred and Twenty One (121) pages of Revised Project Manual Sections.

CLARIFICATION:

Item No. AD-1.1: Reference New Table

A. The following table is hereby issued

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Item No. AD-1.2: Reference New Section

A. The following Section is hereby issued

00700 GENERAL CONDITIONS

Item No. AD-1.3: Reference New Section

A. The following Section is hereby issued

00800 SUPPLEMENTARY GENERAL CONDITIONS

Item No. AD-1.4: Reference Section 01 13 14 Labor Compliance Program

A. Delete Section 01 13 14 issued in Bid Set. Substitute therefore revised Section 01 13 14 hereby issued

BIDDERS QUESTIONS

Item No. AD-1.5:

A. Question: Does the Contractor requirements and scope of work include:

1. Question: Procedure 5 for any abatement work on these sites?

Response: None of the 11 sites will require a Procedure 5 Workplan. The four fire-damaged units (724 N. Sierra Way, 172 W. Vine St., 131 W. 8th St. and 737-739 N. Mountain View Ave.) did have asbestos-containing material(s), but the materials were not impacted by the fires. The fires were relatively minor in nature (i.e. not the entire structure).

2. Question: HAZWOPR training and/or licensing required by GC?

Response: Only the workers that will be handling the hazardous materials described in Section 4.0 of the abatement specification will be required to have the appropriate 40-hour HAZWOPR training. Specifically, the details are outlined in Section 4.2.1 of the abatement specification.

3. Question: All tile to be abated or just that with mastic attached?

Response: Any floor tile or floor tile mastic described in Section 2.2.1 of the abatement specification will need to be abated. If only floor tile mastic is positive, the tile associated with the mastic will also be considered asbestos-containing. Likewise, if asbestos-containing floor tile and/or mastic is underneath carpeting or ceramic tile, the carpeting and/or ceramic tile would also be considered asbestos-contaminated (see Sections 2.3.2.8 and 2.3.5.7 of the abatement specification).

4. Question: Remove sidewalks, patios, driveways for all sites?

Response: Remove sidewalks, patios, driveways, etc. at the 7 properties with DTSC No Further Action (NFA) status. At the four (4) fire-damaged properties sidewalks, patios, driveways etc. to remain in place and undisturbed. At the four (4) fire-damaged properties, abate, demo and remove building structures leaving foundation, footings and slabs in-place.

5. Question: Remove foundations and footings for all sites?

Response: No. Remove foundations, footings, slabs etc at the 7 properties with DTSC NFA status. At the four (4) fire-damaged properties, foundations, footings and slabs are to remain in place and undisturbed.

6. Question: Remove trees and shrubs?

Response: Yes, with the exception of the specified locations (Figure 1 in the abatement specification) that are to be covered for the four fire-damaged properties. At these specific locations, trees and shrubs can be cut off above ground level, but the base and root systems should remain in place so as not to disturb the soil. Trees in the public right of way (between the sidewalk and street curb) shall not be removed and must be protected in place from potential damage.

7. Question: Disconnect existing utilities: gas, water, electric, sewer?

Response: Property Managers working for the District have contacted all of these utilities servicing the properties. In most cases, meters have been removed and services have been terminated. However, it is the responsibility of the Contractor to verify all utility service disconnects in the field prior to the start of their abatement and demolition work. If specific utility services removals and terminations have not been completed, it shall be the responsibility of the Contractor to coordinate the disconnect or termination of the specific utility service. Water service is the only utility requiring a fee be paid to complete the "service kill". The Contractor can coordinate with District representative to arrange payment of the fee, as necessary. Fee may be advanced by Contractor and then reimbursed by District at Cost (w/o mark-ups).

8. Question: Certification of recycled materials – does contractor need to provide documentation?

Response: Assuming question is in reference to section 01340 Construction and Demolition Waste Management, the answer is: Yes, contractor needs to provide certification. Among other commitments, District should be able to demonstrate at the completion of this project that a minimum of 75% (by weight) of construction and demolition waste generated by the project was collected, separated, reused and/or transported to legal landfills in an appropriate manner and in accordance to guidelines established by local jurisdictions and as accepted by the CHPS/HPI (Collaborative High Performance Schools / High Performance Incentive) program.

9. Question: What is the minimum requirement to protect soils for those sites requiring it?

Response: This is described in Section 3.3 of the abatement specification. At a minimum, the contractor should put down one layer of 6-mil plastic sheeting, followed by a layer of ¾-inch plywood, followed by a second layer of 6-mil plastic sheeting, to extend 5 feet out from the wall line (at the locations shaded in red on Figure 1 of the abatement specification). This only applies to the four fire-damaged units.

10. Question: Does the soil protection stay after demo?

Response: Per Section 3.3, the plastic and plywood shall remain intact during the entire abatement and building demolition procedure. After demolition is accepted by the District, the soil protection shall be removed and disposed of as normal demolition debris.


11. Question: Remove all incidental debris not attached to buildings?

Response: Yes. General trash, debris or abandoned personal property shall be removed and disposed of as normal demolition debris. However, hazardous material containers such as paint cans, oil cans, etc. (as described in Section 4.0 of the abatement specification) will need to be handled and disposed of properly.

12. Question: How and where to procure information on square footage of buildings?

Response: You can check building permits at the City of San Bernardino Building Department or field verify by measuring the buildings. Drawing D-1 may be used as an alternate method of obtaining square footages. (See graphical scale at bottom right of drawing.)

San Bernardino City Unified School District

By  11/17/09
Kurt Supinger

**Hazardous Materials Abatement and Demolition Services of
11 properties at the Lincoln II South Elementary School Site**

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00700 GENERAL CONDITIONS

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SECTION 01 31 14

LABOR COMPLIANCE PROGRAM (LCP) COORDINATION

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. LCP Coordination Activities
- B. LCP Meeting

1.02 RELATED SECTIONS

- A. Project Coordination and Meetings
- B. Price and Payment Procedures

1.05 LABOR COMPLIANCE PROGRAM MEETING

After the DISTRICT awards the Contract, and prior to the commencement of the work, a mandatory pre-job Labor Compliance Program (LCP) Meeting will be conducted by the LCP representative with the CONTRACTOR(s) and those subcontractors listed in the Bid Documents – as part of the Pre-Construction Meeting or as a separate meeting.

At that meeting, the LCP representative will discuss the federal and state labor law requirements applicable to the contract including prevailing wage requirements, respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the DISTRICT, and the prohibition against discrimination in employment.

The LCP representative will provide the CONTRACTOR and each subcontractor with a checklist of labor law requirements and will discuss, in detail, the following checklist items:

1. Payment of Prevailing Wage Rates

The CONTRACTOR to whom the contract is awarded and its subcontractors hired for the public works project are required to pay no less than the specified general prevailing wage rates to all workers employed in the execution of the contract, including each subcontract.

The CONTRACTOR is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. Apprentice

It is the duty of the CONTRACTOR and subcontractor's to employ registered apprentices on the public works project under Labor Code Section 1777.5;

3. Penalties

There are penalties required for CONTRACTOR'S/ subcontractor's failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775; 1776; 1771.1; 1777.7 and 1813;

4. Certified Payroll Reports

Under Labor Code Section 1776, CONTRACTORS and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification for each employee and owner performing work; also the straight time and overtime hours worked each day and each week, the fringe benefits and the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the CONTRACTOR/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to Labor Code Section 1776;

Each CONTRACTOR and every lower-tier subcontractor and supplier is required to submit certified payrolls and labor compliance documentation electronically as specified by the DISTRICT.

Electronic submittal will be a web-based system, accessed on the World Wide Web by a web browser. Each CONTRACTOR and subcontractor will be given a Log On identification and a password to access the DISTRICT's reporting system.

Use of the system may entail additional data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid, etc. The CONTRACTOR's payroll and accounting software may be capable of generating a 'comma delimited file' that will interface with the software.

This electronic reporting requirement will be 'flowed down' to every lower-tier subcontractor and vendor required to provide labor compliance documentation.

Under Labor Code Section 1776(g) there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

5. Nondiscrimination in Employment

There exist prohibition against employment discrimination under Labor Code Sections 1735 and 1776.6, the Government Code, the Public Contracts Code and Title VII of the Civil Rights Act of 1964;

6. Kickbacks Prohibited

CONTRACTORS and subcontractors are prohibited from recapturing wages illegally or extracting "kickbacks" from employee wages under Labor Code Section 1778;

7. Itemized Wage Deduction Statement

Under Labor Code Section 226, every employer shall at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the gross wages, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, name of the employee and his/her social security number, the name and address of the employer and all applicable hourly rates in effect during the pay period.

8. Acceptance of fees prohibited

There exists a prohibition against CONTRACTOR/subcontractor acceptance of fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works contracts pursuant to Labor Code Section 1780;

9. Listing of Subcontractors

All prime CONTRACTORS are required to list properly all subcontractors hired to perform work on the public works projects covering more than one half of one percent, pursuant to Government Code Section 4100 et seq;

10. Proper Licensing

CONTRACTORS are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law found at Business and Professions Code Section 7000 et seq.

11. Unfair Competition Prohibited

CONTRACTORS/subcontractors are prohibited from engaging in unfair competition as specified under Business and Professions Code Sections 17200 to 17208;

12. Workers Compensation Insurance

Labor Code Section 1861 requires that CONTRACTORS and subcontractors be insured properly for Workers Compensation.

13. OSHA

Contractors and subcontractors are required to abide by the Occupational Safety and Health laws and regulations that apply to the particular construction project.

14. Employment Diversity

The requirement to demonstrate employment diversity in the hiring of women and ethnic groups as outlined in the Public Contracts Code Section 10115 and in the DISTRICT contract.

The CONTRACTOR's and subcontractors present at the meeting will be given the opportunity to ask questions of the LCP representative relative to the items contained in the Labor Law Requirements Checklist. The checklist will then be signed by the CONTRACTOR's representative, a representative of each subcontractor, and the DISTRICT's LCP representative.

At the meeting, the DISTRICT's LCP representative will provide the CONTRACTOR with a copy of the DISTRICT's LCP package.

It will be the CONTRACTOR's responsibility to provide copies of the LCP package to all of the CONTRACTOR's listed subcontractors and to any substituted subcontractors.

PART 2 PRODUCTS (Not Applicable)

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END OF SECTION

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

SECTION 00700

GENERAL CONDITIONS

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between DISTRICT and CONTRACTOR (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to bidders and the requirements contained in the Bid Documents, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive or a written order for a minor change in the Work issued by the DISTRICT. The Contract Documents are complementary, and each obligation of the CONTRACTOR, subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the DISTRICT and any subcontractor or sub-subcontractor or between any persons or entities other than the DISTRICT and the CONTRACTOR.

1.1.3 THE WORK

The Work shall include all labor, materials and equipment necessary for the CONTRACTOR to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any CONTRACTOR or subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restriction attending the Work under the Contract Documents. Each such CONTRACTOR or subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents.

1.1.4 THE SITE

The "Site" refers to the grounds of the Project as defined by the Contract Documents and includes any and all lands affected by the performance of the Work. Specifically, "onsite" shall refer to the area bounded by the property lines as identified by the District's Field Engineer. "Offsite" shall refer to any area outside of the defined property lines.

1.1.5 THE PROJECT

The Project is the total construction of the Work performed in accordance with the Contract Documents in whole or in part and which may include construction by the DISTRICT or by separate CONTRACTORS.

1.1.6 THE DRAWINGS

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

1.1.7 THE SPECIFICATIONS

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

1.1.8 THE PROJECT MANUAL

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

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 THE PROJECT MANUAL

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by CONTRACTOR as if shown or mentioned in both.

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

1.2.1.3 **Conflicts.** In the event there is a discrepancy between the various Contract Documents, the DISTRICT/CONTRACTOR Agreement shall control. Without limiting CONTRACTOR's obligation to identify conflicts for resolution by the DISTRICT in accordance with Section 1.2.15, it is intended that the more stringent, higher quality and greater quantity of Work shall apply.

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

1.2.1.5 **Ambiguity.** Before commencing any portion of the Work, CONTRACTOR shall carefully examine all Drawings and Specifications and other information given to CONTRACTOR as to materials and methods of construction and other Project requirements. CONTRACTOR shall immediately notify ARCHITECT and DISTRICT in writing of any perceived or alleged error, inconsistency, ambiguity or lack of detail or explanation in the Drawings and Specification in the manner provided herein. If the CONTRACTOR or its subcontractors, material or equipment suppliers or any of their officers, agents, and employees performs, permits or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If CONTRACTOR performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of CONTRACTOR which is in error, inconsistent or ambiguous or not sufficiently detailed or explained, CONTRACTOR shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance. In no case shall any subcontractor proceed with the Work if uncertain without the CONTRACTOR's written direction and/or approval.

1.2.2 ADDENDA AND DEFERRED APPROVALS

~~1.2.2.1 **Addenda.** Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Department of State Architect (DSA). The requirements approved by DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.~~

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

1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 **Approval** means written authorization by DISTRICT or the DISTRICT's authorized representative for specific applications.

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

1.2.3.3 **Project** is the planned undertaking as provided for in the Project documents by DISTRICT and CONTRACTOR.

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

1.2.3.5 **General Conditions.** The General Conditions and Supplementary General Conditions are a part of each and every section of the Specifications.

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

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

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

1.2.3.9 **Work of the Contractor or Subcontractor** includes labor or materials (including, without limitation, equipment, fixtures and appliances) or both, incorporated in, or to be incorporated in the construction covered by the complete Contract Documents.

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

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

1.2.4 RULES OF DOCUMENTS INTERPRETATION

- A. In the event of conflict within the drawings, the following rules shall apply:
1. General notes, when identified as such, shall be incorporated into other portions of drawings.
 2. Schedules, when identified as such, are complementary with other notes and other portions of drawings including those identified as general notes.
 3. Larger scale drawings shall take precedence over smaller scale drawings.
 4. Figured, derived or numerical dimensions shall govern. At no time shall the CONTRACTOR base construction on scaled drawings.
- B. Specifications shall govern as to materials, workmanship and installation procedures.

- C. In the case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality and greater quantity of work shall apply.

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

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

ARTICLE 2

DISTRICT

2.1 **DEFINITION**

The term "DISTRICT" means the **SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT** as identified as such in the Agreement. The DISTRICT is referred to throughout the Contract Documents as if singular in number. The term "DISTRICT" means the DISTRICT or the DISTRICT's authorized representative.

2.2 **INFORMATION AND SERVICES REQUIRED OF THE DISTRICT**

2.2.1 **FINANCING AND FUNDING**

At the request of the CONTRACTOR, the DISTRICT will, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the CONTRACTOR

reasonable evidence that financial arrangements have been made to fulfill the DISTRICT's obligations under the Contract.

2.2.2 SITE SURVEY

When required by the scope of the Project, the DISTRICT will furnish, at its expense, a legal description and a land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site. Surveys to determine locations of construction, grading and site work shall be provided by the CONTRACTOR. Refer to Section 01 71 23 for extent of survey provided.

2.2.3 SOILS

2.2.3.1 DISTRICT Furnished Services. When required by the scope of the Project, the DISTRICT will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the ARCHITECT or as required by local or State codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions. When a report is prepared based on information obtained from test holes at the site, such report shall not be a part of this Agreement.

2.2.3.2 Contractor Reliance. Test borings and soils reports for the Project have been made for the DISTRICT to indicate the subsurface materials that might be encountered at particular locations on the Project. The DISTRICT has made these documents available to the CONTRACTOR and the CONTRACTOR has studied the results of such test borings and information that it has as to the subsurface conditions and site geology as set forth in the test borings and soils reports. The DISTRICT does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the DISTRICT's request, the CONTRACTOR shall make available to the DISTRICT the results of any site investigation, test borings, analyses, studies or other test conducted by or in the possession of the CONTRACTOR or any of its agents. Nothing herein contained shall be deemed a waiver by the CONTRACTOR to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the CONTRACTOR.

2.2.4 UTILITY SURVEY

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

2.2.5 INFORMATION

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

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

2.2.6.1 Removal, Relocation. Pursuant to Government Code §4215, the DISTRICT assumes the responsibility for removal, relocation, and protection of utilities located on the site at the time of commencement of construction under this Contract with respect to any such utility facilities, which are not identified in the Drawings and Specifications made part of the invitation to bid. The CONTRACTOR shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the DISTRICT to provide for removal or relocation of such utility facilities. DISTRICT shall compensate the CONTRACTOR for the costs of locating, repairing damage not due to the failure of the CONTRACTOR to exercise reasonable care and removing or relocating such utility facilities.

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

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

2.2.6.4 Underground Utility Clearance. It shall be CONTRACTOR's sole responsibility to timely notify all public and private utilities serving the site prior to commencing Work. As part of the work to be performed, CONTRACTOR shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4 and pay all fees charged pursuant to Government Code Section 4216 et seq.

2.2.7 EASEMENTS

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

2.2.8 REASONABLE PROMPTNESS

Information or services under DISTRICT's control will be furnished by the DISTRICT with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.9 COPIES FURNISHED

The CONTRACTOR will be furnished such copies of Drawings and Project Manuals as are stated in the Supplementary Conditions.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the DISTRICT enumerated herein and especially those in Article 6 (construction by DISTRICT or by separate CONTRACTORS), Article 9 (payments and completion), and Article 11 (insurance and bonds).

2.3 DISTRICT'S RIGHT TO STOP THE WORK

If the CONTRACTOR fails to correct work, which is not in accordance with the requirements of the Contract Documents as required by paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the DISTRICT, after providing notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the DISTRICT in writing, may order the CONTRACTOR to stop the Work or any portion thereof, until the cause of such order has been eliminated. The right of the DISTRICT to stop the Work shall not give rise to a duty on the part of the DISTRICT to exercise this right for the benefit of the CONTRACTOR or any other person or entity, except to the extent required by Article 6.

2.4 DISTRICT'S RIGHT TO CARRY OUT THE WORK

If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the contract Documents and fails (within a two (2) calendar day period after receipt of written notice or the time period expressly stated in the written notice from the DISTRICT) to commence and continue correction of such default or neglect with diligence and promptness, the DISTRICT may correct such deficiencies without prejudice to other remedies the DISTRICT may have. In such case, the CONTRACTOR will be invoiced the cost to correct such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect or failure. The invoice amount shall be deducted from the next payment due the CONTRACTOR. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the DISTRICT.

2.5 DISTRICT'S RIGHT TO TERMINATE AGREEMENT

- A. If the CONTRACTOR refuses or fails to complete the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if the CONTRACTOR should file a petition for relief as a debtor, or should relief be ordered against CONTRACTOR as a debtor under Title 11 of the United States Code, or if CONTRACTOR should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse or should fail to supply enough properly skilled workers or proper materials to complete the work in the time specified, or if CONTRACTOR should fail to make prompt payment to subcontractors for materials or labor, or persistently disregards laws or ordinances or instructions of DISTRICT, or if CONTRACTOR or its subcontractors should otherwise be guilty of a violation of any provision of this Agreement, then DISTRICT may, without prejudice to any other right or remedy, serve written notice upon CONTRACTOR and its surety of DISTRICT's intention to terminate this Agreement. Such notice shall contain the reasons for such intention to terminate, and unless within three (3) calendar days after the service of such notice such condition or violation shall cease and satisfactory arrangements for the correction thereof be made to DISTRICT, this Agreement shall upon the expiration of said three (3) calendar days, cease and terminate. In such case, CONTRACTOR shall not be entitled to receive any further payment until work is finished to DISTRICT's satisfaction.
- B. In the event of any such termination, DISTRICT shall immediately serve written notice thereof upon surety and CONTRACTOR, and surety shall have the right to take over and perform this Agreement, provided, however, that if surety within five (5) calendar days after service upon it of said notice of termination does not give DISTRICT written notice of its intention to take over and perform this Agreement or does not commence performance thereof within seven (7) calendar days after date of serving such notice of termination by DISTRICT on surety, DISTRICT may take over the work and prosecute same to completion by Agreement or by any other method it may deem advisable for the account and at the expense of CONTRACTOR, and CONTRACTOR and its surety shall be liable to DISTRICT for any excess cost or other damages occasioned by the DISTRICT thereby. Time is of the essence in this Agreement. If the DISTRICT takes over the work as hereinabove provided, the DISTRICT may, without liability for so doing, take possession of and utilize in completing the Work such materials, supplies, equipment and other property belonging to the CONTRACTOR as may be on the site of the work and necessary therefore.

- C. If the expense of finishing the Work, including compensation for additional architectural, managerial, and administrative services, shall exceed the unpaid balance of the Agreement, CONTRACTOR shall pay the difference to DISTRICT. Expense incurred by DISTRICT as herein provided, and damage incurred through CONTRACTOR's default, shall be certified to DISTRICT by ARCHITECT. If the unpaid balance under the Agreement shall exceed expense of finishing the work, including compensation for additional Architectural, managerial and administrative services, such excess shall be paid to CONTRACTOR.
- D. Should the DISTRICT determine that environmental considerations mandate that the Work not go forward, DISTRICT may notify CONTRACTOR that this Agreement is terminated due to environmental conditions and DISTRICT shall only be obligated to pay CONTRACTOR for the work that the CONTRACTOR had performed at the time of notification of termination of this Agreement for environmental considerations.
- E. In the event that sufficient funds are not appropriated to complete the Project or the DISTRICT determines that sufficient funds are not available to complete the Project, DISTRICT may terminate or suspend the completion of the Project at any time by giving written notice to the CONTRACTOR. In the event that the DISTRICT exercises this option, the DISTRICT shall pay for any and all work and materials completed or delivered onto the site and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of 15% for the CONTRACTOR's overhead and profit and there shall be no other costs or expenses paid to CONTRACTOR. All work, materials and orders paid for pursuant to this provision shall become the property of the DISTRICT. DISTRICT may, without cause, order CONTRACTOR in writing to suspend, delay or interrupt the Project in whole, or in part for such period of time as DISTRICT may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspension, delay or interruption.
- F. DISTRICT reserves the right to terminate this Agreement should the DISTRICT determine not to proceed because of the discovery of hazardous or unknown conditions. The CONTRACTOR shall receive payment for all Work performed to the date of termination.
- G. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the DISTRICT.

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The CONTRACTOR is the person or entity identified as such in the Agreement and is referred to through the Contract Documents. The term "CONTRACTOR" means the CONTRACTOR or the CONTRACTOR's authorized representative. CONTRACTOR is and shall at all times be deemed to be an independent CONTRACTOR and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Project documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the DISTRICT and CONTRACTOR or any of CONTRACTOR's agents or employees. To the extent that any portion of the Work is provided with the CONTRACTOR's own forces, any reference to subcontractors shall be equally applicable to the CONTRACTOR.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The CONTRACTOR shall supervise and direct the Work using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and coordinating all portions of the Work under the contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by contractors retained directly by the DISTRICT, CONTRACTOR shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. Specific duties of the CONTRACTOR shall be in accordance with Title 24 of the California Code of Regulations. CONTRACTOR shall fully comply with any and all reporting requirements of Education Code 17316 in the manner prescribed by Title 24.

3.2.2 CONTRACTOR LICENSING

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any CONTRACTOR not so licensed is subject to penalties under the law, and the contract will be considered void pursuant to Section 7028.7 of the Business and Professions Code. Any questions concerning a CONTRACTOR may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, P.O. Box 2600, Sacramento, CA 95826.

3.2.3 CONTRACTOR RESPONSIBILITY

The CONTRACTOR shall be responsible to the DISTRICT for acts and omissions of the CONTRACTOR's employees, subcontractors, material and equipment suppliers and their agents, employees, invitees and other persons performing portions of the Work under direct or indirect contract with the CONTRACTOR or any of its subcontractors. CONTRACTOR, its agents and employees shall not be entitled to any rights or privileges of DISTRICT employees and shall not be considered DISTRICT employees. DISTRICT shall be permitted to monitor the activities of the CONTRACTOR to determine compliance with the terms of the Contract Documents.

3.2.4 OBLIGATIONS NOT CHANGED BY ARCHITECT'S ACTIONS

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

3.2.5 ACCEPTANCE/APPROVAL OF WORK

The CONTRACTOR shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent work thereon.

3.2.6 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

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

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

During progress of the Work, CONTRACTOR shall keep on the work site a competent full-time Superintendent satisfactory to DISTRICT. The Superintendent shall be in attendance at the Project site during performance of the Work. Superintendent shall represent CONTRACTOR and all directions or communications given to Superintendent shall be as binding as if given to CONTRACTOR. Before commencing the Work herein, CONTRACTOR shall give written notice to DISTRICT and ARCHITECT of the name, qualifications and experience of such Superintendent. If Superintendent is found unsatisfactory by DISTRICT, CONTRACTOR shall replace the Superintendent with one acceptable to the DISTRICT. The Superintendent shall not be changed except with the written consent of DISTRICT, unless a superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in its employ, in which case, CONTRACTOR shall

notify DISTRICT and ARCHITECT in writing and replace said Superintendent with one acceptable to the DISTRICT.

3.3.2 STAFF

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

3.3.3. RESPONSIBILITY FOR ACTS AND OMISSIONS

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

3.3.4 SUBSEQUENT WORK

CONTRACTOR shall be responsible to determine when any completed portions of the Work already performed under this Agreement are suitable to receive subsequent work thereon

3.3.5 RIGHT TO REMOVE

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

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

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

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The CONTRACTOR shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so

that work in accordance with the standards of construction set forth in Contract Documents will result.

3.4.3 REPLACEMENT

Any work, materials or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and condemned by the DISTRICT, in which case, they shall be removed and replaced by the CONTRACTOR.

3.4.4 DISCIPLINE

The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, subcontractors and material or equipment suppliers retained for the Project. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.5 ORDERS

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

3.4.6 NONCONFORMING WORK OR MATERIALS

Any work, materials or equipment which do not conform to these requirements or the standard set forth in the Project documents, may be disapproved and condemned by the DISTRICT, in which case they shall be removed and replaced by the CONTRACTOR. All expenses, incidental to the procuring of said materials and/or equipment shall be paid for by the CONTRACTOR.

3.5 WARRANTY

The CONTRACTOR warrants to the DISTRICT and ARCHITECT that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The CONTRACTOR's warranty does not cover damage or defect caused by abuse, modifications not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. If required by the ARCHITECT, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

CONTRACTOR will pay all applicable federal, state and local taxes on all materials, labor or services furnished by it, and all taxes arising out of its operations under the Contract Documents. DISTRICT is exempt from Federal Excise Tax and a Certificate of Exemption shall be provided upon request.

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

The CONTRACTOR shall initiate and pursue the application process for obtaining all permits and licenses (including all required DISTRICT signatures) necessary for the prosecution of the work, including utility fees.

DISTRICT will reimburse CONTRACTOR the actual documented cost of such permits and fees, with no overhead or profit added. No reimbursement will be allowed for fees associated with City or County business licenses, disposals, trucking, etc.

3.7.2 COMPLIANCE

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

3.7.3 CONTRACT DOCUMENTS

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Project documents. CONTRACTOR shall carefully study and compare all Project documents, plans, drawings, specifications and other instructions and shall at once report to ARCHITECT any error, inconsistency or omission which CONTRACTOR or its employees may discover. The CONTRACTOR represents itself to DISTRICT as a skilled, knowledgeable and experienced CONTRACTOR. The CONTRACTOR shall be liable to the DISTRICT for damage resulting from errors, inconsistencies or omissions in the Project documents that the CONTRACTOR recognized and which CONTRACTOR knowingly failed to report and which a similarly skilled, knowledgeable and experienced CONTRACTOR would have discovered.

3.7.4 RESPONSIBILITY

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

3.8 ALLOWANCES

3.8.1 CONTRACT SUM

The CONTRACTOR shall include in the Contract Sum all allowance stated in the Contract Document. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the DISTRICT may direct.

3.8.2 SCOPE

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

3.8.2.2 **Cost.** Allowances shall cover the cost to the CONTRACTOR of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, etc.

3.8.2.3 **Cost.** CONTRACTOR's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances.

3.8.2.4 **Contract Sum Adjustment.** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the CONTRACTOR's costs under paragraph 3.8.2.3.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

Refer to Section 01 32 16 Construction Progress Schedule for project schedule responsibilities.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The CONTRACTOR shall maintain at the Site for the DISTRICT one applicable copy of Titles 19 and 24 and a record copy of the Drawings, Specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction. In addition, the CONTRACTOR shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These documents shall be available to the ARCHITECT and shall be delivered to the ARCHITECT for delivery to the DISTRICT upon completion of the Work. CONTRACTOR shall be acquainted with and shall comply with the provisions of said regulations as they relate to the Contract. (See particularly the Duties of Contractor, 24 California Code of Regulations, Section 4343.) CONTRACTOR shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions of the Work, particularly Titles 8 and 17.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 **Shop Drawings.** The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by CONTRACTOR, subcontractors, manufacturers, suppliers or distributors illustrating some portion of the Work, and includes: illustrations, fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; writing and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment or systems and their position conform to the requirements of the Contract Documents. The CONTRACTOR shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate a material, product or system for some portion of the Work. As used herein, the term “manufactured” applies to standard unit usually mass-produced, and “fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements.

Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

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

3.11.1.3 **CONTRACTOR’S Responsibility.** CONTRACTOR shall obtain and shall submit all required shop drawings and samples in accordance with CONTRACTOR’S “Schedule for Submission of Shop Drawings and Samples” as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other CONTRACTOR or subcontractor but in no event later than thirty-five (35) calendar days after the Notice of Award, unless noted otherwise. No extensions of time will be granted to CONTRACTOR or any subcontractor because of its failure to have shop drawings and samples submitted in accordance with the schedule. Each subcontractor shall submit all shop drawings, samples and manufacturer’s descriptive data for the review of the DISTRICT, the CONTRACTOR and the ARCHITECT through the CONTRACTOR. By submitting shop drawings, product data and samples, the CONTRACTOR or submitting party (if other than CONTRACTOR) represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, “Substitutions.” Review by DISTRICT and ARCHITECT shall not relieve the CONTRACTOR or any subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. CONTRACTOR’S review and approval of shop drawings shall include the following stamp:

“The Prime Contractor has reviewed and approved the construction criteria and has also made written notation regarding any information in these shop drawings that does not conform to the Project Contract Documents. The Prime Contractor shall verify actual dimensions. This shop drawing has been coordinated with the Contract Documents, and all other Shop Drawings within this Prime Contractor’s scope of work. The duty of coordination has not been delegated to the prime Contractor’s subcontractors, material suppliers, the Architect or the Engineers.

Spec Section: _____

Signed: _____

Date: _____

Any submission, which in ARCHITECT's opinion is incomplete, contains numerous errors, or has been checked only superficially will be returned unreviewed by the ARCHITECT for resubmission by the CONTRACTOR."

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

3.11.2 DRAWING SUBMISSION PROCEDURE

3.11.2.1 **Transmittal Letter and Other Requirements.** All shop drawings must be properly identified with the name of the project and dated and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All subcontractor submissions shall be made through the CONTRACTOR. Each drawing shall have a clear space for the stamps of ARCHITECT and CONTRACTOR. Only shop drawings required to be submitted by the Contract Documents shall be reviewed. All submittals are to be forwarded to the DISTRICT.

3.11.2.2 **Copies Required.** Each submittal shall include one (1) legible, reproducible sepia and seven (7) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the CONTRACTOR, of: manufacturers' descriptive data for materials, equipment and fixtures, including catalog sheets showing dimensions, performance, characteristics and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

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

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

3.11.2.5 **Responsibility for Errors.** The ARCHITECT's review shall not relieve the CONTRACTOR or any subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the work, nor from the necessity of furnishing any work required by the Project documents which may not be indicated on shop drawings when reviewed. CONTRACTOR and subcontractors shall be solely responsible for any quantities which may be shown on the shop drawings.

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

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

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

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

3.11.3.4 **Record Drawings and Annotated Specifications.** The CONTRACTOR will prepare and maintain on a current basis an accurate and complete set of record drawings showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features, and annotated specifications showing clearly all changes, revisions and substitutions during construction. A copy of such record drawings and annotated specifications will be delivered to DISTRICT in accordance with the schedule prepared by CONTRACTOR. In the event of a specification that allows CONTRACTOR to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the CONTRACTOR has furnished. The CONTRACTOR will update the record drawings and annotated specifications as often as necessary to keep them current but no less often than weekly. The record drawings and annotated specifications shall be kept at the site and available for inspection by the DISTRICT & ARCHITECT.

On completion of the CONTRACTOR's portion of the work and prior to application for final payment, the CONTRACTOR will provide one complete set of record drawings and annotated specifications to the DISTRICT. Certifying them to be a complete and accurate reflection of the actual construction conditions of the work.

3.11.3.5 **Equipment Manuals.** CONTRACTOR shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the contract documents and any additional data specifically requested under the various sections of the specifications for each division of the work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the completion of its work, the CONTRACTOR shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its work. Prior to submittal of CONTRACTOR's application for final payment, and as a further condition to its approval by the ARCHITECT, each subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the CONTRACTOR, who shall assemble these manuals for all divisions of the work, review them for completeness and submit them to the DISTRICT.

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

3.11.4 SUBSTITUTIONS

3.11.4.1 **One Product Specified.** Unless the specifications state that no substitution is permitted, whenever in the contract documents any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction is indicated or specified by name, make, trade name or catalog number, with or without the words “or equal,” such specification shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by the words “or equal.” CONTRACTOR may, unless otherwise stated, offer any material process or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the contract documents.

3.11.4.2 **Two or More Products Specified.** When two or more acceptable products are specified for an item of the work, the choice will be up to the CONTRACTOR. CONTRACTOR shall utilize the same product throughout the project. If the required notice is not provided and an “or equal” substitution is requested, the DISTRICT, at its sole discretion, may refuse to consider the substitution unless the product specified is no longer commercially available. If the DISTRICT allows the substitution to be proposed despite the lack of proper notice, the CONTRACTOR will be invoiced by the DISTRICT for the professional fees incurred by the ARCHITECT or ARCHITECT’s consultants in reviewing the proposed substitution.

3.11.4.3 **Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the substitution request form available from the ARCHITECT within five (5) calendar days of the date of the Notice to Award. Consideration of substitution does not modify the project schedule regarding shop drawing submission date. Any requests submitted after the five (5) calendar days will not be considered, except as noted in paragraph 3.11.4.2 or at the sole discretion of the DISTRICT. A substitution request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to DISTRICT; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the CONTRACTOR. The CONTRACTOR shall furnish with its request all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the ARCHITECT and the DISTRICT in determining whether the proposed substitution is acceptable. The final decision shall be the DISTRICTS. DISTRICT may condition its approval of the substitution upon delivery to DISTRICT of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the division of the state ARCHITECT’s, or any other governmental agency having jurisdiction, approval of a requested substitution shall be on the requesting party.

3.11.4.4 **List of Manufacturers and Products Required.** The subcontractor shall prepare and submit to the CONTRACTOR within thirty-five (35) calendar days of Notice of Award, comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the project, including information on materials, equipment, and fixtures required by the contract documents, as may be required for CONTRACTOR's or ARCHITECT's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data and samples, which are required by the contract documents, but rather as a base from which more detailed submittals shall be developed for the final review of the CONTRACTOR and the ARCHITECT.

3.11.5 DEFERRED APPROVALS OF SUBSTITUTIONS

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

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The CONTRACTOR shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly. Refer to individual scope of work sheets for more detailed information.

3.12.2 CONSENT

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

3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the ARCHITECT. Work done contrary to such authority is at the CONTRACTOR's risk, subject to replacement at its own expense and without reimbursement under the contract. Agency approvals shall be obtained by the ARCHITECT, not by the CONTRACTOR.

3.12.4 SUBSEQUENT REMOVAL

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

3.13 CLEANING UP

3.13.1 CONTRACTOR'S RESPONSIBILITY

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

3.13.2 FAILURE TO CLEANUP

If the CONTRACTOR fails to clean up as provided in the contract documents, the DISTRICT may do so, and the cost thereof shall be invoiced to the CONTRACTOR and deducted from the next progress payment. Each subcontractor shall have the responsibility for the cleanup of its own work. If the subcontractor fails to clean up, the CONTRACTOR may do so and back-charge the subcontractor.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the DISTRICT or the ARCHITECT, CONTRACTOR and subcontractor shall dismantle temporary structures, if any, and remove from the site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish and supplies belonging to CONTRACTOR or subcontractor. If the CONTRACTOR does not remove the tools, equipment, machinery and materials within fifteen (15) calendar days after completion of its work, then they shall be deemed abandoned and the DISTRICT can dispose of them for its own benefit in whatever way it deems appropriate.

3.14 ACCESS TO WORK

The CONTRACTOR shall provide the DISTRICT, the ARCHITECT and the inspector, access to the work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The CONTRACTOR shall pay all royalties and license fees. The CONTRACTOR shall defend suits or claims of infringement of patent rights and shall hold the DISTRICT and the ARCHITECT harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the contract documents. However, if the CONTRACTOR has reason to believe the required design, process, or product is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless such information is promptly furnished to the ARCHITECT.

3.15.2 REVIEW

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

3.16 INDEMNIFICATION

3.16.1 SCOPE: CONTRACTOR

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify, and hold harmless the DISTRICT, ARCHITECT, ARCHITECT's consultants, the Inspector of Record, the State of California and their respective agents, employees, officers and directors, from and against claims, damages, losses and expenses (including, but not limited to attorneys' fees and costs including fees of consultants) arising out of or resulting from: performance of the work (including, but not limited to) the CONTRACTOR's or its subcontractor's use of the site; the CONTRACTOR's or its subcontractor's construction of the project, or failure to construct the project, or any portion thereof; the use, misuse, erection, maintenance, operation or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists and rigging supports, whether or not such machinery or equipment was furnished, rented or loaned by any of the indemnitees; or any act, omission, negligence or willful misconduct of the CONTRACTOR or its subcontractors or their respective agents, employees, material or equipment suppliers, invitees or licensees but only to the extent caused in whole or in part by the acts or omissions of the CONTRACTOR, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by~party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person or entity described in this paragraph.

3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 **Indemnity.** The subcontractors shall defend, indemnify, and hold harmless the DISTRICT, the ARCHITECT and the ARCHITECT's consultants, the inspector of record, the State of California and their respective agents, employees, officers and directors from and against claims, damages, losses and expenses, including, but not limited to, attorneys fees and costs, including consultants) arising out of or resulting from: performance of the work (including, but not limited to) the subcontractors' use of the site; the subcontractors' construction of the project or failure to construct the project or any portion thereof; the use, misuse, erection, maintenance, operation or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists and rigging supports, whether or not such machinery or equipment was furnished, rented or loaned by any of the indemnities; or any act, omission negligence or willful misconduct of the subcontractors or their respective agents, employees, material or equipment suppliers, invitees or licensees but only to the extent caused in whole or in part by the acts or omissions of the subcontractor anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person or entity described in this paragraph.

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

3.16.3 NO LIMITATION

The CONTRACTOR's and the subcontractor's obligation to indemnify and defend the indemnities hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property and death of any person; for breach of any warranty, express or implied; for failure of the CONTRACTOR or the subcontractor to comply with any applicable governmental law, rule, regulation or other requirement; and for products installed in or used in connection with the work.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The ARCHITECT is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the agreement and is referred to throughout the contract documents as if singular in number. The term “architect” means the ARCHITECT or the ARCHITECT’s authorized representative, and shall also refer to all engineering consultants under the ARCHITECT’s direction and control.

4.1.2 MODIFICATION

Duties, responsibilities, and limitations of authority of the ARCHITECT as set forth in the contract documents shall not be restricted, modified, or extended without written consent of the DISTRICT and ARCHITECT. Consent shall not be unreasonably withheld.

4.1.3 TERMINATION

In the case of the termination of the ARCHITECT, the DISTRICT may appoint an ARCHITECT or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement ARCHITECT under the contract documents shall be that of the former ARCHITECT.

4.2 ARCHITECT’S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The ARCHITECT will provide administration of the contract as described in the contract documents and will be the DISTRICT’s representative during construction, until final payment is due, and during the one (1) year period following the commencement of any warranties. The ARCHITECT will advise and consult with the DISTRICT. The ARCHITECT will have authority to act on behalf of the DISTRICT only to the extent provided in the contract documents, unless otherwise modified by in writing in accordance with other provisions of the DISTRICT/ARCHITECT agreement. The ARCHITECT will have all responsibilities and power established by law including California Code of Regulations, Title 24.

4.2.2 SITE VISITS

The ARCHITECT will visit the site at intervals necessary in the judgment of the ARCHITECT or as otherwise agreed by the DISTRICT and the ARCHITECT in writing to become generally familiar with the progress and quality of the completed work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will be in accordance with the contract documents. However, the ARCHITECT will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the work. On the basis of its on-site observations, the ARCHITECT will keep the DISTRICT informed of the progress of the work.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

The ARCHITECT shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation or for safety precautions and programs in connection with the work, since these are solely the CONTRACTOR's responsibility under the contract documents. The ARCHITECT shall not be responsible for the CONTRACTOR's, subcontractors', material or equipment suppliers' or any other person's schedules or failure to carry out the work in accordance with the contract documents. The ARCHITECT shall not have control over or charge of acts or omissions of the CONTRACTOR, subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the work. The CONTRACTOR shall not be relieved of obligations to perform the work in accordance with the contract documents either by activities or duties of the ARCHITECT in the ARCHITECT's administration of the contract documents, or by tests, inspections, or approvals required or performed by persons other than the CONTRACTOR. The ARCHITECT's duties shall not extend to the receipt, inspection and acceptance on behalf of the DISTRICT of furniture, furnishings and equipment at the time of their delivery to the premises and their installation.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the contract documents or when direct communications are warranted by special circumstances, the DISTRICT and the CONTRACTOR shall communicate directly. Where direct communication is necessary between the DISTRICT and the CONTRACTOR, DISTRICT shall be promptly informed and shall receive copies of all written communications. Communications by and with the ARCHITECT's consultants shall be through the DISTRICT and then through the ARCHITECT. Communications by and with subcontractors and material or equipment suppliers shall be through the CONTRACTOR.

4.2.5 PAYMENT APPLICATIONS

Pursuant to Article 9, based on the ARCHITECT's observations, the CONTRACTOR's applications for payment and the Inspector's approval, the ARCHITECT will review and make recommendations to the DISTRICT regarding the amounts due the CONTRACTOR on the certificates for payment.

4.2.6 REJECTION OF WORK

In addition to the rights, duties and obligations of the inspector under this article, the ARCHITECT may recommend to the DISTRICT that the DISTRICT reject work which does not conform to the contract documents. Whenever the ARCHITECT considers it necessary or advisable to achieve the intent of the contract documents, the ARCHITECT may recommend to the DISTRICT that the DISTRICT require additional inspection or testing of the Work, whether or not such work is fabricated, installed, or completed. However, neither this authority of the ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ARCHITECT to the CONTRACTOR, subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

4.2.7 CHANGE ORDERS

The ARCHITECT will prepare change orders and construction change directives and may authorize minor changes in the work as provided in paragraph 7.1.2.

4.2.8 WARRANTIES UPON COMPLETION

The ARCHITECT in conjunction with the inspector will conduct field reviews of the work to determine the date of completion, shall receive and forward to the DISTRICT for the DISTRICT's review and records written warranties and related documents required by the contract and assembled by the CONTRACTOR, and will issue a final certificate for payment when the DISTRICT believes the work has been completed in compliance with the requirements of the contract documents. The handling by the DISTRICT of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the DISTRICT any responsibilities or liabilities required by the contract documents of the CONTRACTOR or other entities, parties, or persons performing or supplying the work.

The ARCHITECT will conduct a field review of the CONTRACTOR's comprehensive list of items to be completed or corrected (final punch list) and one (1) follow-up field review if required. The cost incurred by the DISTRICT for further field reviews or the preparation of further punch lists by the ARCHITECT shall be invoiced to the CONTRACTOR and deducted from the final payment.

4.2.9 INTERPRETATION

The ARCHITECT will interpret and decide matters concerning performance under and requirements of the contract documents on written request of either the DISTRICT or the CONTRACTOR. The ARCHITECT's response to such a request will be made with reasonable promptness, while allowing sufficient time in the ARCHITECT's professional judgment, to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 **ARCHITECT's Interpretations and Decisions.** Interpretations and decisions of the ARCHITECT will be consistent with the intent of and reasonably inferable from the contract documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the ARCHITECT will endeavor to secure faithful performance by both the DISTRICT and the CONTRACTOR, and will not show partiality to either. The ARCHITECT will not be liable for the result of interpretations or decisions so rendered in good faith. The work shall be executed in conformity with and the CONTRACTOR shall do no work without, approved drawings, ARCHITECT's clarifying instructions and/or submittals.

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

4.2.10.3 **Dimensions.** Dimensions of work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on drawings, ARCHITECT shall supply them on request. The ARCHITECT's decisions on matters relating to aesthetic effect will be final if consistent with the contract documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

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

4.3.2 INSPECTOR'S DUTIES

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

4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK

The inspector shall have the authority to reject work that does not comply with the provisions of the contract documents. In addition, the inspector may stop any work, which poses a probable risk of harm to persons or property. The CONTRACTOR shall instruct its employees, subcontractors, material and equipment suppliers, etc., accordingly. The absence of any stop work order or rejection of any portion of the work shall not relieve the CONTRACTOR from any of its obligations pursuant to the contract documents.

4.3.4 INSPECTOR'S FACILITIES

Within seven (7) calendar days after notice to proceed, the DISTRICT shall provide the inspector with the temporary facilities as required under Division 1 of the specifications.

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

If at any time prior to the completion of the requirements under the contract documents, through no fault of its own, the DISTRICT is required to provide or secure additional professional services for any reason by any act of the CONTRACTOR, the CONTRACTOR shall be invoiced by the DISTRICT for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other DISTRICT remedies. If payment, then or thereafter, due to the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the DISTRICT. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the CONTRACTOR.
- B. Services made necessary due to the defects or deficiencies in the work of the CONTRACTOR.
- C. Services required by failure of the CONTRACTOR to perform according to any provision of the contract documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, subcontractors proposed by the CONTRACTOR, and making subsequent revisions to drawings, specifications and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the CONTRACTOR in connection with the work outside the established change order process.

- F. Services required by the failure of the CONTRACTOR to prosecute the work in a timely manner in compliance within the specified time of completion.
- G. Services in conjunction with the testing, adjusting, balancing and startup of equipment other than the normal amount customarily associated for the type of work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data and samples.

4.5 CLAIMS AND DISPUTES

4.5.1 DEFINITION

A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term "claim" also includes other disputes and matters in question between the DISTRICT and the CONTRACTOR arising out of or relating to the contract documents. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

4.5.2 DECISION OF ARCHITECT

Claims, including those alleging an error or omission by the ARCHITECT, shall be referred initially to the ARCHITECT. A decision by the ARCHITECT, as provided in paragraph 4.6.4, shall be required as a condition precedent to mediation of a claim between the CONTRACTOR and the DISTRICT as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the work, or the extent to which the work has been completed. The decision by the ARCHITECT in response to a claim shall not be a condition precedent to mediation in the event: if the position of ARCHITECT is vacant; the ARCHITECT has not received evidence or has failed to render a decision within agreed time limit; the ARCHITECT has failed to take action required under paragraph 4.6.4 within thirty (30) calendar days after the claim is made, forty-five (45) calendar days have passed after the claim has been referred to the ARCHITECT; or the claim relates to a stop notice claim.

4.5.3 TIME LIMIT ON CLAIMS

Claims by either party must be made within ten (10) calendar days after occurrence of the event giving rise to such claim or within ten (10) calendar days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Claims must be made by written notice. An additional claim made after the initial claim has been implemented by change order will not be considered. The failure of the CONTRACTOR to provide the required notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

4.5.4 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a claim including mediation, arbitration, or litigation, unless otherwise agreed to in writing, the CONTRACTOR shall proceed diligently with performance of the contract, and the DISTRICT shall continue to make any undisputed payments in accordance with the contract.

4.5.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.5.1 **Trenches or Excavations Less Than Four (4) Feet Below The Surface.** If conditions are encountered at the site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the contract documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the contract documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) calendar days after first observance of the conditions. The ARCHITECT will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, time required for or performance of any part of the work, will recommend an equitable adjustment in the contract sum, contract time, or both. If the ARCHITECT determines that the conditions at the site are not materially different from those indicated in the contract documents and that no change in the terms of the contract is justified, the ARCHITECT shall so notify the DISTRICT and the CONTRACTOR in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) calendar days after the ARCHITECT has given notice of the decision. If the DISTRICT and the CONTRACTOR cannot agree on an adjustment in the contract sum or the contract time, the adjustment shall be referred to the ARCHITECT for initial determination, subject to other proceedings pursuant to paragraph 4.6.

4.5.5.2 **Trenches or Excavation Greater Than Four (4) Feet Below The Surface.** Pursuant to Public Contract Code § 7104, when any excavation or trenching extends greater than four (4) feet below the surface:

- A. The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
 - (1) material that the CONTRACTOR believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.
 - (2) subsurface or latent physical conditions at the site differing from those indicated.

- (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.
- B. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
- C. In the event that a dispute arises between the public entity and the CONTRACTOR whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for performance of any part of the work, the CONTRACTOR shall not be excused from 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 which pertain to the resolution of disputes and protests between the contracting parties.

4.5.6 CLAIMS FOR ADDITIONAL COST

If the CONTRACTOR wishes to make claim for an increase in the contract sum, written notice as provided herein shall be given before proceeding to execute the work. Each claim for additional cost must include any claim for additional time and its associated costs. Prior notice is not required for claims relating to an emergency endangering life or property arising under paragraph 10.4. 1. If the CONTRACTOR believes additional cost is involved for reasons, including, but not limited to the following: a written interpretation from the ARCHITECT, an order by the DISTRICT to stop the work where the CONTRACTOR was not at fault, a written order for a minor change in the work issued by the ARCHITECT, failure of payment by the DISTRICT, termination of the contract by the DISTRICT, the DISTRICT's suspension of the work or other reasonable grounds, a claim shall be filed in accordance with the procedure established herein.

4.5.7 CLAIMS FOR ADDITIONAL TIME

4.5.7.1 **Notice and Extent of Claim.** If the CONTRACTOR wishes to make a claim for an increase in the contract time, written notice as provided herein shall be given. The CONTRACTOR's claim shall include the cost associated with the extension and effect of delay on progress of the work. In the case of a continuing delay, only one (1) claim is necessary.

4.5.7.2 **Adverse Weather Claims.** If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. All extensions of time granted for adverse weather conditions will be non compensable.

4.5.7.3 **No Reservation Allowed.** In no event will the CONTRACTOR be allowed to reserve its rights to assert a claim for time extension later than as required by paragraph 4.5.3 unless the DISTRICT agrees in writing to allow such reservation.

4.5.8 **INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party to the contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) calendar days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be made as provided in paragraphs 4.5.6 or 4.5.7.

4.6 **RESOLUTION OF CLAIMS AND DISPUTES**

4.6.1 **ARCHITECT'S REVIEW**

The ARCHITECT will review claims and take one or more of the following preliminary actions within ten (10) calendar days of receipt of a claim: request additional supporting data from the claimant; submit a schedule to the parties indicating when the ARCHITECT expects to take action; reject the claim in whole or in part, stating reasons for rejection; recommend approval of the claim by the other party; or suggest a compromise. The ARCHITECT may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.6.2 **DOCUMENTATION IF RESOLVED**

If a claim has been resolved, the ARCHITECT will prepare or obtain appropriate documentation.

4.6.3 **ACTIONS IF NOT RESOLVED**

If a claim has not been resolved, the party making the claim shall, within ten (10) calendar days after the ARCHITECT's preliminary response, take one or more of the following actions: submit additional supporting data requested by the ARCHITECT; modify the initial claim; or notify the ARCHITECT that the initial claim stands.

4.6.4 ARCHITECT'S WRITTEN DECISION

If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the ARCHITECT, the ARCHITECT will notify the parties in writing that the ARCHITECT's decision will be made within seven (7) calendar days. Upon expiration of such time period, the ARCHITECT will render to the parties its written decision relative to the claim, including any change in the contract sum or contract time or both. The ARCHITECT may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.7 ALTERNATE DISPUTE RESOLUTION OF CLAIMS OF \$375,000.00 OR LESS

4.7.1 CLAIMS LESS THAN \$375,000.00

Notwithstanding any other provision herein, claims of \$375,000.00 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code § 20104, *et seq.* "Claim" for this purpose means a separate demand by the CONTRACTOR for a time extension, payment of money or damages arising from work done by or on behalf of the CONTRACTOR pursuant to the contract, for which payment is expressly provided, or the CONTRACTOR is otherwise entitled to, or an amount the payment of which is disputed by the DISTRICT.

4.7.2 SUBMISSION OF CLAIMS LESS THAN \$375,000.00

The CONTRACTOR shall submit its claim of \$375,000.00 or less to the DISTRICT in writing, within the time frames established under paragraph 4.5.3, but no later than before the final payment is made. The DISTRICT shall respond within the time provided by statute. If the CONTRACTOR disagrees with the response or the DISTRICT fails to respond within the time permitted. The CONTRACTOR shall notify the DISTRICT of the disagreement in writing within fifteen (15) calendar days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference as detailed in paragraph 4.8.1. The DISTRICT shall schedule a meet-and-confer conference within thirty (30) calendar days of the demand. If not resolved at the meet-and-confer conference, then the claim shall be submitted to mediation pursuant to the procedures set forth in paragraph 4.9. if the dispute is not resolved at the mediation, the CONTRACTOR may initiate a civil action as set forth in Public Contract Code § 20104 *et seq.*

4.7.3 TIME LIMITS NOT EXTENDED

Nothing in subdivision (a) of Public Contract Code § 20104.2 shall extend the time limit or supersede the notice requirements provided in this contract for filing claims by the CONTRACTOR.

4.8 DISPUTE RESOLUTION OF CLAIMS IN EXCESS OF \$375,000.00

As a condition precedent to the initiation of litigation and subsequent to the fulfillment of the claims procedures established in paragraph 4.5 of this Article, disputes in excess of a total value of \$375,000.00 shall first be submitted to mediation pursuant to the procedures set forth in paragraph 4.9.

4.8.1 MEET AND CONFER CONFERENCE

Following action by the ARCHITECT under Paragraph 4.6, the parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy. The party disputing the ARCHITECT's action shall give the other party written notice of the dispute. Within ten (10) calendar days after delivery of said notice, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within twenty (20) calendar days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) calendar days, either party may initiate mediation of the controversy or claim under paragraph 4.9.

4.9 MEDIATION PROCEDURES.

4.9.1 NEGOTIATIONS BEFORE MEDIATION

Negotiations to resolve disputes before mediation is initiated are for settlement purposes only and are not binding.

4.9.2 MEDIATION

4.9.2.1 **Authorization.** In the event of a dispute or issue that cannot be resolved by negotiation, the DISTRICT and the CONTRACTOR agree to attempt to resolve the matter by mediation. Said mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.

4.9.2.2 **Initiation of Mediation.** Either party may initiate mediation by notifying the other party or parties in writing.

4.9.2.3 **Request for Mediation.** A request for mediation shall contain a brief statement of the nature of the dispute or claim and the names, addresses and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.

4.9.2.4 **Selection of Mediator.** Within fourteen (14) calendar days after execution of the contract for construction, the parties will meet-and-confer to select an appropriate mediator agreeable to all parties and two (2) alternate mediators, who will serve for the entire project. If the parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by a recognized association such as the American Arbitration Association.

4.9.2.5 **Qualifications of a Mediator.** Any mediator selected shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Before accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties shall meet and confer and decide whether to select another mediator.

4.9.2.6 **Vacancies.** If any mediator shall become unable or unwilling to serve, the first alternate mediator shall be selected unless the parties agree otherwise.

4.9.2.7 **Representation.** Any party may be represented by persons of its choice, who shall have full authority to negotiate. The names and addresses of such persons shall be communicated in writing to all parties and to the mediator.

4.9.2.8 **Time and Place of Mediation.** The mediator shall set the time of each mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine. All reasonable efforts will be made by the parties and the mediator to schedule the first session within thirty (30) calendar days after initiation of mediation.

4.9.2.9 **Identification of Matters in Dispute.** At least ten (10) calendar days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.

4.9.2.10 **Authority of Mediator.** The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

4.9.2.11 **Privacy.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

4.9.2.12 **Confidentiality.** Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by a mediator while serving as mediator shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the mediation proceedings; proposals made or views expressed by the mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

4.9.2.13 **No Stenographic Record.** There shall be no stenographic record of the mediation.

4.9.2.14 **Termination of Mediation.** The mediation shall be terminated: by the execution of a settlement agreement by the parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

4.9.2.15 **Exclusion of Liability.** No mediator shall be a necessary party in judicial proceedings related to the mediation. No mediator shall be liable to any party for any act or omission in connection with any mediation conducted hereunder.

4.9.2.16 **Interpretation and Application of These Mediation Provisions.** The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.

4.9.2.17 **Expenses.** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the mediation, including, required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by all parties to the mediation.

ARTICLE 5
SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A subcontractor is a person or entity, who has a contract with the CONTRACTOR to perform a portion of the work at the site. The term subcontractor is referred to throughout the contract documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor. The term “subcontractor” does not include a separate CONTRACTOR or subcontractors of a separate CONTRACTOR.

5.1.2 SUB-SUBCONTRACTOR

A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform a portion of the work at the site. The term “sub-subcontractor” is referred to throughout the contract documents as if singular in number and means a sub-subcontractor or an authorized representative of the sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a subcontractor is designated as a “specialty CONTRACTOR” as defined in § 7058 of the Business and Professions Code, all of the work outside of that subcontractor’s specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code § 4100, et seq.

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

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF DISTRICT

In accordance with Public Contract Code § 4107 and 4107.5, no CONTRACTOR whose bid is accepted shall, without the written consent of the DISTRICT: substitute any person or entity as a subcontractor in place of the subcontractor designated in the original bid; permit any such subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original subcontractor listed in the original bid; sublet or subcontract any portion of the work in excess of one-half of one percent (.5%) of the CONTRACTOR’s total bid as to which its original bid did not designate a subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the contract. Any consent, if given, shall not relieve CONTRACTOR or its subcontractors from their obligations under the terms of the contract documents.

5.2.2 GROUNDS FOR SUBSTITUTION

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

- A. When the subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime CONTRACTOR;
- B. When the listed subcontractor becomes bankrupt or insolvent;
- C. When the listed subcontractor fails or refuses to perform his or her subcontract;
- D. When the listed subcontractor fails or refuses to meet the bond requirements of the prime CONTRACTOR set forth in Public Contract Code § 4108.
- E. When the CONTRACTOR demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code § 4107. 5, that the name of the subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed subcontractor is not licensed pursuant to the CONTRACTOR's license law; or
- G. When the awarding authority or its duly authorized officer, determines that the work being performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or the subcontractor is substantially delaying or disrupting the progress of the work.
- H. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- I. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

5.2.2.1 **No Change in Contract.** Any substitutions of subcontractors shall not result in any increase in the contract price or result in the granting of any extension of time for the completion of the project.

5.2.2.2 **Substitution Due to Clerical Error.** The CONTRACTOR, as a condition of asserting a claim of inadvertent clerical error in the listing of a subcontractor, shall, pursuant to Public Contract Code § 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the subcontractor it claims to have listed in error, and the intended subcontractor who had bid to the CONTRACTOR prior to bid opening. Any listed subcontractor who has been notified by the CONTRACTOR in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the CONTRACTOR written objection to the CONTRACTOR's claim of inadvertent clerical error.

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

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

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

5.3 **SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the CONTRACTOR by terms of the contract documents, and to assume toward the CONTRACTOR all obligations and responsibilities, which the CONTRACTOR, by the contract documents, assumes toward the DISTRICT and the ARCHITECT. Each subcontract agreement shall preserve and protect the rights of the, DISTRICT and the ARCHITECT under the Contract documents with respect to the work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the CONTRACTOR that the CONTRACTOR, by the contract documents, has against the DISTRICT. Where appropriate, the CONTRACTOR shall require each subcontractor to enter into similar agreements with sub subcontractors.

The CONTRACTOR shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the contract documents to which the subcontractor will be bound. Upon written request of the subcontractor, the CONTRACTOR shall identify to the subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the contract documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the work is assigned by the CONTRACTOR to the DISTRICT provided that:

- A. Assignment is effective only after termination of the contract with the CONTRACTOR by the DISTRICT for cause pursuant to Article 14 and only for those subcontract agreements which the DISTRICT accepts by notifying the subcontractor in writing; and
- B. Assignment is subject to the prior rights of the Surety, if any, obligated under any bond relating to the contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

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

5.5.1 SUPERVISION BY SUBCONTRACTORS

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

5.5.2 DISCIPLINE AND ORDER

Each subcontractor shall at all times enforce strict discipline and good order among its subcontractors, material or equipment suppliers or their agents, employees and invitees and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution or unsightly conditions relative to property areas adjacent to or in the vicinity of the site. The subcontractor shall not employ on the work any unfit person or anyone not skilled in the task assigned. The CONTRACTOR shall have the right to remove from the work any employee of a subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

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

5.5.4 SUBCONTRACTOR INFORMATION

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

5.5.5 TEMPORARY STRUCTURES

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

5.5.6 CHARGES TO SUBCONTRACTOR

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

5.5.7 FINES IMPOSED

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

5.5.8 PROJECT SIGNS

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

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to CONTRACTOR under the contract documents or at law, should: the subcontractor fail to perform its portion of the work in a skilled and expeditious manner in accordance with the terms of the contract documents with sufficient labor, materials, equipment and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the subcontractor or the subcontractor is declared to be bankrupt or insolvent and such appointment, bankruptcy or insolvency proceedings or declaration is not set aside within thirty (30) calendar days, then the CONTRACTOR, upon three (3) calendar days notice to the subcontractor (subject to the requirements of Public Contract Code § 4107), may provide such labor, materials or perform such work.

5.5.10 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the work is within the scope of the work to be performed by a subcontractor, or any dispute as to whether or not the subcontractor is entitled to a change order for any work requested of it, the subcontractor shall continue to proceed diligently with the performance as required by the CONTRACTOR. Regardless of the size or nature of the dispute, the subcontractor shall not under any circumstances cease or delay performance of its portion of the work during the existence of the dispute. The CONTRACTOR shall continue to pay the undisputed amounts called for under the subcontract agreement during the existence of the dispute. Any party stopping or delaying the progress of the work because of a dispute shall be responsible in damages to the DISTRICT, the ARCHITECT, and the CONTRACTOR for any losses suffered as a result of the delay.

5.5.11 APPLICATION FOR PAYMENT

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

5.5.12 COMPLIANCE WITH PROCEDURES

Each subcontractor shall comply with all procedures established by the CONTRACTOR for coordination among the DISTRICT, the DISTRICT's consultants, ARCHITECT, CONTRACTOR and the various subcontractors for coordination of the work with all local municipal authorities, government agencies, utility companies and any other agencies with jurisdiction over all or any portion of the work. The subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

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

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the subcontractor to comply with any of the other provisions of the general conditions and the other contract documents which are relevant to the proper performance of its portion of the work.

ARTICLE 6

CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS

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

6.1.1 DISTRICT'S RIGHTS

The DISTRICT reserves the right to perform work related to the project with the DISTRICT's own forces and to award separate contracts in connection with other portions of the project or other construction or operations on the site under conditions of the contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The project will be performed with multiple prime CONTRACTORS. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall have the absolute obligation to work cooperatively with the Owner and all other contractors, subcontractors, suppliers and other entities working on any portion of the project or performing any operations on or off the Site, including, but not limited to, those provided for in the Project Schedule.

6.1.2 DESIGNATION AS CONTRACTOR

When separate contracts are awarded for different portions of the project or other construction or operations on the site, the term “contractor” in the contract documents in each case shall mean the CONTRACTOR who executes each separate DISTRICT/CONTRACTOR agreement.

6.1.3 CONTRACTOR DUTIES

The CONTRACTOR shall have overall responsibility for coordination and scheduling of the activities of the DISTRICT’s own forces and of each separate CONTRACTOR with the work of the CONTRACTOR, who shall cooperate with them. The CONTRACTOR shall participate with other separate CONTRACTORS and the DISTRICT in reviewing their construction schedules when directed to do so.

6.1.4 OBLIGATIONS

Unless otherwise provided in the contract documents, when the DISTRICT performs work related to the project with the DISTRICT’s own forces, the DISTRICT shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the CONTRACTOR under the general conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The CONTRACTOR shall afford the DISTRICT and separate CONTRACTORS reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate CONTRACTORS’ construction and operations with theirs as required by the contract documents.

6.2.2 NOTICE BY CONTRACTOR

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

6.2.3 COSTS INCURRED

Costs, expenses and damages caused by delays, improperly timed activities, defective construction or damages to another's work shall be borne by the party responsible. The DISTRICT shall deduct said costs from the CONTRACTOR's next progress payment.

6.2.4 CORRECTION OF DAMAGE

The CONTRACTOR shall promptly remedy damage wrongfully caused by the CONTRACTOR to completed or partially completed construction or to property of the DISTRICT or separate CONTRACTORS. Failure to do so will be grounds for deduction of costs from CONTRACTOR'S next progress payment.

6.3 DISTRICT'S RIGHT TO CLEAN UP

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

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

There shall be no change whatsoever in the drawings, specifications, or in the work without an executed change order, construction change directive, or order by the ARCHITECT or DISTRICT for a minor change in the work 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 same shall have been authorized by and the cost thereof approved in writing by change order or executed 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. 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. Notwithstanding anything to the contrary in this Article 7, all change orders shall be prepared and issued by the ARCHITECT and shall become effective when executed by the DISTRICT, the ARCHITECT and the CONTRACTOR. Approval from the DSA will be precedent to payment of all change orders.

7.1.2 ARCHITECT AUTHORITY

The ARCHITECT will have authority to order minor changes in the work not involving any adjustment in the contract sum, an extension of the contract time, or a change, which is inconsistent with the intent of the contract documents. Such changes shall be effected by written change order and shall be binding on the DISTRICT and the CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.

7.2 CHANGE ORDERS (“CO”)

A CO is a written instrument prepared by the ARCHITECT and signed by the DISTRICT, the CONTRACTOR, the ARCHITECT and the DSA, stating their agreement upon all of the following:

- A. A change in the work;
- B. The amount of the adjustment in the contract sum, if any; and
- C. The extent of the adjustment in the contract time, if any.

7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)

7.3.1 DEFINITION

A CCD is a written order prepared by the ARCHITECT and signed by the DISTRICT and the ARCHITECT, directing a change in the work and stating a proposed basis for adjustment, if any, in the contract sum or contract time, or both. The DISTRICT may by CCD, without invalidating the contract, order changes in the work within the general scope of the contract consisting of additions, deletions or other revisions within, the contract sum and contract time being adjusted accordingly.

7.3.2 USE TO DIRECT CHANGE

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

7.4 REQUEST FOR INFORMATION (“RFI”)

7.4.1 DEFINITION

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

7.4.2 SCOPE

The RFI shall reference all the applicable contract documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. the CONTRACTOR shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the contract cost, contract time or the contract documents.

7.4.3 RESPONSE TIME

The ARCHITECT must respond to an RFI within fourteen (14) calendar days after receiving such request. If the ARCHITECT's response results in a change in the work, then such change shall be effected by a written CO or CCD. If the ARCHITECT cannot respond to the RFI within fourteen (14) calendar days, the ARCHITECT shall notify the CONTRACTOR, with a copy to the inspector and the DISTRICT, of the amount of time that will be required to respond.

7.4.4 COSTS INCURRED

The CONTRACTOR shall be invoiced by the DISTRICT for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

An RFP is a written request prepared by the ARCHITECT asking the CONTRACTOR to submit to the DISTRICT and the ARCHITECT an estimate of the effect of a proposed change on the contract price and the contract time.

7.5.2 SCOPE

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

7.6 CHANGE ORDER REQUEST ("COR")

7.6.1 DEFINITION

A COR is a written request prepared by the CONTRACTOR asking the DISTRICT and the ARCHITECT to incorporate a proposed change called for in an RFP or a claim per paragraph 7.7.6 into a CO.

7.6.2 CHANGES IN PRICE

A COR shall include breakdowns per paragraph 7.7 to validate any change in contract price due to proposed change or claim.

7.6.3 CHANGES IN TIME

A COR shall also include any additional 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 project schedule as defined in paragraph 3.9 and Division 1 of the specifications.

7.7 COST OF CHANGE ORDERS

7.7.1 SCOPE

Within ten (10) calendar days or such lesser period of time as may be required by DISTRICT after a request is made for a change that impacts the contract sum or the contract time, the CONTRACTOR shall provide to the DISTRICT and the ARCHITECT in writing an estimate of the effect of the proposed CO upon the contract price and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change and the effect upon the contract time of such CO. Changes may be made by DISTRICT by an appropriate written CO, or, at the DISTRICT's option, such changes shall be implemented immediately upon the CONTRACTOR's receipt of an appropriate written CCD.

7.7.2 DETERMINATION OF COST

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

Value of any such extra work, change or deduction shall be determined at the sole discretion of the DISTRICT in the following ways:

1. Acceptable lump sum proposal from CONTRACTOR properly itemized and supported by sufficient substantiating data to permit evaluation. Estimates for lump sum proposals shall be limited to direct expenditures necessitated specifically by the subject extra work and shall be segregated into categories, which follow those outlined in article 7.7.2.3. In addition, the CONTRACTOR and subcontractor will be paid a lump sum for overhead, profit, and bond. Such lump sum shall conform to the percentages outlined in article 7.7.2.3 E. For added or omitted work by subcontractors, the CONTRACTOR shall furnish to the DISTRICT the subcontractor's detailed estimate of the cost for labor, material, and equipment, including the markup by the subcontractor for overhead and profit.

Such estimate of cost shall be signed by the subcontractor. The same requirement shall apply to any sub-subcontractor or material supplier.

2. By unit prices as utilized in CONTRACTOR's original bid and incorporated into contract documents or fixed by subsequent agreement between DISTRICT and CONTRACTOR. Unit prices shall include all necessary labor, material, overhead, profit and applicable taxes.
3. Time and material. Force account for direct costs for labor, material, and equipment rental plus markups for overhead and profit for prime CONTRACTOR, subcontractor and sub-subcontractors as applicable. The following outline shall be utilized for all time and material and lump sum proposals.
 - A. Labor: attach itemized direct hourly rates in accordance with certified payroll records times total hours expended. Separately show dollar amount for employer-paid payroll taxes/ insurance benefits. Enter total as direct labor time.
 - B. Material: attach receipts, invoices or itemized quantity and unit costs plus tax and delivery. Enter total as material item.
 - C. Equipment: attach receipts, invoices or tear tickets indicating unit costs and total hours or loads charged, (small tools with a value of less than five hundred dollars (\$500.00) are to be included in markup). Enter total as equipment rental time.
 - D. SUBTOTALS (lines A + B + C)
 - E. The allowance for the combined overhead and profit included in the total cost to the DISTRICT shall be based on the following schedules.
 - Schedule 1. Twenty percent (20%) combined overhead and profit, of the total estimated costs of the extra work to be performed. All subcontracted work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the work performed by the subcontractor. This schedule #1 shall apply to all changes totaling less than five hundred dollars (\$500.00).
 - Schedule 2. Fifteen percent (15%) combined overhead and profit, of the total estimated costs of the extra work to be performed.

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

Schedule 3. Ten percent (10%) combined overhead and profit of the total estimated costs of the extra work to be performed.

All subcontracted work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the work performed by the subcontractor.

This schedule #3 shall apply to all changes totaling more than seven thousand five hundred dollars (\$7,500.00), but less than fifteen thousand dollars (\$15,000.00).

Schedule 4. Five percent (5%) combined overhead and profit, of the total estimated costs of the extra work to be performed.

All subcontracted work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the work performed by the subcontractor.

This schedule #4 shall apply to all changes totaling more than fifteen thousand dollars (\$15,000.00).

The combined overhead and profit allowances referenced in schedules 1 through 4 are to include the following costs: home office overhead, off-site supervision, change order preparation, negotiation/research, time delays, project interference and disruption, additional guarantee and warranty durations, on site supervision, additional temporary protection, additional construction facilities, additional material handling costs, additional safety equipment costs and small tools with a daily rental rate of less than two hundred and fifty dollars (\$250.00).

- F. SUBTOTAL (lines D + E)
- G. PRIME CONTRACTOR'S BOND (nte 1% line F)
- H. PRIME CONTRACTOR'S INSURANCE (nte 1% line F)
- I. TOTAL CHANGE ORDER REQUEST (lines F + H)

7.7.3 AMOUNT OF CREDIT

The amount of credit to be allowed by the CONTRACTOR to the DISTRICT for a deletion or change which results in a net decrease in the contract sum shall be actual net cost. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of 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.

7.7.4 DISCOUNTS, REBATES AND REFUNDS

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

7.7.5 ACCOUNTING RECORDS

With respect to portions of the work performed by CO'S and CCDs on a time and materials, unit-cost, or similar basis, 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.

7.7.6 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 give the DISTRICT and the ARCHITECT written notice thereof within ten (10) calendar days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the contract price and/or the contract time. This notice shall be given by the CONTRACTOR before proceeding to execute the work, except in an emergency endangering life or property, in which case the CONTRACTOR shall proceed in accordance with paragraph 10.3 hereof. No claim shall be considered unless made in accordance with this subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the contract time, and/or the increase in the contract price. CONTRACTOR shall proceed to execute the work even though the adjustment has not been agreed upon. Any change in the contract price or extension of the contract time resulting from such claim shall be authorized by a CO.

7.7.7 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to CO'S or CCDs issued to subcontractors by the CONTRACTOR to the same extent required of the CONTRACTOR.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 CONTRACT TIME

Unless otherwise provided, contract time is the period of time, including authorized adjustments, allotted in the contract documents for completion of the work for the entire project.

8.1.2 NOTICE TO PROCEED

The date of commencement of the work is the date established in the notice to proceed. The date shall not be postponed by the failure to act of the CONTRACTOR or of persons or entities for whom the CONTRACTOR is responsible.

8.1.3 DAYS

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

8.2 HOURS OF WORK

8.2.1 SUFFICIENT FORCES

Contractors and subcontractors shall furnish sufficient forces to ensure the prosecution of the work in accordance with the construction schedule.

8.2.2 PERFORMANCE DURING WORKING HOURS

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the DISTRICT. Regular working hours shall be from 7:00 a.m. to 4:00 p.m., Monday through Friday. However, all work shall comply with local ordinance for hours of work.

8.2.3 LABOR CODE APPLICATION

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

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

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the contract documents to be done outside the CONTRACTOR's or the inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the DISTRICT.

If the DISTRICT allows the CONTRACTOR to do work outside regular working hours for the CONTRACTOR's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the CONTRACTOR by the DISTRICT and deducted from the next progress payment.

If the CONTRACTOR elects to perform work outside the inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the CONTRACTOR by the DISTRICT and deducted from the next progress payment.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the contract documents, all subcontractors shall commence their work within two (2) consecutive business days after notice to them by the CONTRACTOR and shall prosecute their work in accordance with the progress of the work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

Time limits stated in the contract documents and durations stated in the Project Schedule are of the essence of the contract. By executing the Agreement, the CONTRACTOR confirms that the contract time and schedule durations are a reasonable period for performing the work.

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

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

8.3.3 EXPEDITIOUS COMPLETION

The CONTRACTOR shall proceed expeditiously with adequate forces and shall achieve completion within the contract time and schedule durations.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 EXCUSABLE DELAY

The CONTRACTOR shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the work due to unforeseeable causes beyond the control and without the fault or the negligence of CONTRACTOR, including, but not restricted to, acts of god, acts of public enemy, acts of government, acts of the DISTRICT or anyone employed by it, acts of another CONTRACTOR in performance of a contract (other than this contract) with the DISTRICT, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather or delays of subcontractors due to such causes.

8.4.2 NOTICE BY CONTRACTOR REQUIRED

The CONTRACTOR shall within seven (7) calendar days of beginning of any such delay (unless DISTRICT grants in writing a further period of time to file such notice prior to the date of final payment under the contract) notify the DISTRICT in writing of causes of delay. DISTRICT will then ascertain the facts and extent of the delay and grant an extension of time for completing the work when, in its judgment, the findings of fact justify such an extension. The DISTRICT's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the work affected by the delay and shall not apply to other portions of the work not so affected. The sole remedy of CONTRACTOR for extensions of time under paragraph 8.4.1 shall be an extension of the contract time at no cost to the DISTRICT.

8.4.3 CONDITIONS FOR EXTENSION OF TIME

If the CONTRACTOR is delayed at any time in progress of the work by an act or neglect of the DISTRICT, the ARCHITECT, an employee of either or of a separate CONTRACTOR employed by the DISTRICT, by changes ordered in the work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the CONTRACTOR's control, by delay authorized by the DISTRICT pending arbitration, or by other causes which the ARCHITECT determines may justify delay, then the contract time shall be extended by change order for such reasonable time as the ARCHITECT may determine. Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The contract sum 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.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the DISTRICT, the CONTRACTOR shall furnish the following:

- A. Within ten (10) calendar days of the award of the contract, a detailed breakdown of the contract price (schedule of values in accordance with a breakdown as prepared by the Contractor for each project or site. Contractor's overhead and profit shall be apportioned over each line item or separate activity of the Schedule of Values. The amount of overhead and profit apportioned to each line item or separate activity shall be proportionate to the line item percentage of the overall contract amount.
- B. Within ten (10) calendar days of the award of the contract, a schedule of estimated monthly payment requests (cash flow) due the CONTRACTOR showing the values and construction time of the various portions of the work to be performed by it and by its subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the DISTRICT may require;
- C. Five (5) calendar days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;

- D. Within ten (10) calendar days, the name, address, telephone number, fax number, license number and classification of all of its subcontractors and of all other parties furnishing labor, material or equipment for its contract, along with the amount of each such subcontract or the price of such labor, material and equipment needed for its entire portion of the work.

9.2.2 DISTRICT APPROVAL REQUIRED

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

9.3 APPLICATIONS FOR PAYMENT

9.3.1 PROCEDURE

On or before the twenty-fifth (25th) day of each calendar month during the progress of the portion of the work for which payment is being requested, the CONTRACTOR shall submit to the DISTRICT an itemized application for payment for operations completed in accordance with the schedule of values. All work will be billed on the DISTRICT's standard pay application.

9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

As the CONTRACTOR is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from DISTRICT, to assure that there will be no delays, payment by the DISTRICT for stored material shall be made only in unusual circumstances where the ARCHITECT specifically recommends, and DISTRICT specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the work, but delivered and suitably stored at the site or at some other location agreed upon in writing by the DISTRICT, the payments shall be conditioned upon submission by the CONTRACTOR, subcontractor, or vendor of bills of sale and such other documents satisfactory to the ARCHITECT and the DISTRICT to establish the DISTRICT's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the DISTRICT's interest, including, without limitation, provision of applicable insurance and transportation to the site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the DISTRICT by sureties of the CONTRACTOR and the subcontractor and, if stored "off-site" stored only in a bonded warehouse or other location suitable to the District.

9.3.3 WARRANTY OF TITLE

The CONTRACTOR warrants that title to all work covered by an application for payment will pass to the DISTRICT no later than the time of payment. The CONTRACTOR further warrants that upon submittal of an application for payment all work for which certificates for payment have been previously issued and payments received from the DISTRICT shall, to the best of the CONTRACTOR's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the CONTRACTOR, subcontractors, material and equipment suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 APPROVAL

The DISTRICT will, within two (2) days after receipt of the CONTRACTOR's application for payment, either approve such payment or notify the CONTRACTOR in writing of the ARCHITECT's or inspector's reasons for withholding approval in whole or in part as provided in paragraph 9.5. 1. DISTRICT, or ARCHITECT, has the discretion to require from CONTRACTOR any of the following information with the application for payment: (i) certified payroll covering the period of the previous application for payment; (ii) unconditional waivers and releases from all subcontractors/ suppliers for which payment was requested under the previous application for payment; or (iii) material invoices, evidence of equipment purchases, rentals and other support and details of cost, including conditional releases

9.4.2 ARCHITECT'S REVIEW

The review of the CONTRACTOR's application for payment by the ARCHITECT is based on the ARCHITECT's observations at the site and the data comprising the application for payment that the work has progressed to the point indicated and that, to the best of 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 an evaluation of the work for conformance with the contract documents, to results of subsequent tests and inspections, to minor deviations from the contract documents correctable prior to completion, and to specific qualifications expressed by the ARCHITECT. The issuance of a certificate for payment will further constitute a representation that the CONTRACTOR is entitled to payment in the amount certified. However, the review by the ARCHITECT will not be a representation that the ARCHITECT has:

- A. Made exhaustive or continuous on-site inspections to check the quality or quantity of the work;
- B. Reviewed construction means, methods, techniques, sequences or procedures;

- C. Reviewed copies of requisitions received from subcontractors, material and equipment suppliers and other data requested by the DISTRICT to substantiate the CONTRACTOR's right to payment; or
- D. Made an examination to ascertain how or for what purpose the CONTRACTOR has used money previously paid on account of the contract sum.

9.4.3 INVOICE GENERATION, COMPLETION AND RETURN

The billing process outlined below shall supercede any other billing procedures contained in the project specifications.

Based on billing percentages approved by the DISTRICT, ARCHITECT and the Inspector of Record, individual CONTRACTOR billings will be generated by the CONTRACTOR..

Upon receipt, CONTRACTORS are required to make five (5) copies of the billing, wet sign all copies as indicated, and return the billings to the DISTRICT within three (3) days of the date received for further processing.

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

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

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The DISTRICT may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the DISTRICT if, in the DISTRICT's opinion, the representations to the DISTRICT required by paragraph 9.4.2 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:

- A. Defective work not remedied;
- B. Stop notices filed, unless the CONTRACTOR at its sole expense provides a bond or other security satisfactory to the DISTRICT in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the DISTRICT, which protects the DISTRICT against such claims;

- C. Liquidated damages assessed against the CONTRACTOR;
- D. Reasonable doubt that the work can be completed for the unpaid balance of any contract price or by the completion date;
- E. Damage to the DISTRICT, another CONTRACTOR, or subcontractor;
- F. Unsatisfactory prosecution of the work by the CONTRACTOR;
- G. Failure to store and properly secure materials;
- H. Failure of the CONTRACTOR to submit on a timely basis, proper and sufficient documentation required by the contract documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders and verified reports;
- I. Failure of the CONTRACTOR to maintain record drawings;
- J. Erroneous estimates by the CONTRACTOR of the value of the work performed, or other false statements in an application for payment;
- K. Unauthorized deviations from the contract documents; or
- L. Failure of the CONTRACTOR to prosecute the work in a timely manner in compliance with established progress schedules and completion dates.
- M. Failure to provide information when requested in accordance with Article 9.4.1.above.

9.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED

Upon request of the CONTRACTOR whose payment is deferred, the CONTRACTOR shall be given a written copy of DISTRICT's reasons for withholding payment.

9.5.3 PAYMENT AFTER CURE

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the CONTRACTOR to perform in accordance with the terms and conditions of the contract documents.

9.6 PROGRESS PAYMENTS

9.6.1 PAYMENTS TO CONTRACTOR

Within thirty (30) calendar days after approval of the request for payment, CONTRACTOR shall be paid a sum equal to ninety percent (90%) of the value of the work performed up to the last day of the previous month, less the aggregate of previous payments. For purposes of this article, a payment request is not considered late if payment is beyond thirty (30) calendar days if the payment request is delayed due to an audit inquiry by the financial officer of the DISTRICT or any county or government agency included in the processing of the payment request. The value of the work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the CONTRACTOR, or any bondsman, from damages arising from such work or from enforcing each and every provision of this contract and the DISTRICT shall have the right subsequently to correct any error made in any estimate for payment.

Payment of Trade Contractors. It is understood by the Parties that the District, subject to the approval of its governing board, may elect to cause and to establish a Trade Contractor Payment Trust Account ("TCP/Trust Account") at no additional cost to the District for the purpose of making payments, subject to the District's approval, to all Trade Contractors. The District will then remit an amount adequate for payment of all Trade Contractor payments to the ("Trustee") of the TCP/Trust Account, who will then make progress payments to the various Trade Contractors for the Project, pursuant to the applicable Trade Contract. It is agreed by the Parties that interest, if any, earned on deposits in the TCP/Trust Account shall ensure to the benefit of the District.

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. At any time after fifty percent (50%) of the work has been completed, if the DISTRICT, by action of its governing body, finds that satisfactory progress is being made, the DISTRICT may make any of the remaining payments in full for actual work completed or may withhold any amount up to ten percent (10%) thereof as the DISTRICT may find appropriate based on the CONTRACTOR's progress.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than seven (7) calendar days after receipt, pursuant to Public Contract Code 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, reflecting percentages actually retained from payments to the CONTRACTOR on account of such subcontractor's portion of the work. The CONTRACTOR shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner.

9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The DISTRICT will, on request, furnish to a subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CONTRACTOR, and action taken thereon by the DISTRICT, on account of portions of the work done by such subcontractor.

9.6.4 NO OBLIGATION 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.

9.6.5 PAYMENT TO SUPPLIERS

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

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An approved request for payment, a progress payment or partial or entire use or occupancy of the project by the DISTRICT shall not constitute acceptance of work not in accordance with the contract documents.

9.6.7 JOINT CHECKS

DISTRICT shall have the right, if necessary for the protection of the DISTRICT, to issue joint checks made payable to the CONTRACTOR and subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. 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.

9.7 COMPLETION OF THE WORK

9.7.1 CLOSEOUT PROCEDURES

When the CONTRACTOR considers that the work, or a portion thereof which the DISTRICT agrees to accept separately, is complete, the ARCHITECT shall prepare and submit to the DISTRICT a comprehensive 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 list. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete all work in accordance with the contract documents. Upon receipt of the ARCHITECT's list, the DISTRICT will make an inspection to determine whether the work or designated portion thereof, is complete.

If the DISTRICT's inspection discloses any item, whether or not included on the ARCHITECT's list, is not completed in accordance with the requirements of the contract documents, the CONTRACTOR shall, before DISTRICT's issuance of the notice of completion, complete or correct such item. The CONTRACTOR shall then submit a request for an additional inspection by the DISTRICT to determine completion. When the work, or designated portion thereof, is complete, the DISTRICT will prepare a notice of completion which shall establish the date of completion, establish the responsibilities of the DISTRICT and CONTRACTOR for security, maintenance, heat, utilities, damage to the work and insurance and fix the time within which the CONTRACTOR shall finish all items on the list accompanying the notice of completion. Warranties required by the contract documents shall commence on the date of completion of the work or designated portion thereof, unless otherwise provided in the notice of completion. The notice of completion shall be submitted to the DISTRICT and the CONTRACTOR for their written acceptance of responsibilities assigned to them in such notice.

9.7.2 PAYMENT UPON COMPLETION

Upon completion of the work, or designated portion thereof, and upon application by the CONTRACTOR, the DISTRICT shall make payment reflecting adjustment in retainage, if any, for such work, or portion thereof, as provided in the contract documents.

9.7.3 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests of the DISTRICT to make inspections required under paragraph 9.7. 1 shall be considered an additional service of ARCHITECT and all subsequent costs will be invoiced to CONTRACTOR and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 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.

9.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE

Immediately prior to such 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.

9.8.3 NO WAIVER

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the work shall not constitute acceptance of the work not complying with the requirements of the contract documents.

9.9 COMPLETION AND FINAL PAYMENT

9.9.1 FINAL INSPECTION

CONTRACTOR shall immediately upon receipt of the punch list, initiate work on all items therein related to CONTRACTOR's work and diligently complete the same. Upon receipt of CONTRACTOR's written notice that all of the punch list items have been fully completed and the work is ready for final inspection and acceptance, ARCHITECT shall inspect the work and shall submit to CONTRACTOR, and DISTRICT a final inspection report noting the work, if any, required in order to complete the work in accordance with the contract documents. Absent unusual circumstances, this report shall consist of the punch list items not yet satisfactorily completed.

Upon completion of the work contained in the final inspection report, the CONTRACTOR shall so notify the DISTRICT, who shall again inspect such work. If the DISTRICT finds the work contained in such final inspection report acceptable under the contract documents and, therefore, the work fully completed, it shall so notify CONTRACTOR, who shall then submit to the ARCHITECT its final application for payment.

Upon receipt and approval of such final application for payment, the ARCHITECT shall issue a final certificate of payment stating that to the best of its knowledge, information, and belief and on the basis of its observations, inspections and all other data accumulated or received by the ARCHITECT in connection with the work, such Work has been completed in accordance with the contract documents. The DISTRICT shall thereupon inspect such 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 (which, 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 payment from DISTRICT, pay the amounts due subcontractors within seven (7) days.

9.9.2 RETAINAGE

The retainage, less any amounts disputed by the DISTRICT or which the DISTRICT has the right to withhold, shall be paid after approval of the DISTRICT of the ARCHITECT's certificate of payment referred to in paragraph 9.9.1, after the satisfaction of the conditions set forth in paragraph 9.9, and no later than sixty (60) calendar days after the acceptance of the work and recording of the notice of completion by DISTRICT. No interest shall be paid on any retainage, 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 § 22300.

9.9.3 PROCEDURES FOR APPLICATION FOR FINAL PAYMENT

The application for final payment shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

- A. 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 waiver of all stop notices or a stop notice release bond from a surety acceptable to the DISTRICT as defined by the contract documents, including a release of stop notice in recordable form, in connection with the work obtained by CONTRACTOR from each person to receive a payment thereunder, which waivers of stop notice shall be in a form as approved by DISTRICT.
- B. The CONTRACTOR shall have made, or caused to have been made, all corrections to the work which are required to remedy any defects therein, to obtain compliance with the contract documents or any requirements of applicable codes and ordinances or to fulfill any of the orders or directions of DISTRICT required under the contract.
- C. 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.
- D. The CONTRACTOR shall deliver to the DISTRICT reproducible final record drawings and annotated specifications showing the CONTRACTORS work as built, with the CONTRACTOR's certification of the accuracy of the record drawings and annotated specifications, all guarantees, and operation and maintenance instructions for equipment and apparatus.
- E. Architect shall have issued a final certificate of payment.

- F. The CONTRACTOR shall have delivered to the DISTRICT all manuals and materials required by the contract documents.
- G. The CONTRACTOR shall have removed or caused to be removed, all waste materials and rubbish from and about the site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment and any other similar materials of the CONTRACTOR or any subcontractor, shall have cleaned or caused to be cleaned, all glass surfaces and shall have left the work broom-clean, except as otherwise provided in the contract documents.

9.10 SUBSTITUTION OF SECURITIES

In accordance with §22300 of the Public Contract Code, the DISTRICT will permit the substitution of securities for any monies withheld by the DISTRICT to ensure performance under the contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR.

Securities eligible for investment under this section shall include those listed in Government Code §16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit or any other security mutually agreed to by the CONTRACTOR and the DISTRICT.

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

The escrow agreement used for the purposes of this section shall be the form set forth in Public Contract Code § 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 CONTRACTOR RESPONSIBILITY

The CONTRACTOR shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the contract. Each CONTRACTOR shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various subcontractors employed to ensure that all employees understand and comply with the programs. Refer also to specification Section 01 52 00

CONTRACTOR's safety for additional safety requirements. In the event that sections differ, the most stringent safety practice will be enforced.

10.1.2 CONTRACTOR NOTICES

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

10.1.3 SAFETY BARRIERS AND SAFEGUARDS

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

10.1.4 USE OR STORAGE OF HAZARDOUS MATERIALS

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

10.2 PROTECTION OF WORK AND PROPERTY

10.2.1 PROTECTION FROM ELEMENTS

The CONTRACTOR and subcontractors shall continuously protect the work, the DISTRICT's property, and the property of others, from damage, injury or loss arising in connection with operations under the contract documents. The CONTRACTOR and subcontractors shall make good any such damage, injury or loss, except such as may be solely due to, or caused by, agents or employees of the DISTRICT.

10.2.2 PROTECTION FOR ELEMENTS

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

10.2.3 SHORING AND STRUCTURAL LOADING

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

10.2.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

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

10.2.5 SUBCONTRACTOR ENFORCEMENT OF RULES

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

10.2.6 SITE ACCESS

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

10.2.7 PROTECTION OF MATERIALS

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

10.3 EMERGENCIES

10.3.1 EMERGENCY ACTION

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

10.3.2 ACCIDENT REPORTS

The CONTRACTOR shall promptly report in writing to the ARCHITECT all accidents arising out of or in connection with the work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the ARCHITECT.

10.4 HAZARDOUS MATERIALS

10.4.1 DISCOVERY OF HAZARDOUS MATERIALS

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

10.4.2 HAZARDOUS MATERIAL WORK LIMITATIONS

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

10.4.3 INDEMNIFICATION BY FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR

In the event the presence of hazardous materials on the project site is not caused by the CONTRACTOR, DISTRICT shall pay for all costs of testing and remediation, if any. In addition, DISTRICT shall defend, indemnify and hold harmless the CONTRACTOR and its agents, officers, directors and employees from and against any and all claims, damages, losses. Costs and expenses incurred in connection with, or arising out of, or relating to the performance of the work in the area affected by the hazardous material.

10.4.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR

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

10.4.5 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this hazardous material provision shall survive the completion of the work and/or any termination of this contract.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 INSURANCE REQUIREMENTS

Before the commencement of the work, the CONTRACTOR shall purchase from and maintain, in a company or companies lawfully authorized by the State of California, Department of Insurance, to do business in California either i) as admitted carriers or ii) as approved for the List of Eligible Surplus Line Insurers ("LESLI"), insurance as set forth under this Article 11 and as amended by the Supplementary General Conditions. For Liability and Workers' Compensation insurance, the insurance provider must also have an A.M. Best Rating of A VIII. The insurance shall protect the CONTRACTOR and DISTRICT from claims set forth below, which may arise out of or result from the CONTRACTOR's operations under the contract and for which the CONTRACTOR may be legally liable, whether such operations are by the CONTRACTOR, by a subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims for damages because of bodily injury, sickness, disease, or death of any person other than the CONTRACTOR's employees;
- B. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the CONTRACTOR or by another person;
- C. Claims for damages because of injury or destruction of tangible property, including loss of use resulting there from, arising from operations under the contract documents;
- D. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the work;
- E. Claims involving blanket contractual liability applicable to the CONTRACTOR's obligations under the contract documents, including liability assumed by and the indemnity and defense obligations of the CONTRACTOR and the subcontractors; and claims involving completed operations, independent contractors' coverage, and broad form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, or excavating.

F Insurance Limits

1. Contractor's Liability Insurance

a. Worker's Compensation

X	State: Voluntary Compensation (by any exempt entities):	Statutory Same as State Workers Compensation
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Applicable Federal (e.g.,
Longshoremen, harbor work,
work at or outside U.S. Boundaries):

X	Employer's Liability Benefits required by union labor contracts:	Statutory \$1,000,000.00 Each accident As applicable
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b. General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage): Can be combined Single Limit (CSL)

1. Bodily Injury:

\$ 1,000,000.00	Each Occurrence
\$ 2,000,000.00	Aggregate

2. Property Damage:

\$ 1,000,000.00	Each Occurrence
\$ 2,000,000.00	Aggregate

3. Products and Completed Operations Insurance shall be maintained for a minimum period of one (1) year after final payment and the Contractor shall continue to provide evidence of such coverage to the DISTRICT on an annual basis during the aforementioned period.

4. Property Damage Liability Insurance shall include coverage for the following hazards:

- X X (Explosion)
- X C (Collapse)
- X U (Underground)

5. Contractual Liability (Hold Harmless Coverage): Include in CSL Form

a. Bodily Injury:

\$ 1,000,000.00 Each Occurrence
\$ 2,000,000.00 Aggregate

b. Property Damage:

\$ 1,000,000.00 Each Occurrence
\$ 2,000,000.00 Aggregate

6. Personal Injury (with Employment Exclusion deleted, if applicable):

\$1,000,000.00 per occurrence
Aggregate subject to CSL Aggregate

7. If the General Liability policy includes a General Aggregate, such General Aggregate shall be not less than \$2,000,000.00. Policy shall be endorsed to have General Aggregate apply to this Project only: No

If Contractor's Contract (Total Bid Price) is expected to be more than \$500,000.00, the following excess liability coverage is required:

a. Umbrella Excess Liability:

\$ 4,000,000.00 Over primary insurance
\$ 10,000.00 Retention

b. Automobile Liability (owned, non-owned, hired):

1. Bodily Injury: \$1,000,000.00 CSL

\$ 1,000,000.00	Each Person
\$ 1,000,000.00	Each Accident

2. Property Damage:

\$ 1,000,000.00	Each Occurrence
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11.1.2 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

11.1.2.1 **Contractor’s Responsibility.** CONTRACTOR shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect CONTRACTOR and DISTRICT from all claims for personal injury, including accidental death, to any person (including, as to DISTRICT, injury or death to CONTRACTOR’S or subcontractor’s employees), as well as from all claims for property damage arising from operations under this Agreement, in amounts as set forth in the Supplementary General Conditions and stated in the Agreement.

11.1.2.2 **Proof of Insurance.** CONTRACTOR shall submit proof of insurance and shall provide certificates and endorsements for DISTRICT approval. Such endorsements shall be submitted concurrently with the Project documents.

11.1.3 SUBCONTRACTOR INSURANCE REQUIREMENTS

The CONTRACTOR shall either include subcontractors of all tiers as insureds under its policies or the CONTRACTOR shall furnish separate certificates and endorsements for each subcontractor of all tiers to the DISTRICT for review and approval. A “claims made” or modified “occurrence” policy shall not satisfy the requirements of paragraphs 11.1.1 or 11.1.2.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The CONTRACTOR shall name, on any policy of insurance required under paragraphs 11.1.1 and 11.1.2, the DISTRICT, (which shall include the PROGRAM MANAGER), as additional insured. Subcontractors of all tiers shall name the CONTRACTOR, the DISTRICT (which shall include the PROGRAM MANAGER), as additional insured. The additional insured endorsement included on all such insurance policies shall state that the coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer’s liability shall not be reduced by the existence of such other insurance.

11.2 WORKERS’ COMPENSATION INSURANCE

During the term of this contract, the CONTRACTOR shall provide workers’ compensation insurance for all of the CONTRACTORS employees engaged in work under this contract on

or at the site of the Project and, in case any of the CONTRACTOR's work is sublet, the CONTRACTOR shall require subcontractors of all tiers to provide workers' compensation insurance for all the subcontractor's employees engaged in work under the subcontract. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the CONTRACTOR's insurance. In case any class of employees engaged in work under this contract on or at the site of the Project is not protected under the workers compensation laws, the CONTRACTOR shall provide or cause a subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The CONTRACTOR shall file with the DISTRICT certificates of insurance as required under paragraph 11.5 and in compliance with Labor Code § 3700.

11.3 BUILDER'S RISK/"ALL RISK" INSURANCE

11.3.1 COURSE OF CONSTRUCTION INSURANCE REQUIREMENTS

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

11.3.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with Article 9 shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The DISTRICT and the CONTRACTOR shall take reasonable steps to obtain consent of the insurance company and shall not, without mutual consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.4 OTHER INSURANCE

The CONTRACTOR shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, regulations, or other conditions of the Contract between the DISTRICT and the CONTRACTOR.

11.5 PROOF OF CARRIAGE OF INSURANCE

The CONTRACTOR shall not commence work nor shall it allow any subcontractor to commence work under this contract until all required insurance, certificates, and additional insured endorsements have been delivered in duplicate to the DISTRICT for approval subject to the following requirements:

- A. Certificates of insurance shall state in particular those insured, the type of insurance, limits of liability, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- B. Certificates of insurance shall clearly state that the DISTRICT is named as additional insured under the General Liability policy described in the certificate, using an additional insured endorsement certificate or another form with similar language, and that such insurance policy shall be primary and non-contributory to any insurance or self-insurance maintained by the DISTRICT. The CONTRACTOR and its subcontractors (whereas separate policies are provided) shall submit the appropriate certificates of insurance along with the additional insured endorsement for the DISTRICT'S approval.
- C. CONTRACTOR and its subcontractors of all tiers (whereas separate policies are provided) shall also include an endorsement to the Commercial General Liability policy which states that the General Liability Aggregate Limit is specifically designated to this construction project.
- D. The CONTRACTOR and its subcontractors of all tiers (whereas separate policies are provided) shall provide a certified copy of any insurance policy required under this section upon written request of the DISTRICT.

11.6 COMPLIANCE

In the event of the failure of any CONTRACTOR to furnish and maintain any insurance required by this Article 11, the CONTRACTOR shall be in default under the contract. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of the contract documents, including, without limitation, the obligation to defend and indemnify and hold harmless the DISTRICT and the ARCHITECT.

11.7 PERFORMANCE AND PAYMENT BONDS

11.7.1 BOND REQUIREMENTS

Unless otherwise specified in the Supplementary General Conditions, prior to commencing any portion of the work, the CONTRACTOR shall apply for and furnish separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance of and payment of all obligations arising under the contract documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work.

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

11.7.2 SURETY QUALIFICATION

Only bonds executed by admitted surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U. S. Treasury with a bonding capacity in excess of the Project cost.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the work is covered contrary to the inspector's request, the ARCHITECT's request, or to requirements specifically expressed in the contract documents, it must, if required in writing by the inspector or the ARCHITECT, be uncovered for the inspector's or the ARCHITECT's observation and be replaced at the CONTRACTOR's expense without change in the contract sum or time.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

If a portion of the work has been covered which the inspector or the ARCHITECT has not specifically requested to observe prior to its being covered, the inspector or the ARCHITECT may request to see such work, and it shall be uncovered by the CONTRACTOR. If such work is in accordance with the contract documents, costs of uncovering and replacement shall, by appropriate change order, be charged to the DISTRICT. If such work is not in accordance with the contract documents, the CONTRACTOR shall pay such costs unless the condition was caused by the DISTRICT or a separate contractor, in which event the DISTRICT shall be responsible for payment of such costs to the CONTRACTOR.

12.2 CORRECTION OF WORK

12.2.1 CORRECTION OF REJECTED WORK

The CONTRACTOR shall promptly correct the work rejected by the inspector or the DISTRICT upon recommendation of the ARCHITECT or 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 the 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.

12.2.2 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 under paragraph 9.9.1, or by 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 unless the DISTRICT has previously given the CONTRACTOR a written acceptance of such condition. 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 under this Section 12.2.2 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.

12.2.3 REMOVAL OF NONCONFORMING WORK

The CONTRACTOR shall remove from the site portions of the work, which are not in accordance with the requirements of the contract documents and are not corrected by the CONTRACTOR or accepted by the DISTRICT.

12.2.4 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 in accordance with paragraph 2.4.1. In addition, if the CONTRACTOR does not proceed with correction of such nonconforming work within the time fixed by written notice from the inspector, and the DISTRICT may remove it and store the salvageable materials or equipment at the CONTRACTOR's expense. If the CONTRACTOR does not pay costs of such removal and storage within ten (10) calendar days after written notice, the DISTRICT may, upon ten (10) additional calendar days written notice, sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the CONTRACTOR, including compensation for the ARCHITECT's services and expenses made necessary thereby. If such proceeds of sale do not cover costs, which the CONTRACTOR should have borne, the CONTRACTOR shall be invoiced for the deficiency. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the DISTRICT.

In addition to work not in conformance, if the CONTRACTOR fails to perform the contractual scope of the CONTRACTOR's work in conformance with the project schedule, and said failure to perform is detrimental to the project completion, the DISTRICT reserves the right to complete the work in question upon written 48-hour notice of DISTRICT's intent to complete outstanding work. All costs incurred by such action will be deducted from the CONTRACTOR's next progress payment. Should the remaining progress payment prove to be inadequate to cover the DISTRICT's costs incurred for completing the work, the DISTRICT will look to the CONTRACTOR's surety for all costs incurred.

The DISTRICT's election to complete a portion of the CONTRACTOR's work which is covering a project delay or damage to another CONTRACTOR shall not relieve the CONTRACTOR of the balance of the CONTRACTOR's contractual obligations, and shall not be construed as termination of the contract unless specifically stated per the requirements of 14.2.2.

12.2.5 COST OF CORRECTING THE WORK

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

12.2.6 NO TIME LIMITATION

Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the CONTRACTOR might have under the contract documents. Establishment of the time period of one (1) year as described in paragraph 12.2.2 relates only to the specific obligation of the CONTRACTOR to correct the work and has, for example, no relationship to the time within which the obligation to comply with the contract documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to the CONTRACTOR's obligations other than specifically to correct the work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

If it is found at any time before or after completion of the work that the CONTRACTOR has varied from the contract documents in materials, quality, form, finish or in the amount or value of the materials or labor used, the ARCHITECT shall make a recommendation: that all such improper work should be removed, remade and replaced; that all work disturbed by these changes be made good at the CONTRACTOR's expense; and that the DISTRICT deduct from any amount due CONTRACTOR that sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications. The ARCHITECT shall determine such difference in value. The DISTRICT, at its option, may pursue either course unless correction is required by law.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The contract shall be governed by the law of the place where the project is located.

13.2 NO ASSIGNMENT

The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this contract or of its rights, title or interest in or to the same or any part thereof. If the CONTRACTOR shall assign, transfer, convey, sublet or otherwise dispose of the contract or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the contract may, at the option of the DISTRICT, be terminated, revoked and annulled, and the DISTRICT shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the CONTRACTOR and to its purported assignee or transferee.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the contract documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE

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

13.4.2 NO WAIVER

The lack of action or failure to act by the inspector, the DISTRICT, the ARCHITECT or the CONTRACTOR to insist upon strict performance of any option herein conferred shall not constitute a waiver of a right or duty afforded them under the contract documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 COMPLIANCE

Tests, inspections and approvals of portions of the work required by the contract documents will comply with Title 24, Section 4335, and with all other laws, ordinances, rules, regulations or orders of public authorities having jurisdiction.

13.5.2 INDEPENDENT TESTING LABORATORY

The DISTRICT will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the DISTRICT's representative and not by the CONTRACTOR. Any costs or expenses of inspection or testing occurring outside of a one hundred (100) mile radius from the Project site or not located in a contiguous county to the site, whichever distance is greater, shall be paid for by the DISTRICT, and deducted from the next progress payment.

13.5.3 ADVANCE NOTICE TO INSPECTOR

The CONTRACTOR shall notify the inspector of its readiness for observation or inspection at least two (2) working days in advance so that the inspector may arrange for same. The CONTRACTOR shall notify the inspector at least two (2) working days in advance of the manufacture of material to be supplied under the contract documents, which must, by terms of the contract documents, be tested in order that the inspector may arrange for the testing of the material at the source of supply.

13.5.4 TESTING OFF-SITE

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

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the inspector, the ARCHITECT, the DISTRICT, or public authority having jurisdiction determines that portions of the work require additional testing, inspection, or approval not included under paragraph 13.5.1, the inspector will, upon written authorization from the DISTRICT, make arrangements for such additional testing, inspection, or approval. The DISTRICT shall bear such costs except as provided in paragraph 13.5.6.

13.5.6 COSTS OF RETESTING

If such procedures for testing, inspection or approval under paragraphs 13.5.1 and 13.5.2 reveal failure of the portions of the work to comply with requirements established by the contract documents, the CONTRACTOR shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the ARCHITECT's services and expenses. Any such costs shall be paid by the DISTRICT, invoiced to the CONTRACTOR and deducted from the next progress payment.

13.5.7 COSTS FOR PREMATURE TEST

In the event the CONTRACTOR requests any test or inspection for the project and is not completely ready for the inspection, the CONTRACTOR shall be invoiced by the DISTRICT for all costs and expenses resulting from that testing or inspection, including, but not limited to, the ARCHITECT's fees and expenses and the amount of the invoice of shall be deducted from the next progress payment.

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the contract documents shall be made promptly to avoid unreasonable delay in the work.

13.6 INTEREST

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the project is located.

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE (5) FEET DEEP

Pursuant to Labor Code § 6705, if this contract involves the excavation of any trench or trenches five feet or more in depth, the CONTRACTOR shall, in advance of excavation, submit to the DISTRICT or to whomever DISTRICT designates a detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefore shall be included in the price named in the contract for completion of the work as set forth in the Project documents. 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 CAL-OSHA and a CAL-OSHA permit for such plan delivered to the DISTRICT. (Labor Code § 6500; Health and Safety Code Section 17922.5).

13.7.2 TRENCHES GREATER THAN FOUR (4) FEET DEEP

If this contract involves the digging of trenches or excavations that extend deeper than four (4) feet below the surface, the following shall apply:

- (1) The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the DISTRICT, in writing, of any:

- (i) 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.
- (ii) Subsurface or latent physical conditions at the site different from those indicated.
- (iii) 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.

13.7.3 CONTRACTOR'S RESPONSIBILITY FOR SHORING, BRACING AND SLOPING

Nothing in this Article shall relieve the CONTRACTOR of the full responsibility of providing shoring, bracing, sloping or other provisions adequate for worker protection.

- (1) 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 in the Project documents.
- (2) In the event a dispute arises between the 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 Project documents, but shall proceed with all the work to be performed under the Project documents. The CONTRACTOR shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties. (Public Contract Code section 7104.)

13.7.4 NO TORT LIABILITY OF

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

13.7.5 NO EXCAVATION WITHOUT PERMITS

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

13.8 WAGE RATES, TRAVEL AND SUBSISTENCE

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the DISTRICT has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file with the Clerk of the DISTRICT's governing board, and copies will be made available to any interested party on request. The CONTRACTOR shall post a copy of such wage rates at the site.

Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1-1/2) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law.

Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

The CONTRACTOR shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of *per diem* wages, pursuant to Labor Code § 1773.2, determined by the Director, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any subcontractor and such workers.

13.8.4 TRAVEL AND SUBSISTENCE

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

13.8.5 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

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

However, should a scheduled change occur during the period the bid to remain open in accordance with what is known as a double asterisk determination, the new wage rates shall supersede those rates contained in the Notice Calling for Bids and shall be incorporated in the contract subsequently awarded.

13.8.6 FORFEITURE AND PAYMENTS

Pursuant to Labor Code § 1775, the Trade Contractor shall forfeit to the District, not more than Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Trade Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Trade Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Trade Contractor or Subcontractor; and (2) whether the Trade Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

13.8.7 MINIMUM WAGE RATES

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

13.8.8 PER DIEM WAGES

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

13.8.9 POSTING OF WAGE RATES

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

13.9 RECORDS OF WAGES PAID: INSPECTION

13.9.1 PAYROLL RECORDS.

(a) Pursuant to § 1776 of the Labor Code, each Trade Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

(b) All payroll records shall be certified and submitted to the District with each application for payment, but shall not be submitted less than once per month. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Trade Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the Trade Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Trade Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

(d) The Trade Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within ten (10) days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Trade Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number.

(f) The Trade Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(g) The Trade Contractor or Subcontractor(s) shall have ten (10) days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Trade Contractor or Subcontractor(s) fails to comply within the ten (10) day period, the Trade Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Trade Contractor is not subject to a penalty due to the failure of a Subcontractor to comply with this section.

The responsibility for compliance with this Article shall rest upon the Trade Contractor.

13.9.2 WITHHOLDING OF CONTRACT PAYMENTS & PENALTIES.

The District may withhold or delay contract payments to the Trade Contractor and/or any Subcontractor if:

- (a) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (b) The Trade Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- (c) The Trade Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (d) The Trade Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (e) The Trade Contractor or Subcontractor(s) fail to comply with any applicable state laws governing labor on public works projects.

13.10 APPRENTICES

13.10.1 GOVERNED BY LABOR CODE § 1777.5

The CONTRACTOR acknowledges and agrees that, if this Agreement involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Agreement is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the CONTRACTOR to ensure compliance with this Article 13.10 and with Labor Code Section 1777.5 for all apprenticing occupations.

13.10.2 EMPLOYMENT OF APPRENTICES

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.

13.10.3 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the CONTRACTOR to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work or the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of division 3, are eligible to be employed under this contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

13.10.4 APPRENTICE LABOR POOL

When the CONTRACTOR to whom the contract is awarded by the DISTRICT or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprentice able craft or trade, the CONTRACTOR and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the Project, for a certificate approving the CONTRACTOR or as subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject CONTRACTOR or subcontractor, shall arrange for the dispatch of apprentices to the CONTRACTOR or subcontractor in order to comply with this section. Every CONTRACTOR and subcontractor shall submit the contract award information to the applicable joint apprenticeship committee, which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.

There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. CONTRACTORS or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.5 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The CONTRACTOR shall employ apprentices for the number of hours computed as above before the end of the contract. However, the CONTRACTOR shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.6 JOURNEYMAN/APPRENTICE RATIO

The CONTRACTOR or subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the CONTRACTOR that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the division of Apprenticeship Standards may grant a certificate exempting the CONTRACTOR from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general CONTRACTORS or to contracts of specialty contractors not bidding for work through a general or prime CONTRACTOR, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week shall not be used to calculate the hourly ratio required by this section.

13.10.6.1 APPRENTICEABLE CRAFT OR TRADE

“Apprentice able craft or trade” as used in this Article means a craft or trade determined as an apprentice able occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a CONTRACTOR from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprentice able craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.7 RATIO EXEMPTION

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

13.10.8 APPRENTICE FUND

A CONTRACTOR to whom the contract is awarded or any subcontractor who, in performing any of the work under the contract, employs journeymen or apprentices in any apprentice able craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Project, to which fund or funds other contractors in the area of the site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The CONTRACTOR or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.

13.10.9 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with Article 13.10 and § 1777.5 of the Labor Code for all apprentice able occupations is with the Prime CONTRACTOR.

13.10.10 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this paragraph 13.10 and Labor Code § 1777.5 are subject to Labor Code § 3081.

13.10.11 NO BIAS

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

13.10.12 VIOLATION OF LABOR CODE

Pursuant to portions of Labor Code § 1777.7, in the event a Contractor or subcontractor willfully fails to comply with the provisions of this Article 13.10 and Labor Code § 1777.5:

“(a) . . . the Chief of the Division of Apprenticeship Standards shall deny to the Contractor or subcontractor and its responsible officers the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of non-compliance by the Chief of the Division of Apprenticeship Standards becomes an order of the Administrator of Apprenticeship.

(b) A contractor or subcontractor who violates Section 1777.5 shall forfeit as a civil penalty the sum of One Hundred Dollars (\$100.00) for each calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from the contract progress payments then due or to become due.

(c) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first time violation and with the concurrence of the joint apprenticeship committee, order the CONTRACTOR or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

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

(e) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.”

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Public Contract Code Section 7103.5 provides that pursuant to Government Code § 4551, in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to the DISTRICT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services or materials pursuant to the public works contract or the subcontract.

This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties. If the DISTRICT receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code), the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the DISTRICT any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the DISTRICT as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the DISTRICT shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the DISTRICT has not been injured thereby or the DISTRICT declines to file a court action for the cause of action.

13.12 STATE AUDIT

Pursuant to and in accordance with the provisions of Government Code § 8546.7 or any amendments thereto, all books, records, and files of the DISTRICT, the CONTRACTOR, or any subcontractor connected with the performance of this Contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the State Auditor, at the request of DISTRICT, for a period of three (3) years after final payment is made under this Contract. CONTRACTOR shall preserve and cause to be preserved such books, records, and files for the audit period.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

14.1.1 GROUNDS FOR TERMINATION

The CONTRACTOR may terminate the contract if the work is stopped for a period of thirty (30) calendar days through no act or fault of the CONTRACTOR, a subcontractor, a sub-subcontractor, their agents or employees, or any other persons performing portions of the work for whom the CONTRACTOR is contractually responsible, for only the following reasons:

- A. Issuance of an order of a court or other public authority having jurisdiction;
- B. An act of government, such as a declaration of national emergency, making material unavailable;
- C. If repeated suspensions, delays, or interruptions by the DISTRICT as described in paragraph 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
- D. The DISTRICT has failed to furnish to the CONTRACTOR promptly, upon the CONTRACTOR's request, reasonable evidence of financing or funding as required by paragraph 2.2.1.

14.1.2 NOTICE OF TERMINATION

If one of the above reasons exists, the CONTRACTOR may, upon written notice of seven (7) additional calendar days to the DISTRICT, terminate the contract and recover from the DISTRICT payment for Work executed and for reasonable costs verified by the ARCHITECT with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit and damages.

14.1.3 NOTICE OF TERMINATION - DISTRICT FAULT

If the work is stopped for a period of sixty (60) calendar days through no act or fault of the CONTRACTOR, subcontractor, sub-subcontractor, their agents or employees, or any other persons performing portions of the work for whom the CONTRACTOR is contractually responsible because the DISTRICT has persistently failed to fulfill the DISTRICT's obligations under the contract documents with respect to matters important to the progress of the Work, the CONTRACTOR may, upon written notice of seven (7)

additional calendar days to the DISTRICT, terminate the contract and recover from the DISTRICT as provided in paragraph 14.1.2.

14.2 NOTIFICATION OF TERMINATION

When any of the above reasons exist, the DISTRICT may, without prejudice to any other rights or remedies of the DISTRICT and after giving the CONTRACTOR and the CONTRACTOR's surety, if any, written notice of seven (7) calendar days, terminate the contract and may, subject to any prior rights of the Surety:

- A. Take possession of the site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR;
- B. Accept assignment of subcontracts pursuant to paragraph 5.4; and
- C. Complete with work by whatever reasonable method the DISTRICT may deem expedient.

14.2.1 PAYMENTS WITHHELD

If the DISTRICT terminates the contract for one of the reasons stated in paragraph 14.1.1, the CONTRACTOR shall not be entitled to receive further payment until the work is complete.

14.2.2 PAYMENTS UPON COMPLETION

If the unpaid balance of the contract sum exceeds costs of completing the work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the DISTRICT. The amount to be paid to the CONTRACTOR or DISTRICT, as the case may be, shall be certified by the ARCHITECT upon application. This payment obligation shall survive completion of the contract.

14.3 TERMINATION OR SUSPENSION BY THE DISTRICT FOR CONVENIENCE

14.3.1 SUSPENSION BY DISTRICT

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

14.3.1.1 **Adjustments.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the CONTRACTOR is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 **Adjustments for Fixed Cost.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 **TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS**

The DISTRICT reserves the right to terminate this contract should the DISTRICT determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.4. The CONTRACTOR shall receive payment for all work performed to the date of termination in accordance with the provisions of Article 9.

14.3.3 **MUTUAL TERMINATION FOR CONVENIENCE**

The CONTRACTOR and the DISTRICT may mutually agree to terminate this contract for convenience. The CONTRACTOR shall receive payment for all work performed to the date of termination in accordance with the provisions of Article 9.

ARTICLE 15

NON-UTILIZATION OF ASBESTOS MATERIAL

- A. The CONTRACTOR will be required to execute and submit the Certificate Regarding Non Asbestos Containing Materials.
- B. Should asbestos containing materials be installed by the CONTRACTOR in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria:
 - 1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - 2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 - 3. The asbestos consultant shall be chosen and approved by the DISTRICT who shall have sole discretion and final determination in this matter.

4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- C. Cost of all asbestos removal, including, but no/necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by the DISTRICT shall be borne entirely by the CONTRACTOR.
 - D. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the CONTRACTOR at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the CONTRACTOR acknowledges the above and agrees to hold harmless the DISTRICT, its Governing Board, employees, agents, ARCHITECT, and assigns for all asbestos liability which may be associated with this work. The CONTRACTOR further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risks and liabilities.

SECTION 00800

SUPPLEMENTARY GENERAL CONDITIONS

These Supplementary General Conditions amend or supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The General Conditions also may be supplemented elsewhere in the Contract Documents by provisions located in, but not necessarily limited to, Division 1 of the Specifications.

ARTICLE 1. BASIC DEFINITIONS

Add the following paragraph:

1.1.3 CONTRACTOR named as such in the Contract Documents is each entity having a contractual agreement with DISTRICT for Contract(s) listed in the Agreement.

ARTICLE 2. COPIES FURNISHED

Add the following paragraph:

2.2.9 CONTRACTOR will be furnished two (2) copies of drawings and specifications free of charge.

ARTICLE 3.3 SUPERINTENDENT

Add paragraph 3.3.1.1 as follows:

3.3.1.1 CONTRACTOR shall not be relieved of the obligation to perform the work in accordance with the Contract Documents by either activities or duties of the DISTRICT in their administration of the Contract or by tests, inspections or approvals required or performed by persons other than the CONTRACTOR.

ARTICLE 4. ADMINISTRATION OF CONTRACT

4.1.1 Replace "The term 'architect' means the ARCHITECT or the ARCHITECT's authorized representative..." with "The term 'architect' means the ARCHITECT or the DISTRICT's authorized representative..."

4.2.4 Add last sentence as follows: "Communications by and with other CONTRACTORS shall be through the DISTRICT."

ARTICLE 6. SEPARATE CONTRACTS

Add the following paragraphs:

6.1.1.1 DISTRICT shall not be responsible for any damages suffered or extra costs incurred by CONTRACTOR resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on project, or caused by any

decision or omission of DISTRICT respecting the order of precedence in performance of contracts.

- 6.1.1.2 If the CONTRACTOR or any of his subcontractors or employees cause loss or damage to any separate Contractor on the work, the CONTRACTOR agrees to settle with such separate Contractor by agreement or arbitration, if they will so settle. If such separate CONTRACTOR sues the DISTRICT on account of any loss so sustained, the DISTRICT, shall notify the CONTRACTOR who shall indemnify and save harmless the DISTRICT against any expenses or judgment arising therefrom.

ARTICLE 8. TIME FOR COMPLETION

8.4.1 Excusable Delay

Add the following paragraph:

- 8.4.1.1 The work shall be commenced and shall be completed in conformance with the Project Construction Schedule. Construction delays caused by normal seasonal rainfall are included within the total number of calendar days specified and will not be considered as a reason for an extension of time. These conditions shall be wholly at the risk of the CONTRACTOR.

- 8.4.1.2 The amount of liquidated damages shall be **Three Hundred Dollars (\$300)** per calendar day.

- 8.4.1.3 Time for completion of the entire Project shall be **Forty Five (45)** consecutive calendar days beginning upon issuance of the DISTRICT'S "Notice to Proceed".

END OF SECTION